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STATUTORY TERMS DEFINED

2875.0110 FOR VALUE.

Subpart 1. **Securities options.** The words “for value” as used in Minnesota Statutes 1975, section 80A.14(p), clauses (1), (2), and (3), do not include the offer or grant of an option to purchase securities if:

A. the offer or grant is made to any person by the issuer or a parent or subsidiary of the issuer;

B. no money or other tangible property is given for such option; and

C. the option, by its terms or by the terms of some supplemental agreement, is nontransferable otherwise than by will or the laws of descent and distribution, and is exercisable, during the lifetime of the grantee, only by the grantee.

Subp. 2. **Registration.** Securities issued pursuant to the exercise of an option described in subpart 1 must at the time of issuance either be registered or exempted from registration pursuant to an applicable exemption contained in Minnesota Statutes, section 80A.15, subdivision 1, or 2, clause (a), (g), or (h).

Subp. 3. **Employee stock ownership trusts.** The words “for value” as used in Minnesota Statutes 1975, section 80A.14(p), clauses (1), (2), and (3), do not include the distribution of any securities pursuant to an employee stock ownership trust as defined in Minnesota Statutes 1974, section 290.01, subdivision 25, if the distributee has paid no money or other tangible property in exchange for the securities or the right to receive the securities.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

2875.0115 SECURITIES GUARANTEED BY A GOVERNMENTAL UNIT OR INSTRUMENTALITY.

Subpart 1. **Definition of “guaranteed.”** For the purpose of Minnesota Statutes, section 80A.15, subdivision 1, paragraph (a), the term “guaranteed,” when used with reference to a security issued by the United States, any state, any political subdivision of a state, or any corporate or other instrumentality of one or more of the foregoing, shall include any debt obligation which:

A. is a general obligation of the issuer, to which the issuer has pledged to its full faith and credit (whether or not the issuer has general taxing powers); or

B. the issuer is obligated to repay out of, and only out of, public funds.

Subp. 2. **Definition of “public funds.”** For the purposes of this part, “public funds” means:

A. any money derived from:

- (1) taxation;
- (2) special assessments;
- (3) revenues or other service charges derived by the issuer from a public facility or enterprise owned and operated by or on behalf of and under the control of the issuer;
- (4) government grants or loans received by the issuer; or
- (5) the proceeds of any bond insurance, letter of credit, line of credit, or other credit enhancement device obtained by the issuer; or

B. any other money subject to the control of and appropriation by the governing body of the issuer.

Except with respect to funds identified in item A, subitem (4) or (5), public funds does not include money received by the issuer from any person other than in the person's capacity as a member of the general public.

Statutory Authority: *MS s 45.023; 80A.25 subd 1*

History: *13 SR 1379*

2875.0116 NONISSUER TRANSACTIONS INVOLVING PREVIOUSLY EXEMPTED SECURITIES.

Subpart 1. **Scope.** This part applies to any security which was issued and exempt under Minnesota Statutes, section 80A.15, subdivision 1, paragraph (a), prior to July 1, 1987, but which is not exempt under the amended provisions of Minnesota Statutes, section 80A.15, subdivision 1, paragraph (a), which became effective July 1, 1987.

Subp. 2. **Nonissuer transactions.** Any security described in subpart 1, shall be exempt for purposes of nonissuer transactions effected on or after July 1, 1987, provided that the nonissuer transaction does not constitute a public offering.

Statutory Authority: *MS s 45.023; 80A.25 subd 1*

History: *13 SR 1379*

2875.0120 WARRANT OR RIGHT TO PURCHASE.

The exemption contained in Minnesota Statutes, section 80A.15, subdivision 1, clause (f) for a warrant or right to purchase any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or the Pacific Stock Exchange, shall only apply to a warrant or right issued by the issuer of the securities so listed or approved for listing.

Statutory Authority: *MS s 80A.25 subd 1*

2875.0130 COMMERCIAL PAPER WHICH ARISES OUT OF CURRENT TRANSACTIONS.

“Commercial paper which arises out of a current transaction” for the purpose of Minnesota Statutes, section 80A.15, subdivision 1, clause (g) means any note or other evidence of indebtedness, which has been issued, or the proceeds of which are to be used, for producing, purchasing, carrying, or marketing goods, liquid inventories, or other assets easily convertible into cash, or in meeting current operating expenses of a commercial, agricultural, or industrial business, and which is not to be used for permanent or fixed investment, such as land, buildings, or machinery, or for speculative transaction or transactions in securities (except direct obligations of the United States government).

Statutory Authority: *MS s 80A.25 subd 1*

2875.0140 REGULATION BY A GOVERNMENTAL AUTHORITY.

Except for regulation of the issuance or guarantee by a public utility of its securities under the Public Utility Holding Company Act of 1935, regulation solely by the United States Securities and Exchange Commission is not "regulation . . . by a governmental authority of the United States" as that term is used in Minnesota Statutes, section 80A.15, subdivision 1, clause (i).

Statutory Authority: *MS s 80A.25 subd 1*

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):

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 the purchaser 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 the purchaser 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

B. there shall be counted as one sale a sale to any corporation, partnership, association, joint stock company, trust, or unincorporated organization except that if such entity was organized for the specific purpose of acquiring the securities offered, each beneficial owner of equity interest or equity securities in such entity shall count as a separate sale; and

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

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

Subp. 3. **Number of sales.** For the purpose of determining the number of sales which have been made, or will have been made upon completion of a proposed distribution under Minnesota Statutes, section 80A.15, subdivision 2, clause (a), only those sales which would be subject to the registration provisions of Minnesota Statutes, chapter 80A, as determined by Minnesota Statutes, section 80A.27, shall be included.

Subp. 4. **Time.** For purposes of this part, time shall be computed pursuant to Minnesota Statutes 1978, section 645.15, as amended.

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

History: *10 SR 275; 14 SR 517; 17 SR 1279*

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: *8 SR 1009; 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. 2. [Repealed, 10 SR 275]

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.

C. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h), is not available for any security which is advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television, or other method of mass communication. Mass communication includes a direct mailing or "seminar" where the issuer or other person making the offering does not have reasonable grounds to believe that the securities being offered would be a suitable investment for each person to whom such solicitation is made, or does not have other justifiable basis for selecting the persons to whom such solicitation is made (such as existing security holders of the issuer).

D. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h), is withdrawn for any security sold in a public distribution. For purposes of this part, "public distribution" means an offering registered under the Securities Act of 1933 or exempted by regulation A of section 3(b) of that act, provided, however, that a public distribution does not include exchange offers or the exercise of options pursuant to a plan approved, or proposed to be approved by shareholders.

E. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h), is withdrawn for any security representing an interest in an association whose operations, or proposed plan of operations, would require a broker-dealer's license pursuant to Minnesota Statutes 1974, section 80A.04, subdivision 1, unless the association has been licensed under that section for a period not less than two consecutive years.

F. The requirement of Minnesota Statutes, section 80A.15, subdivision 2, clause (h)(1) is hereby waived in connection with offers to exchange securities of the issuer or another issuer made to existing security holders.

G. The requirement of Minnesota Statutes, section 80A.15, subdivision 2, clause (h)(1) is hereby waived in connection with any distribution of securities pursuant to any employee's savings, stock purchase, pension, profit sharing, or similar benefit plan, or self-employed person's retirement plan.

Subp. 4. **Time.** For the purposes of this part, time shall be computed pursuant to Minnesota Statutes 1978, section 645.15, as amended.

Subp. 5. **Integrating sales and offers; factors considered.** The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), and this part:

- A. whether the sales are part of the single plan of financing;
- B. whether the sales involve issuance of the same class of securities;
- C. whether the sales have been made at or about the same time;
- D. whether the same type of consideration is received; and
- E. whether the sales are made for the same general purposes.

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

History: *8 SR 1009; 10 SR 275; 14 SR 517*

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*

2875.0190 REASONABLE AND CUSTOMARY COMMISSIONS.

For the purpose of Minnesota Statutes, section 80A.15, subdivision 2, clause (h), "reasonable and customary commissions" means commissions which do not exceed the amounts which may permissibly be paid for the sale of particular types of securities in connection with registered offerings, as prescribed in part 2875.3050.

Statutory Authority: *MS s 80A.15 subd 2; 80A.25 subd 1*

2875.0200 OFFERS BUT NOT SALES.

Offers, but not sales for which a registration statement has been filed under Minnesota Statutes, chapter 80A, are hereby exempted from registration pursuant to Minnesota Statutes 1978, section 80A.15, subdivision 2, clause (i), as amended, provided, however, that any such written offer may be made only by, or only if accompanied by, the most recent preliminary or the final prospectus on file with the commissioner.

Statutory Authority: *MS s 80A.15 subd 2; 80A.25 subd 1*

2875.0210 CONSOLIDATION OR MERGER.

The words "consolidation or merger" as used in Minnesota Statutes, section 80A.15, subdivision 2, clause (1) shall mean a statutory consolidation or a statutory merger as defined by the laws of the governing state or other entity. A reorganization described in section 368 (a) (1) (B) of the Internal Revenue Code of 1954, as amended, is not ordinarily a "consolidation or merger."

Statutory Authority: *MS s 80A.25 subd 1*

2875.0220 OUTSTANDING CONVERTIBLE SECURITY.

An option to purchase securities which has been granted without registration or pursuant to an applicable exemption in reliance upon part 2875.0110 is not an "outstanding convertible security" as that term is used in Minnesota Statutes, section 80A.15, subdivision 2, clause (n). Securities issued pursuant to the exercise of such option must at the time of issuance be either registered or exempted by Minnesota Statutes, section 80A.15, subdivision 1, or 2, clause (a), (g), or (h).

Statutory Authority: *MS s 80A.25 subd 1*

2875.0230 OFFER OR SALE BY AN AFFILIATE.

Any offer or sale by an affiliate of the issuer thereof is hereby exempted from registration pursuant to Minnesota Statutes 1978, section 80A.15, subdivision 2, clause (o), as amended, if the following conditions are met prior to any such offer or sale:

A. if the sale is subject to rule 144 of the Securities and Exchange Commission:

(1) a registration statement is in effect with respect to securities of the same class of such issuer;

(2) the sale is made pursuant to rule 144 promulgated by the Securities and Exchange Commission; and

(3) all annual or other reports required by Minnesota Statutes 1978, section 80A.12, as amended, or any rule thereunder have been filed or distributed

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during the 12 months preceding such sale (or for such shorter period for which the issuer was required to file such reports); or

B. if the sale is not subject to rule 144:

(1) a registration statement is in effect with respect to securities of the same class of such issuer;

(2) a statement of the facts called for by form 144 has been furnished to the commissioner concurrent with the placing with a broker-dealer of an order to execute a sale (if a broker-dealer is used) or at the time of the offer (if a broker-dealer is not used); and

(3) all annual or other reports required by Minnesota Statutes, section 80A.12 or any rule thereunder have been filed or distributed during the 12 months preceding such sale (or for such shorter period for which the issuer was required to file such reports).

Statutory Authority: *MS s 80A.15 subd 2; 80A.25 subd 1*

APPLICATION AND AMENDMENT OF RULES

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*

2875.0420 AMENDMENTS REQUIRING AN ORDER OF THE COMMISSIONER.

Amendments "requiring an order of the commissioner," pursuant to Minnesota Statutes 1978, section 80A.28, subdivision 3, as amended, shall mean any change in the language of the currently effective order of registration or licensing, including by way of example:

- A. a change in the name of the registrant, whether an issuer, broker-dealer, or investment adviser;
- B. a change in price, if equity securities are involved;
- C. a change in interest rate, if debt securities are involved;
- D. a change in type or class of security registered.

Statutory Authority: *MS s 80A.28 subd 3*

2875.0510 ADVERTISEMENT.

"Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or similar communications media, including film strips or motion pictures, published in connection with the offer or sale of a security.

Statutory Authority: *MS s 80A.16; 80A.25 subd 1*

2875.0520 ADVERTISEMENTS TO BE FILED.

All sales and advertising literature and promotional material including that material required to be preserved pursuant to part 2875.1540, other than that exempted by this part, shall be governed by the following:

- A. Any such material shall, upon the written request of the commissioner, be filed with the commissioner prior to being disseminated.
- B. If not disallowed by the commissioner by written notice or otherwise within three business days from the date filed, the literature or material may be disseminated.
- C. No formal approval of the literature or material shall be issued by the commissioner.
- D. The disseminator of the literature or material shall be responsible for the accuracy and reliability of the literature and material, and its compliance with the act and this part.

Statutory Authority: *MS s 80A.16; 80A.25 subd 1*

2875.0530 SPECIFIC PROHIBITIONS.

The following devices or sales presentations, and the use thereof, will be deemed deceptive or misleading practices:

- A. comparison charts or graphs showing a distorted, unfair, or unrealistic relationship between the issuer's past performance, progress, or success and that of another company, business, industry, or investment media;
- B. layout, format, size, kind, and color of type used so as to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified, or modifying portions necessary to make the entire advertisement a fair and truthful representation;
- C. statements or representations, which by themselves predict future profit, success, appreciation, performance, or otherwise relate to the merit or potential of the securities, which are positive or imperative in form; such statement or representations should clearly indicate that they represent solely the opinion of the publisher thereof;
- D. generalizations, generalized conclusions, opinions, representations, and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;

E. sales kits or film clips, displays, or exposures, which, alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain or exaggerated potential, profit, safety, return, or assured or extraordinary investment opportunity, or similar benefit to the prospective purchaser;

F. distribution of any nonfactual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions, or excessive optimism;

G. any package or bonus deal, prize, gift, gimmick, or similar inducement, combined with or dependent upon the sale of some other product, contract, or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered.

Statutory Authority: *MS s 80A.16; 80A.25 subd 1*

2875.0540 ADVERTISING NOT REQUIRING PRIOR APPROVAL.

The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the commissioner, unless specifically prohibited:

A. so-called "tombstone" advertising, containing no more than the following information: name and address of issuer; identity or title of security; per unit offering price, number of shares, and amount of offering; brief, general description of business; name and address of underwriter, or address where offering circular or prospectus can be obtained; and date of issuance;

B. dividend notices, proxy statements, and reports to shareholders, including investment company quarterly and semiannual reports;

C. sales literature, advertising, or market letters prepared in conformity with the applicable regulations, in compliance with the filing requirements of and approved by the SEC, the NASD, or securities exchanges enumerated in Minnesota Statutes, section 80A.15, subdivision 1, clause (f);

D. factual or informative letters, bulletins, or releases, similar to newsletters, relating to issuer's progress or activities, status of the offering or current financial condition; provided, however, that during the course of a public offering this exemption shall not be available to an issuer;

E. advertising or sales literature used in connection with a security or transaction exempted by Minnesota Statutes, section 80A.15, and which meets all of the rules promulgated pursuant to the applicable exemptive paragraph of Minnesota Statutes, section 80A.15.

Statutory Authority: *MS s 80A.16; 80A.25 subd 1*

2875.0550 VIOLATIONS.

Any person, including any broker-dealer or agent thereof, investment adviser, or issuer who knowingly prepares, distributes, or causes to be issued or published any sales literature that is knowingly inaccurate, false, misleading, tending to mislead in any material respect, or otherwise in violation of the provisions herein may be held responsible and accountable therefor in any administrative or civil proceeding arising under the act or these rules.

Statutory Authority: *MS s 80A.16; 80A.25 subd 1*

2875.0560 DEVICE, SCHEME, OR ARTIFICE TO DEFRAUD.

Subpart 1. **Prohibited advertisements.** It shall constitute a "device, scheme, or artifice to defraud" for an investment adviser, directly or indirectly, to publish, circulate, or distribute any advertisement that:

A. refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report, or other service rendered by such investment adviser; or

B. refers, directly or indirectly, to past specific recommendations of such investment adviser that were or would have been profitable to any person; provided,

however, that this shall not prohibit an advertisement that sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year of such advertisement and such list, if:

(1) it is furnished separately;

(2) it states the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell, or hold), the market value at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(3) it contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It shall not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list";

C. represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or that represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making personal decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use;

D. contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

E. contains any untrue statement of a material fact or which is otherwise false or misleading.

Subp. 2. Scope of advertisement. For the purposes of subpart 1, the term "advertisement" shall include any notice, circular, letter, or other written communication given to more than one person, any notice or other announcement, or any publication or by radio or television, which offers:

A. any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell securities;

B. any graph, chart, formula, or other device to be used in making any determination concerning when to buy or sell any security, or which security to buy or sell; or

C. any other investment advisory service with regard to securities.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

2875.0570 SECURITIES NOT APPROVED.

Every registration statement and prospectus for a security that is registered as required under Minnesota Statutes, chapter 80A, and is exempt from registration by section 3(a)(11) of the Securities Act of 1933 as amended, shall bear on the front page of such registration statement or prospectus the following language in capital letters and boldface type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE MINNESOTA DEPARTMENT OF COMMERCE NOR HAS THE DIVISION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Statutory Authority: *MS s 80A.25 subd 1*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

BROKER-DEALER STANDARDS

2875.0910 BROKER-DEALERS.

Subpart 1. **Standards.** Every broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of business.

Subp. 2. **Recommendations to customers.** In recommending to a customer the purchase, sale, or exchange of any security, a broker-dealer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts disclosed by such customer as to financial situation and needs.

A broker-dealer may not recommend speculative, low-priced securities to customers without knowledge or an attempt to obtain information concerning the customers' other securities holdings, their financial situation, and other necessary data.

Subp. 3. **Supervision.** Every broker-dealer shall establish, maintain, and enforce written procedures which will enable it to supervise properly the activities of each agent to assure compliance with applicable securities laws, rules, and regulations.

Final responsibility for proper supervision shall rest with the broker-dealer. The broker-dealer shall designate a partner, officer, or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures.

Every broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out the broker-dealer's supervisory procedures. Every broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its agents pertaining to the solicitation or execution of any securities transaction.

Subp. 4. **Review of activities.** Every broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and at least an annual inspection of each office of supervisory jurisdiction.

Subp. 5. **Duty to investigate.** Every broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to licensing as an agent for that broker-dealer.

Subp. 6. **Office of supervisory jurisdiction defined.** "Office of supervisory jurisdiction" means any office designated as directly responsible for the review of the activities of agents in such office and/or in other offices of the broker-dealer.

Subp. 7. **Prohibitions.** No broker-dealer, investment adviser, agent, or employee of any of the above shall effect with or for any customer's account any transactions of purchase or sale which are excessive in size, amount, or frequency in view of the financial resources and character of such account.

No broker-dealer or agent shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager, duly designated by the broker-dealer.

The broker-dealer or the person duly designated shall approve promptly in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account.

Subp. 8. **Exemption.** Subpart 7 shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

Subp. 9. **Purchases for own account.** If a broker-dealer buys for the broker-dealer's own account from a customer, or sells for his or her own account to a customer, the broker-dealer shall buy or sell at a price that is fair, taking into consideration all

relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that the broker-dealer is entitled to a profit.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

2875.0920 RESCISSION OFFER.

Any rescission offer described in Minnesota Statutes 1978, section 80A.23, subdivision 8, as amended, shall normally be accompanied by a document meeting the requirements of a prospectus for a registration by qualification. The document shall, in addition, clearly disclose any material facts concerning the alternatives available to the offeree.

Statutory Authority: *MS s 80A.23 subd 8*

2875.0930 RECEIPT OF MONEY FROM SALES.

Subpart 1. **Conditions.** No broker-dealer or agent participating in any distribution of securities, other than a firm commitment distribution of securities, shall accept any part of the sale price of any security being distributed unless:

A. the money or other consideration received is promptly transmitted to the persons entitled thereto; or

B. if the distribution is being made on an all-or-none basis, or on any other basis that contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs;

(1) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interest therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto; or

(2) all such funds are promptly transmitted to a bank that has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

Subp. 2. **Promptly defined.** For the purpose of subpart 1, "promptly" shall mean not later than two business days following receipt.

Statutory Authority: *MS s 80A.25 subd 1*

2875.0940 NOTICE TO CUSTOMERS.

Subpart 1. **Information.** No broker-dealer shall offer or sell any security to, or to attempt to induce the purchase of any security, by any person in connection with which such broker-dealer, directly or indirectly, offers to extend any credit to or to arrange any loan for such person, or extends any credit to or participates in arranging any loan for such person, unless such broker-dealer before any purchase, loan, or other related element of the transaction is entered into:

A. delivers to such person a written statement setting forth the exact nature of:

(1) such person's obligations under the particular loan arrangement, including, among other things, the specific charges which such person will incur under such loan in each period during which the loan may continue or be extended;

(2) the risks and disadvantages which such person will incur in the entire transaction, including the loan arrangement; and

(3) all commissions, discounts, and other remuneration received and to be received, in connection with the entire transaction including the loan arrangement, by the broker-dealer, by any person controlling, controlled by, or under common control with the broker-dealer, and by any other person participating in the transaction; and

B. obtains from such person information concerning the person's financial situation and needs, reasonably determines that the entire transaction, including the loan arrangement, is suitable for such person, and delivers to such person a written statement setting forth the basis upon which the broker-dealer made such determination.

Subp. 2. **Exemption.** Subpart 1 shall not apply to any credit extended or any loan arranged by any broker-dealer subject to the provisions of Regulation T (issued by the board of governors of the Federal Reserve System) if such credit is extended or such loan is arranged, in compliance with the requirements of such regulation, only for the purpose of purchasing or carrying the security offered or sold.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

2875.0950 ACCOUNTING PRINCIPLES.

All financial statements required by these rules or by any official form of the commissioner shall be prepared in accordance with generally accepted accounting principles unless otherwise permitted by order.

Financial statements shall be audited by independent certified public accountants who shall express an opinion thereon, except where the particular form or these rules permits the use of unaudited statements for interim periods or generally. Any financial statements prepared in accordance with the rules and requirements of the Securities and Exchange Commission shall satisfy the requirements of this part, provided however, that the statements are audited by an independent certified public accountant who expresses an opinion thereon.

Statutory Authority: *MS s 80A.25 subds 1,3*

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 statements 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*

2875.0970 AUDITORS' REPORT.

The auditors' report required herein shall comply with the following requirements:

A. The report shall be dated, manually signed, and shall identify the financial statements covered by the report.

B. The report shall state whether the audit was made in accordance with generally accepted auditing standards and shall disclose any auditing procedures generally recognized as normal or deemed necessary under the circumstances of the particular case, which have been omitted, and the reasons for such omission.

C. The report shall state clearly:

(1) the opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; and

(2) the opinion of the accountant as to any changes in accounting principles or practices or method of applying the accounting principles or practices which have a material effect on the financial statements, or material adjustments of the accounts.

D. Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated and, to the extent practicable, the effect of each such exception on the related financial statements given.

Statutory Authority: *MS s 80A.25 subs 1,3*

2875.0980 REGISTRATION STATEMENT.

All registration statements filed with the commissioner shall include a manually signed and dated consent of the accountant to the use of the accountant's name and report in the prospectus and registration statement, unless such consent has been filed with the Securities and Exchange Commission.

If an independent accountant has been engaged as the principal accountant to audit the registrant's financial statements who was not the principal accountant for the registrant's most recently filed certified financial statement, the registrant shall furnish the commissioner with a statement of the date when such independent accountant was engaged and whether, in the 18 months preceding such engagements, there were any disagreements with the former principal accountant on any manner of accounting principles or practices, financial statement disclosure, or auditing procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused the former accountant to make reference in connection with an opinion to the subject matter of the disagreement. The registrant shall also request the former accountant to furnish the registrant with a letter stating whether the accountant agrees with the statements contained in the letter of the registrant, and, if not, stating the respects in which that accountant does not agree; and the registrant shall furnish such letter to the commissioner together with its own.

Statutory Authority: *MS s 80A.25 subs 1,3*

History: *17 SR 1279*

2875.0990 WAIVER.

Notwithstanding any of the provisions of parts 2875.0950 to 2875.0980, the commissioner may by order or otherwise waive such provisions as the commissioner considers to be appropriate under the circumstances of a particular case.

Statutory Authority: *MS s 80A.25 subs 1,3*

History: *17 SR 1279*

2875.1000 UNCLAIMED PROPERTY.

Upon application for any registration the applicant shall be required to inform the commissioner of commerce of compliance with requirements set forth in Minnesota Statutes, chapter 345 relating to unclaimed property.

Statutory Authority: *MS s 80A.25 subd 1*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279*

2875.1010 INVESTMENT ADVISORY CONTRACTS.

Subpart 1. **Illegal contracts.** It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract that:

A. provides for compensation to the investment adviser which is based upon or measured by profits accrued or to accrue from transactions recommended or carried out by the investment adviser, or which is based upon a share of capital gains or upon capital appreciation of the funds or any portion of the funds of the client. This shall not be construed to prohibit charges based upon the total value of the assets under management averaged over a definite period, or as of definite dates, or taken as of a definite date, nor charges based upon the performance of the managed assets as compared to an established index;

B. fails to provide, in writing, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

C. fails to provide in writing that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within 30 business days after such change.

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.

A. The client entering into the contract subject to this subpart must be:

(1) a natural person or a company, as defined in subpart 2, who immediately after entering into the contract has at least \$500,000 under the management of the investment adviser; or

(2) a person who the investment adviser and any person acting on behalf of the adviser entering into the contract reasonably believes, immediately before entering into the contract, is a natural person or a company, as defined in subpart 2, whose net worth at the time the contract is entered into exceeds \$1,000,000. The net worth of a natural person may include assets held jointly with the person's spouse.

B. The compensation paid to the investment adviser under this subpart with respect to the performance of any securities over a given period must be based on a formula which:

(1) includes, in the case of securities for which market quotations are readily available, the realized capital gains and losses and unrealized capital appreciation and depreciation of the securities over the period;

(2) includes, in the case of securities for which market quotations are not readily available, (i) the realized capital gains and losses of securities over the period; and (ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(3) provides that any compensation paid to the investment adviser under this subpart is based on the gains less the losses computed in accordance with item B, subitems (1) and (2), in the client's account for a period of not less than one year.

C. The investment adviser shall disclose to the client, or the client's independent agent, before entering into an advisory contract under this subpart, all material information concerning the proposed advisory arrangement including the following:

(1) that the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(2) where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(3) the periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(4) the nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes the index is appropriate; and

(5) where an investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available, how the securities will be valued, and the extent to which the valuation will be independently determined.

D. The investment adviser and any person acting on behalf of the adviser who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client, or in the case of a client which is a company as defined in subpart 2, the person representing the company, alone or together, with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer, or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent in subpart 2, item C.

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.

Subp. 2. Definitions. As used in this part:

A. "Assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

B. "Affiliate" has the same meaning as in section 2(a)(3) of the Investment Company Act.

C. "Client's independent agent" means a person agreeing to act as the client's agent in connection with the contract other than:

(1) The investment adviser acting in reliance upon this part, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser, or an interested person of the investment adviser as defined in item E.

(2) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser, or an interested person of the investment adviser as defined in item E.

(3) A person with any material relationship between himself or herself, or an affiliated person of the person, and the investment adviser, or an affiliated person of the investment adviser, that exists or has existed at any time during the previous two years.

D. "Company" has the same meaning as in section 202(a)(5) of the Investment Advisers Act of 1940, but does not include a company that is required to be registered under the Investment Company Act of 1940, but is not registered. Further, the term "company" as used in subpart 1a, item A, does not include (i) a private investment company as defined in item G, (ii) an investment company registered under the Investment Company Act of 1940, or (iii) a business development company, as

defined in section 202(a)(22) of the Investment Advisors Act of 1940, unless each of the equity owners other than the investment adviser entering into a contract under subpart 1a of any such company is a natural person or company described in this item.

E. "Interested person" as used in item C means:

(1) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser.

(2) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if the beneficial or legal interest of the person in any security issued by the investment adviser or by a controlling person of the investment adviser (a) exceeds one-tenth percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or (b) exceeds five percent of the total assets of the person seeking to act as the client's independent agent.

(3) Any person, partner, or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment adviser.

F. "Investment advisory contract" means any contract or agreement where a person agrees to act as an investment adviser or to manage any investment or trading account for a person other than an investment company as defined in the Investment Company Act of 1940.

G. "Private investment company" means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3(c)(1) of the act.

H. "Securities for which market quotations are readily available" in subpart 1a, item B, have the same meaning as in Rule 2a-4(a)(1) under the Investment Company Act of 1940.

I. "Securities for which market quotations are not readily available" in subpart 1a, item B, means securities not described in item H.

Statutory Authority: *MS s 45.023; 80A.06 subd 5; 80A.25*

History: *12 SR 1335; 14 SR 517*

2875.1020 CLIENT FUNDS AND SECURITIES.

Subpart 1. **Permitted custody.** It is unlawful for any investment adviser to take or have custody of any funds or securities in which any client has a beneficial interest unless:

A. all such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss;

B. all such funds of such clients are deposited in one or more bank accounts which contain only clients' funds; such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and the investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account;

C. such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds or securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof;

D. such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits, and transactions in such client's account during such period; and

E. all such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent certified public accountant. A certificate of such accountant stating that the accountant has made an examination of such funds and securities, and describing the nature and extent of such examination, shall be filed with the commissioner promptly after such examination.

Subp. 2. **Exceptions.** Subpart 1 shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934 if such broker-dealer is subject to and in compliance with Rule 15c3-1 (Reg. 240.15c3-1) under the Securities Exchange Act of 1934; or such broker-dealer is a member of an exchange whose members are exempt from Rule 15c3-1 under the provisions of paragraph (b) (2) thereof, and such broker-dealer is in compliance with all rules and settled practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

MANIPULATIVE OR DECEPTIVE DEVICES OR CONTRIVANCES

2875.1030 BONA FIDE DISTRIBUTION OF SECURITIES.

Subpart 1. **Underwriters.** It shall constitute a “manipulative or deceptive device or contrivance” within the meaning of Minnesota Statutes, section 80A.03 for any broker-dealer or agent who is an underwriter in connection with a distribution of securities to fail to make a bona fide distribution of the securities at the public offering price of securities of a public offering which immediately trades at a premium in the secondary market.

Subp. 2. **Definitions.** For purposes of this part, the term “any person associated with the underwriter” shall mean any officer, director, partner, or branch manager of an underwriter, or any person occupying a similar status or performing similar functions, or any natural person directly or indirectly controlling or controlled by such underwriter (other than employees whose functions are clerical or ministerial).

Subp. 3. **Nonbona fide distribution.** An underwriter does not make a “bona fide distribution to the public” within the meaning of this part when the underwriter, or any person associated with the underwriter:

A. continues to hold any of the securities in the underwriter’s own account or in the account of any person associated with the underwriter;

B. sells any of the securities to any officer, director, general partner, employee, or agent of the underwriter or of any other broker-dealer, or to a person associated with the underwriter or with any other broker-dealer, or to a member of the immediate family of any such person;

C. sells any of the securities to a person who is a finder in respect to the public offering or to any person acting in a fiduciary capacity to the managing underwriter, including, among others, attorneys, accountants, and financial consultants, or to a member of the immediate family of any such person;

D. sells any securities to any senior officer of a bank, savings association, insurance company, registered investment company, registered investment advisory firm, or any other institutional type account, domestic or foreign, or to any person in the securities department of, or to any employee or any other person who may influence or whose activities directly or indirectly involve or are related to the function of buying or selling securities for any bank, savings association, insurance company, registered investment company, registered investment advisory firm, or other institutional type account, domestic or foreign, or to a member of the immediate family of any such person;

E. sells any securities to any account in which any person specified in items A to D has a beneficial interest; provided, however, an underwriter may sell part of the underwriter's securities acquired as described above to:

- (1) persons enumerated in item C or D; and
- (2) members of the immediate family or persons enumerated in item B, provided that such person enumerated in item B does not contribute directly or indirectly to the support of such member of the immediate family; and
- (3) any account in which any person specified under item C, D, or E has a beneficial interest; if the broker-dealer or agent is prepared to demonstrate that the securities were sold to such persons in accordance with their normal investment practice with the broker-dealer or agent, that the aggregate of the securities so sold is insubstantial and not disproportionate in amount as compared to sales to members of the public and that the amount sold to any one of such persons is insubstantial in amount;

F. sells any of the securities, at or above the public offering price, to any other broker-dealer; provided, however, an underwriter may sell all or part of the securities acquired as described above to another broker-dealer upon receipt from the latter assurance in writing that such purchase would be made to fill orders for bona fide public customers, other than those enumerated in items A to E, at the public offering price as an accommodation to them and without compensation for such;

G. sells any of the securities to any domestic bank, domestic branch of a foreign bank, trust company, or other conduit for an undisclosed principal unless written assurance is received from such bank, trust company, or conduit certifying that the purchase in each case is not made for the benefit of any person enumerated in items A to F.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279; L 1995 c 202 art 1 s 25*

2875.1040 IMPROPER REPRESENTATIONS.

Subpart 1. **Prohibitions.** It shall constitute a "manipulative or deceptive device or contrivance" within the meaning of Minnesota Statutes, section 80A.03, for any person, directly or indirectly, in connection with the offer or sale of any security, to make any representation:

A. to the effect that the security is being offered or sold on an "all or none" basis, unless the security is part of an offering or distribution being made on the condition that all or a specified amount of the consideration paid for such security will be promptly refunded to the purchaser unless all of the securities being offered are sold at a specified price within a specified time, and the total amount due to the seller is received by the seller by a specified date; or

B. to the effect that the security is being offered or sold on any other basis whereby all or part of the consideration paid for such security will be refunded to the purchaser if all or some of the securities are not sold, unless the security is part of an offering or distribution being made on the condition that all or a specified part of the consideration paid for such security will be promptly refunded to the purchaser unless a specified number of units of the security are sold at a specified price within a specified time, and the total amount due to the seller is received by the seller by a specified date.

Subp. 2. **Exception.** Subpart 1 shall not apply to any offer or sale of securities as to which the seller has a firm commitment from an underwriter (subject only to customary conditions precedent, including "market outs") for the purchase of all the securities being offered.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

2875.1050 IMPROPER PROMOTION, SALE, AND MARKET MANIPULATION.

It shall constitute a “fraudulent or deceptive device or contrivance” within the meaning of Minnesota Statutes, section 80A.03, for any person to:

A. represent in the offer or sale of securities, either directly or by implication, in writing or orally, that there is a guarantee against risk or loss;

B. induce excessive trading in a customer’s account, or induce trading beyond the customer’s known financial resources;

C. effect transactions in the account of a customer without the customer’s knowledge or maintain discretionary accounts without written authorization;

D. engage or aid in “boiler room” operations or high pressure tactics in connection with the promotion of speculative offerings or “hot issues” by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salespersons or broker-dealer represented by him or her, whereby the prospective purchaser is encouraged to make a hasty decision to invest, irrespective of investment needs and objectives;

E. charge, pay, or receive commissions, selling charges, expenses, or any other kind of remuneration greater than those authorized for the particular types of securities involved in connection with registered offerings under part 2875.3050; provided, however, that this item shall not apply to the sale by an issuer of a security exempted by Minnesota Statutes, section 80A.15, subdivision 2, clause (a);

F. use information about an issuer, learned from the issuer’s officers, directors, or key employees, which is not generally available to the public and which would significantly affect the market price of the issuer’s securities for personal benefit, directly or indirectly, in the offer, sale, or purchase of the issuer’s securities;

G. create an atmosphere of false supply or demand or engage in market manipulations;

H. create unreasonable delays in delivering securities;

I. represent that securities will be listed on a national exchange or that application for listing will be made, without any basis in fact for such representation; or

J. sell or solicit the purchase of one security conditioned upon the customer’s agreement to purchase another security.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

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 adviser,” “investment counselor,” “estate planner,” “investment adviser,” “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. A copy of the disclosure document must be delivered or mailed to the client when an account is opened. A licensed broker/dealer is authorized to mail the disclosure document on behalf of its agents. A record of the disclosure must be maintained for a period of three years. 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 identification of companies and/or affiliates that supply products or services 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 (name of firms(s) and/or affiliates):

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

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

“The (insert the term used by agent engaged in the business of financial planning) assigned to your account is 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].”

Subp. 3. **Exemption.** The disclosure document need not be provided to a client who meets the requirements in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g).

Statutory Authority: *MS s 45.023; 60A.17; 80A.25; 82.28; 82.47*

History: *10 SR 274; 18 SR 1471; L 2004 c 203 art 2 s 61*

2875.1060 DEFINITIONS RELATING TO QUOTATION SYSTEMS.

Subpart 1. **Scope.** For purposes of parts 2875.1060 to 2875.1140, the following terms have the meanings given them.

Subp. 2. **Inter-dealer-quotation-system.** “Inter-dealer-quotation-system” shall mean any system of general circulation to broker-dealers which regularly disseminates quotations of identified broker-dealers.

Subp. 3. **Quotation.** Except as otherwise specified in parts 2875.1060 to 2875.1140, “quotation” shall mean any bid or offer at a specified price with respect to a security.

Subp. 4. **Quotation medium.** “Quotation medium” shall mean any inter-dealer-quotation-system or any publication or electronic communications network or other device which is used by broker-dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1070 EXCEPTIONS TO QUOTATIONS SYSTEMS RULES.

The provisions of parts 2875.1060 to 2875.1140 shall not apply to the publication or submission of a quotation respecting a security which has been the subject of both bid and ask quotations in an inter-dealer-quotation-system at specified prices on each of at least 12 days within the previous 30 calendar days, with no more than four business days in succession without such a two-way quotation.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1080 QUOTATIONS TO INTER-DEALER-QUOTATION-SYSTEM.

It shall constitute a “manipulative, deceptive, or other fraudulent device or contrivance,” within the meaning of Minnesota Statutes, section 80A.03, for any broker-dealer to furnish or submit, directly or indirectly, any quotation for a security to an inter-dealer-quotation-system unless:

A. the inter-dealer-quotation-system is informed, if such is the case, that the quotation is furnished or submitted:

(1) by a broker-dealer acting for the account of or on behalf of another broker-dealer, and if so, the identity of such other broker-dealer; and/or

(2) in furtherance of one or more other arrangements (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) between or among broker-dealers, and if so, the identity of each broker-dealer participating in any such arrangement or arrangements; provided, however, that the provisions of this subitem shall not apply if only one of the broker-dealers participating in any such arrangement or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer-quotation-system;

B. the inter-dealer-quotation-system to which the quotation is furnished or submitted makes it a general practice to disclose with each published quotation, by appropriate symbol or otherwise, the category or categories in item A, subitems (1) and (2) in furtherance of which the quotation is submitted, and the identities of all other broker-dealers referred to in item A, subitems (1) and (2) where such information is supplied to the inter-dealer-quotation-system under the provisions of item A.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1090 PUBLICATION OF QUOTATIONS.

It shall constitute a “manipulative, deceptive, or other fraudulent device or contrivance” within the meaning of Minnesota Statutes 1978, section 80A.03, as amended, for a broker-dealer or agent to recommend the purchase or sale of any security or to furnish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in part 2875.1060) unless:

A. the issuer has filed a registration statement under Minnesota Statutes 1978, section 80A.09, 80A.10, or 80A.11, as amended, which became effective less than 90 calendar days prior to the day on which such broker-dealer or agent publishes or submits the quotation to the quotation medium, provided that such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted, and such broker-dealer has in records a copy of the prospectus or offering circular used in connection with the registration; or

B. the issuer is required to file reports pursuant to Minnesota Statutes, section 80A.12, subdivision 8 and the rules thereunder; the broker-dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed by Minnesota Statutes, section 80A.12, subdivision 8 and the rules promulgated thereunder; and the broker-dealer has in records the issuer's reports filed pursuant to Minnesota Statutes, section 80A.12, subdivision 8 and the rules promulgated thereunder covering the most recent 18 months or such shorter period as the issuer has filed such reports; or

C. such broker-dealer has in records, and shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker-dealer, the following information (which shall be reasonably current in relation to the day the quotation is submitted), which the broker-dealer has no reasonable basis for believing is not true and correct or reasonably current, and which was obtained from sources which the broker-dealer has a reasonable basis for believing are reliable:

- (1) the exact name of the issuer and its predecessor (if any);
- (2) the address of its principal executive offices;
- (3) the state of incorporation, if it is a corporation;
- (4) the exact title and class of the security;
- (5) the par or stated value of the security;
- (6) the number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;
- (7) the name and address of the transfer agent;
- (8) the nature of the issuer's business;
- (9) the nature of products or services offered;
- (10) the nature and extent of the issuer's facilities;
- (11) the name of the chief executive officer and members of the board of directors;
- (12) the issuer's most recent balance sheet and profit and loss and retained earnings statements;
- (13) similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence;
- (14) whether the broker-dealer or any associated person is affiliated, directly or indirectly with the issuer;
- (15) whether the quotation is being published or submitted on behalf of any other broker-dealer, and, if so, the name of such broker-dealer; and
- (16) whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer, or any person, directly or indirectly the beneficial owner of more than ten percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under Minnesota Statutes, sections 80A.01 to 80A.31 for any sales of such securities on behalf of such person. If such information is made available to others upon request pursuant to this subitem, such delivery, unless otherwise represented, shall not constitute a representation by such broker-dealer that such information is true and correct, but shall constitute a representation by such broker-dealer that the information is reasonably current in relation to the day the quotation is submitted, that the broker-dealer has no reasonable basis for believing the information is not true and correct, and that the information was obtained from sources which the broker-dealer has a reasonable basis for believing are reliable.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

2875.1100 PUBLICATION RECORDS.

Subpart 1. **Maintaining records.** With respect to any security the quotation of which is within the provisions of parts 2875.1060 to 2875.1140, the broker-dealer submitting or publishing such quotation shall maintain in records information regarding all circumstances involved in the submission of publication of such quotation, including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transaction provided to the broker-dealer by such person or persons.

Subp. 2. **Information required.** The broker-dealer shall maintain in writing as part of his or her records the information described in this part and part 2875.1090, and any other information (including adverse information) regarding the issuer which comes to his or her knowledge or possession before the publication or submission of the quotation, and preserve such records for the periods specified in Minnesota Statutes, section 80A.06, subdivision 1, or any rule thereunder.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

2875.1110 INFORMATION SUBMITTED TO SYSTEM.

For any security of an issuer included in part 2875.1090, item C, the broker-dealer submitting the quotation shall furnish to the inter-dealer-quotation-system (as defined in part 2875.1060), in such form as such system shall prescribe, at least two days before the quotation is published or submitted, the information regarding the security and the issuer which such broker-dealer is required to maintain pursuant to part 2875.1090, item C.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1120 REASONABLY CURRENT INFORMATION.

The requirement in part 2875.1090, item C that the information with respect to the issuer be "reasonably current" will be presumed to be satisfied, unless the broker-dealer has information to the contrary, if:

A. the balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of date less than six months before the publication or submission of the quotation, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than six months before the publication or submission of the quotation;

B. other information regarding the issuer specified in part 2875.1090, item C is as of a date within 12 months prior to the publication or submission of the quotation.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1130 EXEMPTIONS.

Parts 2875.1060 to 2875.1140 shall not prohibit any publication or submission of any quotation if the commissioner, upon written request or upon the commissioner's own motion, exempts by order such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative, or deceptive practice comprehended within the purpose of parts 2875.1060 to 2875.1140.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

2875.1140 IMPROPER CORRESPONDENT ARRANGEMENTS.

Subpart 1. **Prohibition.** It shall constitute a fraudulent and dishonest practice for a broker-dealer to enter into any correspondent or other arrangement (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest, and accommodation arrangement) in furtherance of which two or more broker-dealers furnish or submit quotations with respect to a particular security unless such broker-dealer informs all broker-dealers furnishing or submitting such quotations of the existence of such correspondent and other arrangements, and the identity of the parties thereto.

Subp. 2. **Definitions.** For the purpose of the subpart 1:

A. the term "correspondent" shall mean a broker-dealer who has a direct line of communication to another broker-dealer located in a different city or geographic area;

B. the term “inter-dealer-quotation-system” shall mean any system of general circulation to broker-dealers which regularly disseminates quotations of identified broker-dealers; and

C. the term “quotation” shall mean any bid or offer, or any indication of interest (such as OW or BW) in any bid or offer.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1150 NECESSARY NOTICES AND DISCLOSURES.

The following shall constitute “manipulative, deceptive, or other devices or contrivances” within the meaning of Minnesota Statutes, section 80A.03:

A. any act of any broker-dealer designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F, and G) unless such broker-dealer, at or before the completion of each such transaction, gives or sends to such customer written notification disclosing:

(1) where the broker-dealer is acting as a broker for such customer, as a dealer for his or her own account, as a broker for some other person, or as a broker for both such customer and some other person; and

(2) in any case in which the broker-dealer is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by the broker-dealer in connection with the transaction;

B. any act of any broker-dealer or agent controlled by, controlling or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such securities unless such broker-dealer or agent, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

C. any act of any broker-dealer who is acting for a customer or for both such customer and some other person, or of any broker-dealer who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the distribution of which such broker-dealer is participating or is otherwise financially interested unless such broker-dealer, at or before the completion of such transaction, gives or sends to such customer written notification of the existence of such participation or interest;

D. any act of any broker-dealer designed to effect with or for any customer's account in respect to which such broker-dealer or the broker-dealer's agent or employee is vested with any discretionary power any transaction of purchase or sale unless immediately after effecting such transaction such broker-dealer makes a record of such transaction, which record includes the name of such customer, the name, amount, and price of the security, and the date and time when such transaction took place. In addition, such broker-dealer shall send each month to each customer in whose account such broker-dealer exercises any discretionary authority, an itemized statement showing the funds and securities in the custody or possession of the broker-dealer at the end of such period, and all debits, credits, and transactions in such client's account during such period;

E. any representation made to a customer by a broker-dealer who is participating or otherwise financially interested in the distribution of any security which is not

admitted to trading on a national securities exchange that such security is being offered to such customer "at the market" or at a price related to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom he or she is associated in such distribution, or by any person controlled by, controlling, or under common control with the broker-dealer;

F. the use of financial statements purporting to give effect to the receipt and application of any part of the proceeds from the sale or exchange of securities, unless the assumptions upon which each such financial statement is based are clearly set forth as part of the caption to each such statement in type at least as large as that used generally in the body of the statement.

Statutory Authority: *MS s 80A.25 subd 1*

History: *17 SR 1279*

BROKER-DEALER RECORDS

2875.1500 EXEMPTION.

Subpart 1. **Conditions.** Parts 2875.1500 to 2875.1550 shall apply to every licensed broker-dealer, except that a broker-dealer meeting all of the following conditions shall be exempt from the provisions of parts 2875.1500 to 2875.1550:

A. the person's dealer transactions (as principal for the person's own account) are limited to the purchase, sale, and redemption of redeemable shares of registered investment companies;

B. the person's transactions as broker (agent) are limited to:

(1) the sale and redemption of redeemable securities of registered investment companies; or of interests or participations in an insurance company separate account, whether or not registered as an investment company;

(2) the solicitation of share accounts for savings associations insured by an instrumentality of the United States; and

(3) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

C. the person promptly transmits all funds and delivers all securities received in connection with activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

Subp. 2. **Additional waiver.** In addition to subpart 1, the commissioner may exempt a broker-dealer from this part, whether or not in compliance with subpart 1, if:

A. the broker-dealer is a fully disclosed correspondent of another broker-dealer licensed under this chapter; and

B. both the correspondent broker-dealer and the carrying broker-dealer have entered into a written agreement with the commissioner relating to record keeping and access to records.

Statutory Authority: *MS s 80A.06*

History: *17 SR 1279; L 1995 c 202 art 1 s 25*

2875.1505 CUSTOMER ACCOUNTS.

Every broker-dealer shall maintain accounts of customers in such form and manner as to show the following information: name, address, age, and in the case of a margin or discretionary account, the customer's signature; the signature of the agent introducing the account and the signature of the broker-dealer or the partner, officer, or manager accepting the account for the broker-dealer. If the customer is associated with or employed by another broker-dealer, this fact must be noted. In discretionary accounts, the broker-dealer shall also record the date said account was authorized, the

occupation and signature of the customer, and the signature of each person authorized to exercise discretion in each account.

Statutory Authority: *MS s 80A.06*

2875.1510 COMPLAINT FILE.

Every broker-dealer shall keep and preserve in each office of supervisory jurisdiction either a separate file on all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaint as maintained in such office. A "complaint" shall be deemed to mean any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

Statutory Authority: *MS s 80A.06*

2875.1520 BOOKS AND RECORDS.

Every licensed broker-dealer shall make and keep current the books and records specified in items A to J:

A. *Blotters, or other records of original entry, containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and all other debits and credits. Such record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person for whom purchased or received or to whom sold or delivered.*

B. *Ledgers, or other records, reflecting all assets and liabilities, income and expense, and capital accounts.*

C. *Ledger accounts itemizing separately as to each cash and margin account of every customer and of such broker-dealer and partners thereof, all purchases, sales, receipts, and deliveries of securities for such account, and all other debits and credits to such account.*

D. *Ledgers, or other records, reflecting securities in transfer; dividends and interest received; securities borrowed and securities loaned; money borrowed and money loaned (together with a record of the collateral therefor and any substitution in such collateral); and securities failed to receive and failed to deliver.*

E. *A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such dealer for the dealer's account or for the account of customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.*

F. *A memorandum of each order, and of any order instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed, and the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by any employee shall be so designated, and each such order shall be approved by an officer or partner. The term "instruction" shall be deemed to include instructions between partners and employees of a dealer. The term "time of entry" shall be deemed to mean the time when such broker-dealer transmits the order or instruction for execution, or, if it is not so transmitted, the time when it is received.*

G. Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers, partners, or officers, of such broker-dealer.

H. A record in respect of each cash and margin account with such broker-dealer, containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such accounts.

I. A record of all puts, calls, spreads, straddles, and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved.

J. A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital shall be prepared currently at least once a month.

Statutory Authority: *MS s 80A.06*

History: *17 SR 1279*

2875.1530 QUARTER YEAR INSPECTION.

Subpart 1. **Duties.** Any broker-dealer who is subject to the provisions of parts 2875.1500 to 2875.1550 shall at least once in each calendar quarter-year:

A. physically examine and count all securities held;

B. account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to the broker-dealer's control or direction but not in physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

C. verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to the broker-dealer's control or direction but not in physical possession, where such securities have been in said status for longer than 30 days;

D. compare the results of the count and verification with the broker-dealer's records; and

E. record on the books and records of the broker-dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than seven business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in part 2875.1520, subpart 1, item C; provided, however, that such procedures need not be carried out by the broker-dealer for the calendar quarter-year during which the date of his or her annual report of financial condition (pursuant to Code of Federal Regulations, title 17, section 240.17a-5) falls; and further provided, that no examination, count, verification, and comparison for the purpose of parts 2875.1500 to 2875.1550 shall be within two months of or more than four months following a prior examination, count, verification, and comparison made hereunder.

Subp. 2. **Dates.** The examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities. In either case the recordation shall be effected within seven business days subsequent to the examination, count, verification, and comparison of a particular security. In the event that an examination, count, verification, and comparison is made on a cyclical basis, it shall not extend over more than one calendar quarter-year, and no security shall be examined, counted, verified, or compared for the purpose of parts 2875.1500 to 2875.1550 less than two months or more than four months after a prior examination, count, verification, and comparison.

Statutory Authority: *MS s 80A.06*

History: *17 SR 1279*

2875.1540 MAINTAINING RECORDS OF ADVERTISEMENTS.

Every broker-dealer shall keep and preserve any written, printed, or other advertisement that is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the broker-dealer or any of its agents.

The practices deemed deceptive or misleading pursuant to part 2875.0530 shall likewise be deemed deceptive or misleading when employed by or on behalf of a broker-dealer.

Statutory Authority: *MS s 80A.06*

2875.1550 MAINTAINING RECORDS.

Every broker-dealer shall preserve all records, files, communications, and other information required by parts 2875.1500 to 2875.1540 for a period of not less than three years, the first two years in an easily accessible place and form. After the first two years a photograph on film may be substituted for the records for the balance of the required time.

Statutory Authority: *MS s 80A.06*

2875.1560 DIRECT COMMON CONTROL.

Broker-dealers are affiliated by direct common control, for the purpose of Minnesota Statutes, section 80A.04, subdivision 2, when 80 percent or more of the equity of each broker-dealer is beneficially owned by the same person or group of persons.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1570 TERMINATION.

Upon termination of the activities of a licensed person, the broker-dealer or issuer shall, within ten business days, notify the commissioner in writing of the termination stating the reason therefor.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1580 SUCCESSOR TO BROKER-DEALER.

“Successor” for the purpose of Minnesota Statutes 1978, section 80A.05, subdivision 2, as amended, includes any person succeeding to the business of a licensed broker-dealer or investment adviser under the following circumstances:

A. when a licensee is a partnership, a change in the membership of the partnership occurs which, under the law of the jurisdiction in which such partnership is formed, results in the creation of a new legal entity (this item shall not apply, however, if more than one-half of the members of the predecessor partnership are no longer partners after such change in partnership);

B. when a partnership or individual incorporates or otherwise changes its form of legal organization;

C. when an entity formed under the laws of the particular jurisdiction changes the jurisdiction in which it is incorporated, organized, or formed;

D. when a licensee changes its name; or

E. upon the consolidation or merger of a licensee, or in the case of the acquisition of substantially all of the assets of a licensee, unless the transactions are entered into for the purpose of evading the operation of the licensing requirement.

Statutory Authority: *MS s 80A.25 subd 1*

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS 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 association that:

A. solicits brokerage business for which it receives transaction-related compensation, unless the bank, savings institution, or savings 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 association provided that:

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

(2) bank, savings institution, or savings 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 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 association provides advice; provided, however, that this item does not apply if the bank, savings institution, or savings 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 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 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 association, either conditionally or on specific terms and conditions, where the commissioner determines that the activities of the bank, savings institution, or savings 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; L 1995 c 202 art 1 s 25*

LICENSING

2875.1900 LICENSING.

Subpart 1. **Experience.** No person shall be issued a broker-dealer or investment adviser’s license unless at least one person employed full-time in a supervisory capacity, by the applicant for such license, shall have been actively engaged in the securities business in a similar supervisory capacity for a minimum of three of the preceding five years, or shall have had substantially equivalent experience, satisfactory to the commissioner.

Subp. 2. **Exceptions to experience requirement.** The provisions of subpart 1 do not apply to any broker-dealer meeting all of the following conditions:

A. the person’s dealer transactions (as principal for the person’s own account) are limited to the purchase, sale, and redemption of redeemable shares of registered investment companies, except that a broker-dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his or her own account with or through another registered broker-dealer;

B. the person’s transactions as broker (agent) are limited to the sale and redemption of redeemable securities of registered investment companies; the solicitation of share accounts insured by an instrumentality of the United States; and the sale of securities for the account of the customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

C. the person promptly transmits all funds and delivers all securities received in connection with activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities, to customers.

Subp. 3. **Prior liquidated firm.** No person shall be issued a broker-dealer or investment adviser’s license if any employee of such person was an officer, supervisor, or owner of ten percent or more of the securities of, any firm liquidated under the Securities Investor Protection Act of 1970, unless good cause, satisfactory to the commissioner, be shown that the issuance of the license would be in the public interest.

Subp. 4. **Unclaimed property.** As a condition of being granted a license, every broker-dealer or investment adviser shall inform the commissioner of commerce that it has complied with the requirements set forth in Minnesota Statutes, chapter 345 relating to unclaimed property.

Statutory Authority: *MS s 80A.05 subds 3,6*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279*

2875.1910 EXAMINATION.

Subpart 1. **Waiver.** No license shall be issued by the commissioner after February 23, 1981, for a broker dealer or investment adviser unless each partner, officer or director, or person occupying a similar status or performing similar functions shall have successfully passed such examinations as the commissioner may prescribe. The commissioner may waive the requirement of this part for any partner, officer or director, or person occupying a similar status or performing similar functions who has satisfactorily completed an examination for principals given by the New York Stock Exchange, the National Association of Securities Dealers Inc., or the Securities and Exchange Commission. The commissioner may waive the requirements of this part for any partner, officer or director who represents to the commissioner in writing that he or she will not be engaged in the sale of securities, the business of advising others concerning the value of securities in this state.

No agent's license shall be issued by the commissioner after February 23, 1981, unless the applicant shall have successfully completed such examinations as the commissioner may prescribe. The commissioner may waive the requirement of this part for any applicant who has successfully completed a written examination given by the New York Stock Exchange, the National Association of Securities Dealers Inc., or the Securities and Exchange Commission.

Subp. 2. **Terminated licenses.** Any broker dealer, agent, or investment adviser whose most recent license has been terminated for a period of two years or more immediately preceding the filing of a new application and who has not been actively engaged as a broker dealer or agent respectively during that period shall be required to satisfactorily complete an examination prescribed by the commissioner, or an examination for principals or agents respectively given by the New York Stock Exchange, the National Association of Securities Dealers Inc., or the Securities and Exchange Commission.

Statutory Authority: *MS s 80A.05 subd 3*

History: *17 SR 1279*

2875.1920 NET CAPITAL REQUIREMENTS.

Subpart 1. **Net capital and indebtedness.** Every broker-dealer shall have and maintain the following net capital requirements: the broker-dealer's aggregate indebtedness to all other persons shall not exceed 15 times his or her net capital; and the net capital shall not be less than \$25,000.

Subp. 2. **Exempt transactions.** The provisions of subpart 1 shall not apply to any broker-dealer:

A. whose dealer transactions (as principal for that person's own account) are limited to the purchase, sale, and redemption of redeemable shares of registered investment companies so long as the person's transactions as broker (agent) are limited to:

(1) the sale and redemption of redeemable securities or registered investment companies;

(2) the solicitation of share accounts insured by an instrumentality of the United States;

(3) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(4) the sale of limited partnership interests; and the broker maintains a net capital of not less than \$5,000; or

B. who promptly transmits all funds and delivers all securities received in connection with activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers; and who maintains a net capital of not less than \$5,000; or

C. who the commissioner has, upon written application, exempted from the provisions of this part, either unconditionally or on specified terms and conditions, because of the special nature of the person's business, financial position, and the safeguards the person has established for the protection of customers' funds and securities.

Subp. 3. **Persons exempt.** The provisions of subpart 1 shall not apply to any member in good standing and subject to the capital rules of the Midwest Stock Exchange, the American Stock Exchange, or the New York Stock Exchange, if the rules, settled practices, and applicable regulatory procedure of those exchanges are deemed by the commissioner to impose requirements more comprehensive than the requirements of this part; provided, however, that the exemption as to the members of any exchange may be suspended or withdrawn by the commissioner at any time, by sending ten days' written notice to such exchange, if it appears to the commissioner to be necessary or appropriate in the public interest or for the protection of investors so

to do. This exemption shall not be available to the members of any exchange whose capital rules do not provide that in the computation of net capital there shall be a deduction of not less than ten percent of the contract price of each item in the securities failed to deliver account that is outstanding 40 to 49 calendar days, 20 percent of the contract price of each item in the securities failed to deliver account that is outstanding 50 to 59 calendar days, and 30 percent of the contract price of each item in the securities failed to deliver account which is outstanding 60 or more calendar days.

Subp. 4. Conformity with federal regulations. The net capital requirements for broker-dealers, as set forth in this part, shall be calculated in conformance with Code of Federal Regulations, title 17, section 240-15c3-1, as amended.

Subp. 5. Noncompliance. Whenever any broker-dealer subject to the requirements of subpart 1, or exempt under subpart 2 or 3, falls below the required net capital or fails to continue to qualify for an exemption, that person shall immediately cease operations as a broker-dealer and notify the commissioner in writing of failure to comply with this part, together with an explanation of the reasons for noncompliance. Activities as a broker-dealer shall not be again commenced until the commissioner has been provided satisfactory evidence demonstrating that the broker-dealer is in compliance with subpart 1, and has provided written consent thereto.

Subp. 6. Violation of exchange rules. Whenever any broker-dealer subject to these rules is in violation of the net capital rules of the Securities and Exchange Commission, or any securities exchange of which the broker-dealer is a member, the broker-dealer shall notify the commissioner of such violation in the same manner as specified in subpart 5.

Subp. 7. Excessive aggregate indebtedness. Every broker-dealer subject to the requirements of subpart 1, or exempt under subpart 2 or 3, shall notify the commissioner in writing whenever that person's aggregate indebtedness exceeds 12 times net capital or net capital is less than 120 percent of the minimum required.

Statutory Authority: *MS s 80A.05 subd 4*

History: *17 SR 1279*

2875.1930 BOND REQUIREMENTS FOR INVESTMENT ADVISERS.

Subpart 1. Amount. Any investment adviser who has custody of, or discretionary authority over, any assets of any client shall have first posted with the commissioner a surety bond in the amount of \$25,000, on such form as the commissioner may prescribe.

Subp. 2. Alternative compliance. Any appropriate deposit of cash or security shall be accepted in lieu of any bond required by this part. An appropriate deposit requires, in the case of deposited securities, that the securities have a market value equal to 120 percent of the amount of the bond which would otherwise be required, and represent an interest in, or debt of, any of the persons whose securities are exempt from registration under Minnesota Statutes, section 80A.15, subdivision 1, clause (a), (b), (c), (d), or (e). At no time shall the market value of the securities on deposit be less than 105 percent of the amount of the required bond. Any deposit of cash or securities under this subpart shall be made with an escrow agent, and under such terms and conditions as the commissioner deems appropriate, and shall remain with the depository for a period of three years after the last securities transaction conducted by the licensee or the effective date of any bond acquired by the licensee, whichever first occurs. The commissioner shall allow an irrevocable letter of credit in lieu thereof.

Subp. 3. Exemption. Subpart 1 does not apply to any investment adviser who continuously maintains net capital of not less than \$100,000.

Statutory Authority: *MS s 80A.05 subd 5*

INVESTMENT ADVISER RECORDS

2875.2300 BUSINESS RECORDS.

Every investment adviser shall make and keep true, accurate, and current the following books and records relating to the investment advisory business:

A. a journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

B. general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts;

C. a memorandum of each order given by the investment adviser for the purchase or sale of any security, a memorandum of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security, and a memorandum of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;

D. all check books, bank statements, canceled checks, and cash reconciliation of the investment adviser;

E. all bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such;

F. all trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;

G. originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(1) any recommendation made or proposed to be made and any advice given or proposed to be given;

(2) any receipt, disbursement, or delivery of funds or securities; or

(3) the placing or execution of any order to purchase or sell any security; provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and that if the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular, or advertisement a memorandum describing the list and the source thereof.

H. a list or other records of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client;

I. all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;

J. all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;

K. a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement,

newspaper article, investment letter, bulletin, or other communication does not state the reasons for such recommendation a memorandum of the investment adviser indicating the reasons therefor;

L. a record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(1) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(2) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected. For the purposes of this item, the term "advisory representative" shall mean any partner, officer, or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with duties, obtains any information concerning which securities are being recommended; and any person in a control relationship to the investment adviser who obtains information concerning securities recommendations being made by such investment adviser other than as a regular client of such investment adviser. An investment adviser shall not be deemed to have violated the provisions of this item because of failure to record securities transactions of any advisory representative if the adviser establishes that he or she instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

Statutory Authority: *MS s 80A.06*

History: *17 SR 1279*

2875.2310 FUNDS AND SECURITIES.

If an investment adviser subject to part 2875.2300 has custody or possession of securities or funds of any client, the records required to be made and kept under part 2875.2300 shall include:

A. a journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;

B. a separate ledger account for each such client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;

C. copies of confirmations of all transactions effected by or for the account of any such client; and

D. a record for each such security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount or interest of each such client, and the location of each such security.

Statutory Authority: *MS s 80A.06*

2875.2320 PORTFOLIO SUPERVISION.

Every investment adviser subject to part 2875.2300 who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current:

A. records showing separately for each such client the securities purchased and sold, and the date, amount, and price of each such purchase and sale; and

B. for each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

Statutory Authority: *MS s 80A.06*

2875.2330 CLIENT IDENTITY.

Any books or records required by these rules may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation. Such code or designation shall be made available to the commissioner upon demand.

Statutory Authority: *MS s 80A.06*

2875.2340 RECORDS RETENTION.

All books and records required to be made under the provisions of parts 2875.2300 to 2875.2320, inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

An investment adviser subject to part 2875.2300, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this part for the remainder of the period specified in these rules, and shall notify the commissioner in writing the exact address where such books and records will be maintained during such period.

After a record or other document has been preserved for two years, a photograph on film may be substituted for the balance of the required time.

Every investment adviser shall preserve all records, files, communications, and other information required by this part for a period of not less than three years, the first two years in an easily accessible place and form. After the first two years, a photograph on film may be substituted for the records for the balance of the required time.

Statutory Authority: *MS s 80A.06*

2875.2350 SECURITIES EXCHANGE ACT RECORDS.

Any book or other record made, kept, maintained, and preserved in compliance with the rules under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved in compliance with parts 2875.2300 to 2875.2370, shall be deemed to be made, kept, maintained, and preserved in compliance with this part.

A record made and kept pursuant to any provision of part 2875.2300, which contains all the information required under any provision of part 2875.2300, need not

be maintained in duplicate in order to meet the requirements of the other provision of part 2875.2300.

Statutory Authority: *MS s 80A.06*

2875.2360 LIMITATION OF DISCRETIONARY POWER.

As used in parts 2875.2300 to 2875.2370, the term “discretionary power” shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a particular security.

Statutory Authority: *MS s 80A.06*

2875.2370 ADVERTISEMENTS.

Every investment adviser shall keep and preserve any written, printed, or other advertisement that is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the investment adviser.

The practices deemed deceptive or misleading pursuant to part 2875.0530 shall likewise be deemed deceptive or misleading when employed by or on behalf of an investment adviser.

Statutory Authority: *MS s 80A.06*

2875.2380 ANNUAL REPORT FOR BROKER-DEALERS.

Subpart 1. **Content.** Every broker-dealer shall, within 90 days following the close of either its fiscal or accounting year, submit an annual report to the commissioner in such form, and containing such information as the commissioner shall prescribe. At a minimum, the report shall contain audited financial statements certified by an independent certified public accountant consisting of a balance sheet, income statement, and reconciliation of surplus prepared in accordance with generally accepted accounting principles.

Subp. 2. **Reports in lieu.** Any report required to be filed with the Securities and Exchange Commission which contains essentially the same information as the commissioner shall prescribe under subpart 1 may be filed in lieu of the form required by subpart 1.

Subp. 3. **Additional reports.** The commissioner may at any time require such report as is deemed necessary to determine whether the broker-dealer is in compliance with the net capital requirement and aggregate indebtedness limitation of these rules.

As a condition of granting any license, the commissioner may, by order, impose a more frequent reporting requirement upon any broker-dealer.

Statutory Authority: *MS s 80A.06 subd 2*

History: 17 SR 1279

2875.2390 PROSPECTUS.

Subpart 1. **Time.** Except as provided in Minnesota Statutes, section 80A.15, subdivision 2, clause (i), and except for negotiations with and among underwriters and members of a selling group in connection with any offering made pursuant to Minnesota Statutes, section 80A.11, a prospectus or offering circular complying with the provisions of Minnesota Statutes, section 80A.11, subdivision 2 shall be given to each person to whom an offer is made before or concurrently with:

A. the first written offer made to the person (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution;

- B. the confirmation of any sales made by or for the account of any such person;
- C. payment pursuant to any such sale; or
- D. delivery of the security pursuant to any such sale, whichever first occurs.

Subp. 2. **Offering part of unsold allotment.** An underwriter or broker-dealer is deemed to be offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution in connection with any transaction executed by him or her prior to the expiration of 40 days after the effective date of the registration statement or the first date upon which a bona fide offer of the security was made to the public by the issuer or by or through an underwriter after such effective date, whichever is later, or, with respect to securities of an issuer which have not previously been sold pursuant to an earlier effective registration statement, prior to the expiration of 90 days after such date.

Subp. 3. **Definitions.** For the purpose of subparts 1, 2, and 4, the following terms shall have the meanings herein ascribed to them:

A. "Offering circular" means an offering circular in compliance with the requirements of the Securities Act of 1933 and the rules and forms promulgated thereunder.

B. "Prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10 of the Securities Act of 1933) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus (meeting the requirements of Minnesota Statutes, section 80A.11, subdivision 2, at the time of such communication) was sent or given to the person to whom the communication was made; and a notice, circular, advertisement, letter, or communication in respect of the security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of Minnesota Statutes, section 80A.11, subdivision 2 may be obtained and, in addition, does no more than identify the security, state the price therefor thereof, state by whom orders will be executed, and contain such other information as the commissioner deems necessary or appropriate in the public interest and for the protection of investors.

C. "Underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such terms shall not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributor's or seller's commission.

Subp. 4. **Noncompliance.** A prospectus or offering circular does not comply with the provisions of Minnesota Statutes, section 80A.11, if the issuer or other person on whose behalf the offering is being made, or any broker-dealer or underwriter is offering part of an unsold allotment; and

A. any material change has occurred in the information contained in the prospectus or offering circular and the prospectus or offering circular has not been updated to reflect such change; or

B. the prospectus or offering circular is more than nine months old, except in the case of a prospectus or offering circular for stock option plans or stock purchase plans in which case the prospectus shall be no more than 12 months old.

Statutory Authority: *MS s 80A.11 subd 4*

History: *17 SR 1279*

2875.2400 ESCROW AND TRANSFER AGREEMENT DEFINITIONS.

Subpart 1. **Scope.** When used in parts 2875.2400 and 2875.2410 or in any escrow agreement entered into pursuant to parts 2875.2400 and 2875.2410, the following terms have the meanings given them, unless the context otherwise requires.

Subp. 2. **Accepted for filing.** “Accepted for filing” means a written notation on the agreement that it is accepted for filing by the commissioner and will be incorporated by reference in the order for registration.

Subp. 3. **Conditions of escrow.** “Conditions of escrow” means those conditions specified in the escrow agreement which must be performed by the designated signatory thereto before the escrowed shares or any property deposited into escrow pursuant to the escrow agreement or supplemental escrow agreement may be released from escrow.

Subp. 4. **Deposited in escrow.** “Deposited in escrow” means the delivery by or on behalf of a depositor to the escrow agent of any certificates, instruments, documents, or other evidence of title, evidencing ownership in securities required to be escrowed by terms of the escrow agreement.

Subp. 5. **Depositor.** “Depositor” means any person whose securities are deposited in escrow pursuant to an escrow agreement signed by the person, or any other person who, because of subsequent transactions by any depositor, becomes entitled to escrowed shares upon release from escrow.

Subp. 6. **Escrow agent.** “Escrow agent” means an independent corporate fiduciary acceptable to the commissioner and signatory to the escrow agreement who receives securities for deposit in escrow pursuant to the terms and conditions of the escrow agreement.

Subp. 7. **Escrow agreement.** “Escrow agreement” means an agreement, in form and content prescribed by the commissioner, executed by the escrow agent and all depositors and noted by the commissioner as accepted for filing.

Subp. 8. **Escrowed shares.** “Escrowed shares” means all securities, including all rights and title to and interests therein, deposited in escrow pursuant to the escrow agreement or any supplemental escrow agreement.

Subp. 9. **Issuer.** “Issuer” means the issuer as defined in Minnesota Statutes, section 80A.14, clause (i), whose securities are proposed to be offered or offered for sale to public investors pursuant to an order of registration.

Subp. 10. **Price paid by depositors.** “Price paid by depositors” means the amount in cash or other tangible assets having an established market value paid to the issuer for the depositors’ shares.

Subp. 11. **Price paid by public investors.** “Price paid by public investors” means the aggregate offering price of all securities sold in an offering registered under the act.

Subp. 12. **Public investors.** “Public investors” includes all holders of securities issued or purchased pursuant to registration under the act, and all holders of securities issued or purchased in any transaction exempt from registration, which transaction occurred subsequent to a registration for which shares were required to be escrowed.

Subp. 13. **Receipt for escrowed shares.** “Receipt for escrowed shares” means a receipt, which may be included in the escrow agreement or supplemental escrow agreement, signed by the escrow agent and delivered to the commissioner, which receipt describes the escrowed shares or any authorized dividend and certifies that the escrowed shares or any authorized dividend with respect thereto have been deposited in escrow.

Subp. 14. **Release of escrowed shares.** “Release of escrowed shares” means the delivery of escrowed shares by the escrow agent to any person thereto entitled by terms of the escrow agreement for purposes therein specified.

Subp. 15. **Securities purchased by public investors.** “Securities purchased by public investors” include all securities outstanding by reason of issuance pursuant to registra-

tion or by reason of issuance in a transaction exempt from registration subsequent to registration.

Subp. 16. **Supplemental escrow agreement.** “Supplemental escrow agreement” means an agreement between escrow agent and depositors whereby all rights to authorized dividends with respect to escrowed shares are deposited in escrow pursuant to the conditions of escrow contained in the escrow agreement.

Subp. 17. **Term of escrow.** “Term of escrow” means the duration of time within which the condition of escrow must be performed before the escrow agent may release the escrowed shares.

Statutory Authority: *MS s 80A.12 subd 5; 80A.25 subd 1*

History: *17 SR 1279*

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.

Subp. 2. **Conditions of escrow.** The commissioner shall determine conditions of escrow which the commissioner deems applicable whenever escrow of securities may be necessary, and shall prescribe forms embodying such conditions of escrow. The commissioner may prescribe additional conditions applicable to each particular case which shall be typed upon the form in space provided, or upon separate sheets which shall be attached to and made a part of the prescribed form. All escrow agreements shall be prepared on forms so prescribed by the commissioner. The commissioner shall require that the escrow agent be a national bank, a state bank, or a trust company.

Subp. 3. **Commissioner as party.** Whenever an escrow is required by the commissioner, the commissioner shall be deemed a party to the agreement.

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

History: *10 SR 275; 17 SR 1279*

2875.2420 ESCROW DEPOSIT NOTICE.

Where the commissioner determines that protection of public investors requires that all or some portion of cheap stock be deposited in escrow, the commissioner shall so notify the issuer or depositors, specifying the additional terms and conditions to be included in the agreement. The issuer or depositors shall then prepare, on forms prescribed by the commissioner, and submit for approval a proposed escrow agreement.

Upon notification by the commissioner that the proposed escrow agreement is approved as to form, the depositors and escrow agent shall execute an original and such copies of the approved escrow agreement as may be necessary, and shall file the same with the commissioner. An original of said escrow agreement will remain on file with the commissioner, and copies noted as accepted for filing will be returned to the issuer. No securities shall be registered until an executed original of the escrow agreement is filed with the commissioner. The conditions of the escrow agreement shall be incorporated by reference in the order of registration. Escrowed securities shall be subject to the continuing jurisdiction of the commissioner until the commissioner orders termination of the escrow.

Statutory Authority: *MS s 80A.12 subd 5; 80A.25 subd 1*

History: *17 SR 1279*

2875.2430 EXEMPTIONS.

The commissioner in his or her discretion may remove the conditions and restrictions imposed by this chapter from any part or all of the escrowed shares when the commissioner deems that such removal is justifiable or that the circumstances under which the conditions and restrictions were imposed no longer exist. Events warranting a consideration of the circumstances with regard to the foregoing determination include, but are not limited to, the following:

A. the need of a depositor for funds to meet emergency needs which were not readily foreseeable at the time of registration and which cannot otherwise be satisfactorily met, provided release from escrow would not result in substantial detriment to public investors;

B. upon receipt by public investors of cash and/or actively traded securities of another corporation of a market value at least equal to the price paid by the public investors pursuant to bona fide arm's-length negotiations with an independent third person for the sale of substantially all the assets of the issuer or in connection with a merger or consolidation;

C. whenever the issuer has demonstrated annual net earnings, after taxes, determined in accordance with generally accepted accounting principles and excluding extraordinary items, during any two consecutive years after the date of the order of registration, of at least five percent, on an amount determined by multiplying the number of outstanding shares of the issuer by the average price per share paid by public investors;

D. when a depositor exercised rights under Minnesota Statutes, section 302A.471, or until January 1, 1984, under Minnesota Statutes, section 301.40 or 301.44, if, in the opinion of the commissioner, the proposed manner of sale of the escrowed shares does not tend to work fraud or inequity on other shareholders, present or proposed.

Statutory Authority: *MS s 80A.12 subd 5; 80A.25*

History: *8 SR 1009; 17 SR 1279*

2875.2440 PROCEEDS IMPOUNDMENT.

Subpart 1. Condition of registration. Where the offering of securities is not firmly underwritten, and in the opinion of the commissioner, the protection of public investors so requires, the commissioner may require as a condition of registration, unless reason for exception can be demonstrated, that all or a portion of the proceeds from the sale of the securities registered be impounded with an impoundment agent satisfactory to the commissioner.

Subp. 2. Agreements. The commissioner shall determine conditions of impoundment which he or she deems applicable to all impoundment agreements, and shall prescribe forms embodying such general conditions. The commissioner may prescribe additional conditions applicable to each particular case, which shall be typed upon the form in space provided or upon separate sheets which shall be attached to and made a part of the prescribed form. All impoundment agreements shall be prepared on forms so prescribed by the commissioner. Upon notification by the commissioner of the additional terms and conditions of impoundment, the issuer shall submit a proposed impoundment agreement for approval as to form. Upon notification by the commissioner that the impoundment agreement is approved as to form, the issuer, the impoundment agent, and any agent or underwriter shall execute an original and such copies of the impoundment agreement as may be necessary, and shall file the same with the commissioner. An original of said impoundment agreement will remain on file with the commissioner, and copies noting acceptance for filing will be returned to the issuer. No securities shall be registered until an executed original of the impoundment agreement is filed with the commissioner. The commissioner shall require that the impoundment agent be a national bank, a state bank, or a trust company.

Subp. 3. **Incorporation in order.** The conditions of the proceeds impoundment agreement shall be incorporated by reference in the order of registration, and impounded proceeds shall be subject to the continuing jurisdiction of the commissioner until the commissioner directs termination of the impoundment.

Statutory Authority: *MS s 80A.12 subd 5; 80A.25 subd 1*

History: *17 SR 1279*

2875.2450 DEFINITIONS.

Subpart 1. **Scope.** When used in this chapter or in any proceeds impoundment agreement entered into pursuant to these rules, the following terms have the meanings given them, unless the context otherwise requires.

Subp. 2. **Conditions of impoundment.** "Conditions of impoundment" means those conditions specified in the impoundment agreement which must be performed before any issuer or impoundment agent may apply to the commissioner for termination of the impoundment agreement and the release of impounded proceeds.

Subp. 3. **Impoundment.** "Impoundment" means the receipt by the impoundment agent of all proceeds from the sale of securities subject to the impoundment agreement, whether sold by the issuer, by an agent for the issuer, or by any underwriter.

Subp. 4. **Impoundment agent.** "Impoundment agent" means an independent corporate fiduciary that will impound all proceeds from the sale of securities subject to the impoundment agreement according to the conditions and for the term of the impoundment agreement.

Subp. 5. **Impoundment agreement.** "Impoundment agreement" means an agreement, accepted by the commissioner for filing, and executed by the impoundment agent, the issuer, and any underwriter or agent engaged in the sale of securities subject to the impoundment agreement, specifying the conditions and term of impoundment.

Subp. 6. **Proceeds.** "Proceeds" include all valuable consideration given by any person in connection with the purchase of any securities subject to the impoundment agreement.

Subp. 7. **Release of impounded proceeds.** "Release of impounded proceeds" means release of the impounded proceeds by the impoundment agent at the direction of the commissioner to any person entitled thereto according to the terms of the impoundment agreement.

Subp. 8. **Securities subject to the impoundment agreement.** "Securities subject to the impoundment agreement" means all securities sold pursuant to an order of registration which requires the impoundment of proceeds.

Subp. 9. **Subscribers.** "Subscribers" include all persons who subscribe for securities subject to the impoundment agreement and deliver payment therefor.

Subp. 10. **Terms of impoundment.** "Terms of impoundment" means the number of days, specified in the impoundment agreement, beginning from date of order or registration, within which the issuer or any agent or underwriter must sell the securities subject to the impoundment agreement in order to meet the minimum conditions of impoundment relating to the amount of proceeds.

Subp. 11. **Termination of impoundment.** "Termination of impoundment" means a written authorization by the commissioner directing the impoundment agent to terminate the impoundment and to release the impounded proceeds.

Statutory Authority: *MS s 80A.12 subd 5; 80A.25 subd 1*

2875.2460 TERMINATION OF PROCEEDS IMPOUNDMENT.

Subpart 1. **Authorization.** The commissioner shall authorize the impounding agent to terminate the impoundment and release the impounded proceeds to the issuer when the full amount specified in the impoundment agreement has been impounded, and any other conditions to such release have been satisfied, unless there have been material changes in the plan of operation or in other material circumstances that would render

the amount of impounded proceeds inadequate to finance the proposed plan of operation, or unless such other material changes have occurred as would render the representations contained in the prospectus by which securities were offered for sale to be fraudulent, false, or materially misleading.

Subp. 2. **Applications.** An application to the commissioner for authorization to terminate the impoundment and release the impounded proceeds shall contain:

A. a statement of the issuer and any agent or underwriter engaged in the sale of securities subject to the impoundment agreement, setting forth the number of securities sold, and stating that all proceeds from the sale of the securities subject to the impoundment agreement have been delivered to the impoundment agent in accordance with the terms and conditions of the impoundment agreement, and that there have been no material adverse changes in the financial condition of the issuer or in other circumstances that would render the amount of impounded proceeds inadequate to finance the proposed plan of operations and that there have been no other material changes which would render the representations contained in the prospectus or offering circular to be fraudulent, false, or materially misleading;

B. a statement of the impoundment agent signed by an appropriate officer setting forth the aggregate amount and the date received of the impounded proceeds; and

C. such other information as the commissioner may require in a particular case.

Statutory Authority: *MS s 80A.12 subd 5; 80A.25 subd 1*

2875.2470 NOTICE OF MATERIAL OCCURRENCE.

Subpart 1. **Timely.** So long as a registration is effective, the issuer shall, if possible, notify the commissioner in writing prior to or simultaneously with the occurrence of any of the following events, but in no event later than ten days following the occurrence thereof:

A. a decision to file for bankruptcy, enter receivership, or any other similar proceeding;

B. the cessation of business activities;

C. a default on any payment of principal, interest, sinking fund installment, or other similar payment, for a period of over 30 days, with respect to any indebtedness of the registrant or any of its subsidiaries exceeding five percent of the total assets of the registrant and its consolidated subsidiaries; or

D. any other event, occurrence, or transaction which may or will have a material adverse effect upon the financial stability of the issuer.

Subp. 2. **Effective date.** Subpart 1 shall not take effect until September 1, 1975.

Statutory Authority: *MS s 80A.25 subd 1*

2875.2480 NOTICE OF EXCESS SALE.

Every issuer or its agent shall immediately notify the commissioner in the event of a sale of securities in excess of the amount registered. Under no circumstances shall the notice be more than 30 days after the date on which the oversale occurred.

Statutory Authority: *MS s 80A.12 subd 8; 80A.25 subd 1*

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 the accountant's 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; 17 SR 1279*

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

- A. the date of the report and fiscal year covered by the report;
- B. the exact name of the issuer;
- C. the state or other jurisdiction of incorporation or organization;
- D. the address of the issuer's principal executive offices;
- E. the telephone number of the issuer;
- F. a description of all sales of unregistered securities made within the fiscal year covered by the report including the type of securities sold; the number and dollar amount of securities sold; the persons or class of persons to whom such securities were sold; the market price of the securities sold on the date of sale, if applicable; the name of any broker-dealer or agent participating in such sale, and the amount of commissions or other remuneration paid, if applicable; and the exemptions claimed for any such sales;
- G. a description of all securities of the issuer repurchased or otherwise reacquired by the issuer within the fiscal year covered by the report;
- H. the names and addresses of all officers and directors, or persons occupying similar status or performing similar functions;
- I. a description of the business of the issuer, including its products and services, competitive conditions, sources of supply, the number and general function of employees, its market area, and any other factors which materially affect the business or operations of the issuer;
- J. a summary of operations for the fiscal year covered by the report including, without limitation, gross revenues, cost of goods sold or services provided, net income, debt service, and earnings per share of each class of equity security outstanding, together with a comparison of similar figures for the fiscal year preceding the fiscal year covered by the report (the comparison required by this item may be presented in columnar form);
- K. a brief description of the location and general character of plants, mines, and other materially important physical properties of the issuer;
- L. a description of any material legal proceedings pending against the company;
- M. an explanation of any increase or decrease in the number of outstanding securities, in any class, of the issuer;
- N. the approximate number of holders of record of each outstanding class of equity securities;
- O. a list in tabular form of the name and address of each executive officer, and any person known to the issuer who beneficially owns ten percent or more of any class of outstanding voting securities of the issuer, showing for each the title of the class owned, the type of ownership, the amount owned, and the percent of class owned;
- P. a list in tabular form of the amount of remuneration received and the capacity in which such remuneration was received for each executive officer and director;
- Q. a list and description of the number and exercise price of all options outstanding which are beneficially owned by any officer or director;

R. a description of any transactions in the last fiscal year or any currently pending transaction to which the issuer or any of its subsidiaries was a party and in which any director, officer, ten percent shareholder, or any affiliate had or will have a direct or indirect material interest, and a description of the nature of such interest;

S. financial statements complying with the requirements of parts 2875.0950 and 2875.0960; and

T. a statement by the issuer that it has complied with the requirements set forth in Minnesota Statutes, chapter 345 relating to unclaimed property.

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*

EQUITY SECURITIES

2875.3000 MINIMUM INVESTMENT REQUIRED.

Subpart 1. **Minimum.** Unless an issuer or its predecessors have demonstrated profitable operations for two of the three fiscal years prior to registration, determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary items, the fair value of the equity investment of such issuer shall be at least ten percent of the first \$1,000,000 and five percent thereafter of the equity investment that would result from the sale of all the securities proposed to be offered.

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.

Subp. 3. **Equity investment.** "Equity investment" shall mean the sum of the fair value of the equity investment, plus an amount equal to the net proceeds that would be received by the issuer upon completion of the offering, assuming the maximum aggregate amount of securities registered are sold.

Subp. 4. **Accounting principles.** An appraisal or other evaluation used for the purposes of complying with the minimum equity investment may not be reflected in any form, either in the prospectus or in the issuer's financial statements or any footnotes thereto, unless it conforms with generally accepted accounting principles.

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

History: *10 SR 275*

2875.3010 CHEAP STOCK.

Subpart 1. **Quantity.** The maximum quantity of cheap stock allowable, expressed as a percentage of the total number of shares to be outstanding after the proposed offering, shall be determined by calculating the fair value of equity investment (part 2875.3000, subpart 2) as a percentage of equity investment (part 2875.3000, subpart 3) in accordance with the following formulations.

If the percentage is ten percent or less, the maximum quantity of cheap stock allowable shall be three times the percentage.

If the percentage is greater than ten percent, the maximum quantity of cheap stock allowable shall be two times the percentage plus ten percent.

The maximum quantity of cheap stock allowable shall not exceed 90 percent of the total number of shares to be outstanding after the proposed offering.

Subp. 2. **Maximum amount allowable.** Maximum amount of cheap stock allowable (as a percentage of the shares to be outstanding).

Fair Value of Equity Investment Divided by Equity Investment	Cheap Stock
5%	15%
10%	30%
15%	40%
20%	50%
30%	70%
40%	90%
50%	90%

Subp. 3. **Definitions.**

A. "Cheap stock" means securities:

(1) issued in consideration of property tangible or intangible, or services, the value of which has not been reasonably established; or

(2) issued at a price substantially less than the public offering price of the securities and which cannot be justified with reference to the existence of an active public market for such securities.

B. "Securities issued at a price substantially less than the public offering price of the securities" means:

(1) securities issued for less than 66-2/3 percent of the public offering price if the securities were issued less than one year prior to registration;

(2) securities issued for less than 50 percent of the public offering price if the securities were issued more than one year but less than two years prior to registration;

(3) securities issued for less than 33-1/3 percent of the public offering price if the securities were issued more than two years but less than three years prior to registration.

Subp. 4. **Unexercised options or other convertible securities.** In the case of unexercised options, or other securities convertible into the same class of security as that proposed to be offered, the aggregate of the cash amount paid and the cash amount required to be paid pursuant to the conversion or exercise privilege shall be divided by the number of shares issuable upon conversion or exercise to determine whether the securities were issued at a price substantially less than the public offering price.

Subp. 5. **Exclusions.** "Cheap stock" does not include:

A. securities which have been outstanding more than three years at the time of the proposed registration, provided that the issuer or its predecessors have been in active, continuous business operation for more than three years immediately prior to the proposed registration;

B. securities of an issuer which had earnings during the fiscal year prior to registration or had earnings during two of the three fiscal years prior to registration, as determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary income. For each fiscal year such earnings shall be in an amount equal to four or greater than four percent of the proposed public offering price on all outstanding shares of the same class at the date of application for registration; or

C. securities previously issued pursuant to a registration under Minnesota Statutes, chapter 80A.

Statutory Authority: *MS s 80A.25*

2875.3020 COMPENSATION THROUGH RECEIPT OF SECURITIES.

Outstanding options to all employees and directors shall not exceed 20 percent of the to-be-outstanding common shares of the issuer, provided further that:

A. the exercise price shall not be less than 85 percent of the fair market value on the date of the grant; and

B. no such options in excess of ten percent of the to-be-outstanding shares are granted to any individual who, immediately before such option is granted, owns stock possessing more than ten percent of the total combined voting power or value of all classes of stock of the issuer.

No shares shall be issued to employees or directors unless they shall have paid at least 85 percent of fair market value therefor, other than pursuant to the provisions of the first paragraph of this part, unless they are issued under the same terms and conditions as shares are issued to all holders of the same class of securities of the issuer.

The terms of issuance of options granted and shares issued to employees and directors may vary in any manner and to any extent from the requirements and limitations of the previous paragraphs of this part, if ratified or approved by a majority of the shareholders, excluding officers, directors, employees, and their spouses.

Statutory Authority: *MS s 80A.25*

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:

A. The issuer shall either not have a public market for its securities, or not have previously issued options, warrants, or cheap stock to any underwriter in connection with more than one public offering of its securities.

B. The securities may be issued only to a managing underwriter, and no securities may be issued in connection with a best efforts underwriting unless the entire issue is sold; provided however, that securities may be issued in connection with a minimum-maximum offering if the amount to be issued is prorated depending on the amount of the underwriting which is sold.

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.

E. The initial exercise price of the options or warrants is at least equal to the public offering price plus either: seven percent each year they are outstanding, commencing one year after issuance, so that the exercise price throughout the second year is 107 percent, throughout the third year 114 percent, throughout the fourth year 121 percent, and throughout the fifth year 128 percent; or 20 percent at any time after one year from the date of issuance.

F. The antidilution provisions of the securities, or the agreement under which the securities are to be issued, shall give no greater protection, rights, or adjustments to the underwriter than are given the public purchasers in the proposed offering. Normally, adjustments in the exercise price or the number of shares should occur only in the cases of stock splits (both forward and reverse), stock dividends, and mergers or acquisitions.

G. The term of any options or warrants shall not be longer than five years.

H. The prospectus or offering circular used in connection with the public offering shall contain a full disclosure as to the terms and reasons for the issuance of the securities, and if such reason is in connection with future advisory services to be performed by the underwriter without additional compensation, a statement to that effect shall appear in the prospectus or offering circular.

I. Shares of stock underlying warrants, options, and/or stock acquired directly by an underwriter and related persons, whether acquired prior to, at the time of, or after the offering (but which is determined to be in connection with or related to the offering) shall not, in the aggregate, be more than ten percent of the total number of shares being offered in the proposed offering. For purposes of this limitation, over-allotment shares and shares underlying warrants, options, or convertible securities which are a part of the proposed public offering are not to be counted as part of the aggregate number of shares being offered against which the ten percent limitation is to be applied.

J. If the offering is being made, either in part or in whole, on behalf of selling shareholders, such shareholders may, either individually or collectively, participate in the issuance of securities to the underwriter in the same proportion that their offering bears to the total public offering.

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

History: *14 SR 517*

2875.3040 OPTIONS, WARRANTS, AND CONVERTIBLE SECURITIES ISSUED IN CONNECTION WITH FINANCING.

Subpart 1. **Criteria.** Options, warrants, and convertible securities issued to financial institutions, other than underwriters, in connection with financing arrangements made by the issuer shall meet the following criteria unless good cause for an exception or variance is shown.

A. The securities are issued contemporaneously with the issuance of the evidence of indebtedness of the loan and expire no later than the final maturity date of the loan.

B. The securities are issued as a result of bona fide negotiation between the issuer and parties not affiliated with the issuer.

C. The exercise or conversion price of such securities is not less than the fair market value of the shares into which they are exercisable or convertible on the date that the loan is approved.

D. The number of shares issuable upon conversion or exercise multiplied by the conversion or exercise price thereof does not exceed the principal amount of the loan.

E. The aggregate number of shares into which these securities are converted or exercised shall not exceed ten percent of the shares to be outstanding upon completion of the proposed public offering.

Subp. 2. **Loan defined.** For purposes of subpart 1, "loan" shall mean any direct obligation of the issuer including obligations which are guaranteed by any person or persons. In the case of an affiliated person guaranteeing an obligation of the company, such person may not receive options, warrants, or convertible securities.

Statutory Authority: *MS s 80A.25*

2875.3050 COMMISSIONS AND EXPENSES.

Subpart 1. **Inclusions and exclusions.** Selling expenses in connection with an offering of securities, whether such offering is sold entirely or partially within Minnesota, shall include underwriting discounts or commissions; the value of options or warrants excluding overallotment options to acquire securities granted or proposed to be granted in connection with the offering to an underwriter, or its partners, officers, directors, or shareholders, or otherwise as such underwriter may lawfully direct; finder's fees paid or to be paid in connection with the offering, whether such fees are paid by the issuer or an affiliate of the issuer; the value of the difference between the fair value at the time of issuance and the price paid for securities of the issuer issued within two years prior to the offering or proposed to be issued to an underwriter or any of its partners, officers, directors, or shareholders, to the extent such sales or issuances may be deemed by the commissioner to have been in lieu of commissions, or material in the selection of an underwriter by the issuer, or otherwise directly or indirectly connected with the offering; and all other expenses directly or indirectly incurred in connection with the offering, including nonaccountable expenses of the underwriter, but excluding, however:

A. attorneys' fees for services in connection with the offer, sale, and issuance of the securities and their qualification for offer and sale under applicable laws and regulations;

B. charges of transfer agents, registrars, indenture trustees, escrow holders, depositaries, auditors, accountants, engineers, appraisers, and other experts;

C. cost of prospectuses, circulars, and other documents required to comply with such laws, rules, and regulations;

D. other expenses incurred in connection with such qualification and compliance with such laws, rules, and regulations; and

E. cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps.

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.

Subp. 2. **Options or warrants.** Options or warrants to underwriters, or their partners, officers, directors, or shareholders or otherwise as lawfully directed by such underwriters, shall be valued at market value, if any exists. In cases where no market value exists, an option or warrant to acquire common stock shall be valued at 20 percent of the public offering price of such numbers of shares under option or warrant.

Subp. 3. **Expenses on behalf of selling securities holder.** An issuer should not normally pay or assume any liability for expenses, excluding options to underwriters, incurred in connection with the sale of securities made by or on behalf of a selling security holder, whether or not such expenses constitute selling expenses as defined in subpart 1, except that the issuer may:

- A. provide for services customarily rendered to all security holders in connection with the transfer of securities including the services of transfer agents and registrars;
- B. provide audited financial statements if such statements are needed by the issuer for its own purposes; and
- C. pay all expenses in connection with the sale of securities:

(1) made by a person who purchased such securities from the issuer pursuant to an arm's-length agreement which required the issuer to pay such expenses in the event of a resale by the original purchaser, or made by a transferee of such purchaser; or

(2) made by a security holder where there is no preexisting public market and a majority of the other shareholders consent to such payment.

Subp. 4. **Apportionment.** When an offering is made simultaneously by an issuer and one or more of its security holders, the expenses, except as provided above, should be apportioned among the issuer and the selling security holders in accordance with the aggregate offering price of the securities being sold by each party.

Statutory Authority: *MS s 45.023; 80A.11 subd 4; 80A.25*

History: *8 SR 1009; 14 SR 517*

2875.3060 LOANS.

Subpart 1. **Disclosures.** Every issuer shall disclose in an appropriate section of the prospectus or offering circular the details of every loan made by such issuer to an officer, director, employee, or principal shareholder if such loan was outstanding, either in whole or in part, as of a date one year prior to the date of application for registration, provided, however, that no disclosure need be made for a loan made in the ordinary course of business, such as travel advances, expense account advances, relocation advances, and salary advances (not exceeding 20 percent of that individual's annual compensation from the issuer in the one-year period immediately preceding the date of the application).

Subp. 2. **Repayment.** Every loan required to be disclosed by subpart 1 shall be repaid within one year from the date of registration, and this shall be disclosed in the prospectus or offering circular.

Subp. 3. **Form of notice.** Every issuer whose prospectus or offering circular discloses a loan required to be disclosed by subpart 1 shall include in such prospectus or offering circular the following language, or substantially similar language acceptable to the commissioner:

The company has agreed with certain state regulatory authorities that so long as the company's securities are registered in such states, or one year from the date of this (prospectus) (offering circular), whichever is longer, the company will not make loans to its officers, directors, employees, or principal shareholders, except for loans made in the ordinary course of business, such as travel advances, expense account advances, relocation advances, or reasonable salary advances.

Statutory Authority: *MS s 80A.11 subd 4; 80A.25*

2875.3070 INTEREST OF MANAGEMENT IN TRANSACTIONS.

Subpart 1. **Disclosure.** The prospectus or offering circular should describe briefly any material interest, direct or indirect, of any of the following persons in any material transactions during the last three years, or in any material proposed transactions, to which the registrant or any of its subsidiaries was, or is to be, a party: any affiliate of the registrant; any associate or affiliate of any of the foregoing persons.

Official instructions and other applicable interpretations or rules promulgated by the United States Securities and Exchange Commission will be deemed to apply to this part.

Subp. 2. **Form of notice.** For every transaction which would be required to be disclosed by subpart 1, the prospectus or offering circular should include the following language, or substantially similar language acceptable to the commissioner:

The company's management believes that the terms of this transaction were (are) no less favorable to the company than would have been obtained from a nonaffiliated third party for similar (services) (equipment) (space) (or whatever descriptive term is appropriate).

If the inclusion of such language would be false or misleading, or tend to work a fraud upon the investor, complete disclosure of the transaction should be included in the prospectus or offering circular.

Statutory Authority: *MS s 80A.11 subd 4; 80A.25*

2875.3080 VOTING RIGHTS OF COMMON STOCK.

Common shares and similar equity securities shall have equal voting rights on all matters where such vote is permitted by applicable law.

If an issuer has more than one class of common stock authorized, the offering to the public of a class of common stock that has: no voting rights, or less than equal voting rights in proportion to the shares of each class outstanding, shall not be registered, regardless of preferential treatment on matters such as dividends or liquidation (unless such preference be a satisfactory substitute, in the discretion of the commissioner, for such voting rights).

The intent of this part shall not be circumvented by the issuance of securities convertible into common stock, or securities voting with the common, unless the issuance thereof can be justified to the commissioner. Nothing herein, however, shall prevent increased voting rights as described in part 2875.3510.

Statutory Authority: *MS s 80A.25*

2875.3090 ASSESSMENTS.

Corporate securities should be nonassessable, except that issuers organized solely to supply services or property to their members on a continuing basis may provide for an equitable assessment corresponding to the services or property supplies; or where applicable laws require assessments, such assessable securities will be allowed; provid-

ed, however, that full and complete disclosure of such assessability is provided the investor in the prospectus or offering circular.

Statutory Authority: *MS s 80A.25*

2875.3100 SPECULATIVE ISSUES.

As a condition to permitting any offering involving securities which the commissioner shall deem speculative, the commissioner may require any one or more of the following:

A. that the prospectus or offering circular conspicuously state on its cover that the securities offered thereby are speculative or a brief description of the material risks involved in the purchase of the securities with a cross-reference to further discussion (in greater detail) in the body of the prospectus and/or that each investor receive a statement concerning the speculative nature of the securities, sign a copy thereof, and file same with the commissioner;

B. that the prospectus or offering circular conspicuously state on its cover that the offering involves substantial dilution of the book value of the common stock from the public offering price and further state within its body, in reasonable detail, the amount and nature of such dilution;

C. that the prospectus include an undertaking to make available, on a quarterly or semiannual basis, summary statements of earnings, and on an annual basis audited statements of earnings and financial condition, to the commissioner, its stockholders and any registered dealer making a market in such securities, for a period not to exceed two years from the date of effectiveness of the registration.

Statutory Authority: *MS s 80A.25*

2875.3110 SLIDING SCALE CONTRACTS.

Subpart 1. **Conditions.** No securities, except as hereinafter provided, shall be sold pursuant to a contract whereby the price of the securities varies among different purchasers of the same offering or whereby such price varies as a result of the quantity of securities sold, except that in the case of quantity discounts qualification may be approved provided that there is compliance with all of the following six conditions.

A. There is no variance in the net proceeds to the issuer from the sale of the securities to different purchasers of the same offering.

B. All purchasers of the securities are informed of the available quantity discounts.

C. The same quantity discounts are allowed to all purchasers of all securities which are part of the offering.

D. The minimum amount of securities on the purchase of which quantity discounts are allowed is not less than \$10,000.

E. The variance in the price of the securities results solely from a different range of commissions, no discounts are allowed to any group of purchasers, and all discounts allowed are based on a uniform scale of commissions.

F. The applicant for registration of the securities justifies allowance of the proposed quantity discounts by a showing that the aggregate amount thereof does not exceed, and that the measure of such discounts is reasonably related to, the savings of selling expense to be achieved in the sale of the quantities of securities of which such discounts are allowed.

Subp. 2. **Exclusion.** Subpart 1 does not prohibit a quantity discount offered by an investment company registered under the Investment Company Act of 1940, as permitted by the regulations under that act, and does not apply to qualified stock options or debt instruments.

Statutory Authority: *MS s 80A.25*

2875.3120 INACTIVE COMPANIES.

An application to qualify securities or continue registration of securities for nonissuer transactions should show that the issuer's assets are productively employed in the operation of an ongoing business. Ordinarily an issuer showing annual gross receipts from operations of not less than \$250,000 will be deemed to meet this requirement.

Statutory Authority: *MS s 80A.25*

SENIOR SECURITIES**2875.3500 DIVIDEND AND INTEREST COVERAGE.**

Subpart 1. Preferred stock. In connection with the offering of preferred stock, whether or not convertible, the net earnings of the issuer, computed in accordance with generally accepted accounting principles, after taxes and exclusive of extraordinary income, for its last fiscal year prior to the public offering, or the average of its last three fiscal years prior to the public offering, shall be sufficient to cover the dividends on the securities proposed to be offered to the public.

Subp. 2. Debt securities.

A. In connection with the offering of debentures, notes, bonds, investment certificates, or similar interest-bearing securities, (other than bonds or similar interest-bearing securities issued by the United States, any state, any political subdivision, or any corporate or other instrumentality of one or more of those entities), whether convertible or not, the cash flow of the issuer, computed in accordance with generally accepted accounting principles, exclusive of extraordinary income, for its last fiscal year prior to the public offering, or the average of its last three fiscal years prior to the public offering, shall be sufficient to cover the interest, including that which is deferred and not paid, on the securities proposed to be offered to the public.

B. In connection with the offering of bonds or similar interest-bearing securities issued by the United States, any state, any political subdivision of any state, or any corporate or other instrumentality of one or more of those entities, except those which are exempt from registration under Minnesota Statutes, section 80A.15 or are rated in one of the top four letter rating categories by Fitch Investors Service, Inc., Standard and Poor's Corporation, or Moody's Investor Services, Inc., the cash flow of the user or borrower of the offering proceeds or, if a different entity, the cash flow of the entity obligated to make payment of principal and interest on the bonds or securities or obligated to make payments under a lease, sale, loan, or guarantee arrangement sufficient to make principal and interest payments on the bonds or securities, computed in accordance with generally accepted accounting principles, exclusive of extraordinary income, for its last fiscal year prior to the public offering, or the average of its last three fiscal years prior to the public offering, shall be sufficient to cover the interest, including that which is deferred and not paid, on the bonds or securities proposed to be offered to the public. If the bonds or securities proposed to be offered are unconditionally guaranteed, both as to payment of interest and as to the repayment of principal, by an entity other than the user or borrower of the proceeds, then the cash flow of the guarantor shall be used in determining whether the bonds or securities qualify for registration.

C. In connection with the offering of bonds or similar interest-bearing securities issued by the state of Minnesota, its political subdivisions, governmental agencies, or corporate or other instrumentalities, if the cash flow requirements of the previous paragraph are not satisfied, then the application for registration must be accompanied by a financial forecast, examined by an independent certified public accountant who must express an opinion on the forecast. The examination must be made in accordance with the Guide for Prospective Financial Statements as promulgated by the American Institute of Certified Public Accountants, and the financial forecast must attest to the ability of the user or borrower of the offering proceeds or other obligor to generate sufficient cash flow, computed in accordance with generally

accepted accounting principles, exclusive of anticipated extraordinary income, to cover interest on the securities proposed to be offered to the public. Notwithstanding the foregoing, a financial forecast will not be accepted as evidence of the satisfaction of cash flow requirements if the user or borrower of the offering proceeds or other obligor has had a material default during the past three years in any required payment under a lease or any payment of principal, interest, dividend, or sinking fund installments on preferred stock or indebtedness for borrowed money.

Subp. 3. **Subsequent material acquisitions.** If the issuer has made, or proposes to make, any material acquisitions subsequent to the last year specified in subpart 1 or 2, the earnings or cash flow for such year shall be restated on a pro forma basis to include such acquisitions provided however, that if the earnings or cash flow tests of subpart 1 or 2 would not be met without an entity which, at the date of registration, has not yet been acquired, then appropriate protective provisions, such as an impoundment of all proceeds of the offering, shall be made to the end that should the acquisition not take place, the proceeds of the offering would be returned to the purchasers.

Subp. 4. [Repealed, 13 SR 1379]

Subp. 5. **Unconditional guarantee.** If the securities proposed to be offered are unconditionally guaranteed, both as to interest or dividends and as to the repayment of principal, by an entity other than the issuer, then the earnings or cash flow of the guarantor shall be used in determining whether the securities qualify for registration pursuant to subpart 1 or 2.

Statutory Authority: *MS s 45.023; 80A.25 subd 1*

History: *13 SR 1379*

2875.3510 VOTING RIGHTS OF PREFERRED STOCK.

In the case of an offering or proposed offering of preferred shares (which are nonparticipating and nonconvertible) without full voting rights, provision should be made under which the holders of such preferred shares shall have the right to reasonable representation on the board of directors of the issuer upon default, for a reasonable, specific period, whether consecutive or not, of payment of dividends on such preferred shares, which right shall continue until the full payment of all arrears in dividends on such preferred shares. The right to elect a majority of the board of directors is presumptively reasonable.

Statutory Authority: *MS s 80A.25*

2875.3520 PROTECTIVE PROVISIONS FOR PREFERRED SHARES.

The charter documents of a corporation proposing to issue preferred shares which are nonparticipating and nonconvertible should normally provide reasonable protective provisions for the preferred shareholders, including where appropriate:

- A. a provision that the dividends on such shares shall be cumulative;
- B. a provision prohibiting any dividends on common stock during the existence of any arrears on the preferred shares;
- C. an appropriate requirement for the approval by the vote or written consent of a specified percentage of the preferred shares of any adverse change in the rights of such shares and of the issuance of any shares having priority over such preferred shares; and
- D. appropriate dividend restrictions on the common stock.

Statutory Authority: *MS s 80A.25*

2875.3530 DEBT SECURITIES.

Subpart 1. **Indenture.** The indenture or other instrument pursuant to which nonconvertible debt securities are proposed to be issued should normally provide for the following:

A. a sinking fund provision or serial maturity schedule whereby all or a reasonable portion of the issue is to be retired in installment prior to maturity (the deferral of sinking fund payments and the amount of the balloon payment at maturity which will be permitted will depend upon the financial condition and other circumstances of the issuer);

B. an appropriate negative pledge or equal protection clause restricting the creation of liens on the property of the issuer;

C. if the debt is unsecured, an appropriate restriction on the creation of other funded debt; and

D. an appropriate restriction on the payment of dividends upon stock of the issuer.

Subp. 2. Exemption. Such protective provisions will not be required in connection with debt securities having a rating making such provisions unnecessary.

Subp. 3. Bonds issued by governmental entities. With respect to bonds or similar interest-bearing securities issued by the United States, any state, any political subdivision of any state, or any corporate or other instrumentality of one or more of those entities other than those which are exempt from registration under Minnesota Statutes, section 80A.15, or are rated in one of the top four letter rating categories by Fitch Investors Service, Inc., Standard and Poor's Corporation, or Moody's Investor Services, Inc., the protective provisions specified in subpart 1 shall apply to the user or borrower of the offering proceeds, or, if a different entity, the person obligated to make payment of principal and interest on the bonds or securities or obligated to make payments under a lease, sale, loan, or guarantee arrangement sufficient to make principal and interest payments on the bond or securities.

Statutory Authority: *MS s 45.023; 80A.25 subd 1*

History: *13 SR 1379*

2875.3531 SECURITY INTEREST.

In connection with the offering of bonds or similar interest-bearing securities issued by the United States, any state, any political subdivision of any state, or any corporate or other instrumentality of one or more of those entities, the trustee must be granted, for the benefit of the bondholders or security holders, a mortgage and security interest of first priority in the facility to be constructed, land to be acquired, and other real or personal property to which the offering proceeds will be applied unless:

A. the securities are exempt from registration under Minnesota Statutes, section 80A.15;

B. the securities are rated in one of the top four letter rating categories by Fitch Investors Service, Inc., Standard and Poor's Corporation, or Moody's Investor Services, Inc.; or

C. all of the following conditions are met:

(1) the cash flow requirements of part 2875.3500, subpart 2, item B, are satisfied;

(2) if funds to make principal and interest payments on the bonds or securities arise from appropriations by the United States, any state, any political subdivision of any state, or any corporate or other instrumentality of one or more of those entities, the funds are not subject to the risk of nonappropriation; and

(3) if funds to make principal and interest payments on the bonds or securities arise under a lease arrangement, the lease is not subject to termination or nonrenewal prior to the maturity of the bonds or securities.

Statutory Authority: *MS s 45.023; 80A.25 subd 1*

History: *13 SR 1379*

2875.3532 [Repealed, L 1993 c 271 s 11]

2875.3533 SUITABILITY STANDARD.

Except with respect to bonds or similar interest-bearing securities exempt from registration under Minnesota Statutes, section 80A.15 or those rated in one of the top four letter rating categories by Fitch Investors Service, Inc., Standard and Poor's Corporation, or Moody's Investor Services, Inc., purchasers of bonds or similar interest-bearing securities issued by the United States, any state, any political subdivision of any state, or any corporate or other instrumentality of one or more of the foregoing, shall have a minimum annual gross income of \$30,000 and a net worth of \$30,000, or in the alternative, a net worth of \$75,000. Net worth is determined exclusive of home, home furnishings, and automobiles.

A purchaser will be considered to meet the standards in this part if the purchaser has certified within the 24-month period immediately preceding the purchase that the standards are satisfied.

Statutory Authority: *MS s 45.023; 80A.25 subd 1*

History: *13 SR 1379*

2875.3540 CONVERTIBLE SENIOR SECURITIES.

The charter documents or other instruments of a corporation proposing to issue convertible preferred shares or the indenture or other instrument pursuant to which convertible debt securities or options or warrants are proposed to be issued should normally contain an appropriate antidilution provision providing for an adjustment of the number of shares into which such shares or units are convertible or the number of shares purchasable pursuant to such options or warrants upon any stock split or stock dividend or other recapitalization of the issuer.

Statutory Authority: *MS s 80A.25*

INVESTMENT COMPANIES**2875.3900 DEFINITIONS.**

Terms appearing in parts 2875.3900 to 2875.3980 that also appear in and are defined by the Investment Company Act of 1940 shall be accorded the same meaning within parts 2875.3900 to 2875.3980 as assigned by that act.

Statutory Authority: *MS s 80A.25*

2875.3910 APPLICATION.

Every investment company shall comply with parts 2875.3900 to 2875.3980, except that closed-end companies shall be governed by the provisions of parts 2875.4300 to 2875.4330 where those parts conflict with any other part in parts 2875.3900 to 2875.3980.

Statutory Authority: *MS s 80A.25*

2875.3920 [Repealed, 10 SR 275]

2875.3930 [Repealed, 10 SR 275]

2875.3940 MINIMUM CAPITALIZATION.

An investment company having net assets of less than \$1,000,000 or an affiliated investment adviser with less than an aggregate of \$100,000,000 under management may not qualify its securities for registration unless:

A. the securities are being offered pursuant to a firm underwriting commitment that will, upon expiration of the initial offering period, capitalize the fund at not less than \$1,000,000; or

B. all proceeds of the offering are deposited in an escrow account, subject to their return in full to the investors if the minimum capitalization of \$1,000,000 is not achieved within three months after the date of the offering.

Statutory Authority: *MS s 80A.25*

2875.3950 REDEMPTION.

All payments by an investment company upon redemption of securities of which it is the issuer shall be made in cash, except that the payments in cash by a company which has filed an election pursuant to rule 18f-1 under the Investment Company Act of 1940 may be limited to the amount specified thereunder. The company shall give prompt written notice to the commissioner prior to effecting any redemption in assets other than cash, specifying the manner in which such redemption will be effected and the securities to be distributed upon redemption. The redemption fee payable by any shareholder shall not exceed one percent of the amount receivable upon redemption of the shareholder's shares, except that if the shares of a company are sold without sales commissions, the redemption fee shall not exceed two percent of such amount.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.3960 ALLOCATION OF BROKERAGE TRANSACTIONS.

An investment company shall not effect any brokerage transactions in its portfolio securities with any broker-dealer affiliated directly or indirectly with its investment adviser or manager, or with any broker-dealer providing the investment adviser or manager with statistical or research information or other services which might be of value to the adviser or manager, unless such transactions are effected at competitive brokerage rates. A statement that all portfolio securities will be purchased and sold through a particular broker-dealer or group of broker-dealers, without the further qualification that the company will seek the best price and service available, will be considered unfair per se. The commissioner may require the company to file periodic reports concerning all brokerage transactions.

Statutory Authority: *MS s 80A.25*

2875.3970 CONTRACTUAL OR PERIODIC PAYMENT PLANS.

Subpart 1. **Restrictions.** An investment company offering contractual or periodic payment plans for the accumulation of securities of another investment company, or of its own securities through single payment or periodic payment plans shall be subject to the restrictions of subparts 2 to 7.

Subp. 2. **Reasonable fee.** The fee payable by the investor as compensation for services of the custodian or services delegated to others by the custodian in maintaining the plans shall be reasonable in light of the services required to be rendered. The following information shall be included in one section of the prospectus:

A. a statement clearly setting forth all deductions which may be made from plan payments, from fund shares, or from distributions of dividends and capital gains including, but not limited to:

- (1) sales charges;
- (2) custodian fees to be deducted after completion of the plan expressed as a dollar amount and as a percentage of both the minimum and maximum monthly plans;
- (3) custodian fees to be deducted after completion of plan payments;
- (4) penalties for late payments of any periodic installment;
- (5) charges upon liquidation, withdrawal, or transfer of a shareholder's account; and
- (6) charges for any other bookkeeping or administrative services the custodian or sponsor may perform;

B. a statement that these charges are in addition to the costs to which the shares of the underlying fund are subject, including the pro rata management fees and all other expenses paid by the underlying fund;

C. if the shares of the underlying fund may be purchased separately, a statement to that effect and a statement that the costs of acquiring and holding those shares would be substantially reduced if they were purchased separately.

Subp. 3. **Right to purchase.** The investment company offering the contractual plans must have the right to purchase shares of the underlying investment company at their net asset value without imposition of any sales charges.

Subp. 4. **Prospectus.** The distribution of any prospectus of the company offering the contractual plans in connection with the solicitation of a resident of this state shall be accompanied by the prospectus of the underlying investment company.

Subp. 5. **Late payment charges.** Any charges occasioned by a late payment under a contractual plan, or by liquidation or transfer of a shareholder's interest, or for any bookkeeping or administrative services the custodian may perform, must bear a reasonable relationship to actual administrative costs incurred by the custodian or trustee by virtue of performance of such services.

Subp. 6. **Grace period.** In the event of default in one or more of the monthly payments the investor shall be given a grace period of not less than 90 days in which to cure the default before forced liquidation.

Subp. 7. **Operational aspects.** The operational aspects of the plans must be fully disclosed and clearly explained, and the offering in all other respects must comply with parts 2875.3900 to 2875.4330.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.3980 MUTUAL FUND AND INSURANCE PLANS.

Subpart 1. **Security for loan.** Any company offering to investors a portfolio of mutual fund shares to be pledged as security for a loan by the company in payment of the premium on a policy of insurance shall be subject to the following requirements:

A. The investment company shares to be offered to residents of this state shall be limited to those which could be sold in conformity with Minnesota Statutes 1974, section 80A.10 or 80A.11.

B. The policy of insurance offered by the company shall be written only by an insurance company licensed to write insurance by the commissioner of commerce of the state of Minnesota.

C. Distribution of the securities shall be made only through persons who are licensed both as securities agents and insurance agents by the Department of Commerce of this state.

D. The purchaser of a plan shall have the right of discontinuing the insurance policy at any time without forfeiting any interest in the accumulated securities, other than that interest required to satisfy the liability for any portion of the loan which may become due and payable upon discontinuance.

E. The purchaser of a plan shall have the right to discontinue the purchase of securities without forfeiting any securities already purchased, other than those required to satisfy the purchaser's liability for the loan which may become due and payable upon discontinuance, and without forfeiting or causing the cancellation of the policy of insurance.

F. The rate of interest charged by the company upon the loan which pays the premium on the insurance contract shall not exceed the maximum rate allowable under Minnesota Statutes 1971, section 334.01.

G. The operational aspects of the plans and the penalizing effect of early termination or failure to maintain the required minimum investment balance must be fully disclosed, and all other aspects of the offering must appear fair and equitable.

Subp. 2. **Application statement.** The application for registration shall be accompanied by a statement by the issuer containing the following information:

A. a list of all mutual funds proposed to be offered to residents of Minnesota and a statement that each mutual fund so listed is registered for sale in this state;

B. a list of all insurance companies writing policies to be offered to residents of Minnesota and a statement that each insurance company so listed is licensed to write insurance in this state; and

C. a statement that all persons authorized to distribute plans in Minnesota are licensed both as a securities agent and an insurance agent by the Department of Commerce.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

CLOSED-END INVESTMENT COMPANIES

2875.4300 SCOPE AND DEFINITION.

Subpart 1. **Scope.** In addition to the requirements of parts 2875.3900 to 2875.3980, the following shall apply to closed-end investment companies. If any of the other requirements of parts 2875.3900 to 2875.3980 conflict with the requirements contained in parts 2875.4300 to 2875.4330, those contained in parts 2875.4300 to 2875.4330 shall apply to closed-end investment companies.

Subp. 2. **Definition.** "Closed-end investment company" or "closed-end fund" means an investment company (as defined in the Investment Company Act of 1940) the equity securities of which are not redeemable.

Statutory Authority: *MS s 80A.25*

2875.4310 OFFER OR SALE OF SECURITIES.

The offer or sale of securities of a closed-end investment company, as defined in the Investment Company Act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements. Each registered investment company shall notify the commissioner promptly when it is not in compliance with any of the following requirements, and its registration statements shall be subject to revocation or suspension.

Statutory Authority: *MS s 80A.25*

2875.4320 REGISTRATION RESTRICTIONS.

No closed-end fund shall be registered for public offering in this state unless such fund adheres to, and discloses in its prospectus, each of the policies specified in items A to B.

A. The fund shall not at the time of purchase, as to 100 percent of its total assets:

(1) invest more than 30 percent of its total assets in restricted debt securities unless permitted by the commissioner upon proper justification;

(2) invest more than 15 percent of its total assets in all forms of illiquid securities, including, but not limited to, commodities, real estate, general and limited partnership interests, oil and gas interests, options and warrants, puts, calls, straddles, spreads, and restricted securities, except as provided in subitem (1);

(3) invest in securities carrying more than ten percent of the voting rights of any issuer;

(4) invest in more than ten percent of the equity securities of any one issuer;

(5) invest more than ten percent of its total assets in the securities of real estate investment trusts or other investment companies, provided that investments in excess of ten percent may be permitted by the commissioner upon a showing that such

investments involve no duplication to management or advisory services with those of the fund.

B. The fund shall not at any time, as to 75 percent of its total assets, invest more than five percent of such assets in the securities of any one issuer, exclusive of government securities.

C. The fund shall not effect any brokerage transactions in its portfolio securities with any broker-dealer affiliated directly or indirectly with its investment adviser or manager, unless such transactions (including the frequency thereof, the receipt of commissions payable in connection therewith, and the selection of the affiliated broker-dealer effecting such transactions) are not unfair or inequitable to the shareholders of the fund.

Statutory Authority: *MS s 80A.25*

2875.4330 DISCLOSURE FORMAT.

Notwithstanding part 2875.4320, because of the possible risk to the investor, no closed-end fund which engages in any of the following or related speculative activities shall be registered for public offering in this state unless the appropriate disclosure is made in boldface type on the cover of both the preliminary and final prospectuses, or on a prospectus supplement satisfactory in form to the commissioner, as follows:

“These securities may involve a high degree of risk because the fund is authorized:

(1) to engage in short term trading resulting in portfolio turnover greater than 100 percent annually (see page _____).

(2) to leverage more than ten percent of its total assets (see page _____).

(3) to invest more than five percent of assets in restricted securities exclusive of debt securities (see page _____).

(4) to engage in short sales, excluding short sales against the box (see page _____).

(5) to invest more than five percent of its total assets in foreign securities where the fund must pay an interest equalization tax.

(6) in relation to 75 percent of its total assets, to invest more than five percent of such assets in any one issuer.”

Statutory Authority: *MS s 80A.25*

REAL ESTATE LIMITED PARTNERSHIPS

2875.4500 DEFINITIONS.

Subpart 1. **Acquisition fee.** “Acquisition fee” means the total of all fees and commissions paid in connection with the purchase, construction, or development of property by a program. Included in the computation of such fees or commissions shall be any real estate commission, acquisition fee, selection fee, development fee, construction fee, nonrecurring management fee, or any fee of a similar nature, however designated.

Subp. 2. **Appraised value.** “Appraised value” means the value according to an appraisal made by an independent qualified appraiser.

Subp. 3. **Assessments.** “Assessments” means additional amounts of capital which may be mandatorily required of or paid at the option of a participant beyond the subscription commitment.

Subp. 4. **Capital contribution.** “Capital contribution” means the gross amount of investment on a program by a participant, or all participants as the case may be.

Subp. 5. **Cash available for distribution.** “Cash available for distribution” shall mean cash flow less amount set aside for restoration or creation of reserves.

Subp. 6. **Cash flow.** “Cash flow” means program cash funds provided from operations, including lease payments on net leases from builders and sellers, without

deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements, and replacements.

Subp. 7. **Construction fee.** "Construction fee" means a fee for acting as general contractor to construct improvements on a program's property either initially or at a later date.

Subp. 8. **Cost of property.** "Cost of property" means the sum of the price paid by the buyer for property plus all costs, payments, and expenses and cost of improvements, if any, reasonably and properly allocable to the property in accordance with generally accepted accounting principles (cost may include acquisition fees, loan points, prepaid interest, and debts).

Subp. 9. **Development fee.** "Development fee" means a fee for the packaging of a program's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.

Subp. 10. **Net worth.** "Net worth" means the excess of total assets over total liabilities as determined by generally accepted accounting practices.

Subp. 11. **Nonspecified property program.** "Nonspecified property program" means a program where, at the time a securities registration is ordered effective, less than 75 percent of the net proceeds from the sale of program interests is allocable to the purchase, construction, or improvement of specific properties. Reserves shall be included in the nonspecified 25 percent.

Subp. 12. **Participant.** "Participant" means the holder of a program interest.

Subp. 13. **Program management fee.** "Program management fee" means a fee paid to the sponsor or other persons for management and administration of the program.

Subp. 14. **Property management fee.** "Property management fee" means the fee paid for day-to-day professional property management services in connection with a program's real property projects.

Subp. 15. **Sponsor.** "Sponsor" means any person directly or indirectly instrumental in organizing, wholly or in part, a program or any person who will manage or participate in the management of a program, and any affiliate of any such person, but does not include a person whose only relation with the program is as that of an independent property manager, whose only compensation is as such. "Sponsor" does not include wholly independent third parties such as attorneys, accountants, investment advisers, and underwriters whose only compensation is for professional services rendered in connection with the offering of syndicate interests.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.4510 SPONSORS.

Subpart 1. **Experience.** The sponsor, general partner, the chief operating officer, or an affiliate providing services to the program shall have had not less than two years' relevant experience in the real estate field, shall have had not less than four years' relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed and shall have the knowledge and experience to acquire and manage the type of properties to be acquired.

Subp. 2. **Net worth requirement of general partner.** The financial condition of the general partner or general partners must be commensurate with any financial obligations assumed in the offering in the operation of the program.

At a minimum, the net worth of the general partners shall be the greater of: an amount at least equal to five percent of all offerings sold within the prior 12 months plus five percent of the gross amount of the current offering; or 15 percent of the gross amount of the current offering in offerings of less than \$2,500,000. If the offering

exceeds \$2,500,000, the net worth must be at least ten percent of the gross amount of the offering.

However, in no event shall the required net worth exceed \$1,000,000. In determining net worth for this purpose, promissory notes shall be excluded and depreciation of real property owned by the general partners shall be included. Also, evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in computation of net worth. Net worth of individual sponsors shall be determined exclusive of home, home furnishings, and automobiles.

Subp. 3. **Reports.** The sponsor shall submit to the commissioner any information required to be filed with the commissioner, including, but not limited to, reports and statements required to be distributed to limited partners.

Subp. 4. **Liability.** Sponsors shall not be indemnified by the participants for acts of negligence or misconduct or for the breach of any fiduciary obligation imposed upon the sponsors by law.

Subp. 5. **Additional requirements.** The sponsor shall maintain an ongoing place of business.

The sponsor shall have full time employees who will devote a reasonable portion of their time to partnership business, or, in the alternative, shall show to the satisfaction of the commissioner that adequate management arrangements have been made.

The sponsor shall provide evidence of ability to act in a fiduciary capacity for the limited partners; such evidence may include the holding of a state granted or regulated securities or real estate license.

Statutory Authority: *MS s 80A.25*

2875.4520 SUITABILITY OF INVESTORS.

Given the limited transferability, the relative lack of liquidity, and the specific tax orientation of many real estate programs, the sponsor and its selling representatives should be cautious concerning the persons to whom such securities are marketed. Suitability standards for investors will, therefore, be imposed which are reasonable in view of the foregoing and of the type of program to be offered. Sponsors will be required to set forth in the prospectus the investment objectives as a program, a description of the type of person who could benefit from the program, and the suitability standards to be applied in marketing it. The suitability standards proposed by the sponsor will be reviewed for fairness by the commissioner in processing the application. In determining how restrictive the standards must be, special attention will be given to the existence of such factors as high leverage, substantial prepaid interest, balloon payment financing, excessive investments in unimproved land, and uncertain or no cash flow from program property. As a general rule, programs structured to give deductible tax losses of 50 percent or more of the capital contribution of the participant in the year of investment should be sold only to persons in higher income tax brackets considering both state and federal income taxes. Programs which involve more than ordinary investor risk should emphasize suitability standards involving substantial net worth of the investor.

Statutory Authority: *MS s 80A.25*

2875.4530 SALES TO APPROPRIATE PERSONS.

The sponsor and each person selling limited partnership interests on behalf of the sponsor or partnership shall make every reasonable effort to assure that those persons being offered or sold the limited partnership interests are appropriate in light of the suitability standards set forth as required above and are appropriate to the investor's investment objectives and financial situations.

The sponsor or the sponsor's representative shall ascertain that the investor can reasonably benefit from the program, and the following shall be relevant to such determination:

A. The investor has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following: the nature of employment experience; educational level achieved; access to advice from qualified sources, such as attorney, accountant, tax adviser, etc.; prior experience with investments of a similar nature.

B. The investor has apparent understanding: of the fundamental risks and possible financial hazards of the investments; of the lack of liquidity of this investment; that the investment will be directed and managed by the sponsor; and of the tax consequences of the investment.

C. The investor has the financial capability to invest in this program.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.4540 MAINTENANCE OF RECORDS.

The sponsor shall maintain a record of the information obtained to indicate that a participant meets the suitability standards employed in connection with the offer and sale of its interests and a representation of the participant that the participant is purchasing for his or her own account or, in lieu of such representation, information indicating that the participants for whose account the purchase is made meet such suitability standards. Such information may be obtained from the participant through the use of a form which sets forth the prescribed suitability standards in full and which includes a statement to be signed by the participant in which the participant represents that he or she meets such suitability standards and is purchasing for his or her own account. However, where the offering is underwritten or sold by a broker-dealer, the sponsor shall obtain a commitment from the broker-dealer to maintain the same record of information required of the sponsor.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.4550 MINIMUM INVESTMENT.

In income oriented offerings, a minimum initial cash purchase of \$2,500 per investor shall be required. In tax oriented offerings the minimum initial cash purchase shall be \$5,000 per investor. Assignability of the interests must be limited so that no assignee (transferee) or assignor (transferor) may hold interests less than the minimum purchase, except by gifts, inheritance, intrafamily transfers, family dissolutions, transfers to affiliates, or by operation of law.

Statutory Authority: *MS s 80A.25*

2875.4560 REASONABLE FEES, COMPENSATION, AND EXPENSES.

A. The total amount of compensation of all kinds which may be paid directly or indirectly to the sponsor or its affiliates shall be reasonable, considering all aspects of the program and the investors. Such compensation may include:

- (1) organization and offering expenses;
- (2) compensation for acquisition, development, or construction services;
- (3) compensation for program management, or property management fee;
- (4) additional compensation to the sponsor-subordinated interests and promotional interests; and
- (5) real estate brokerage commissions on sale or resale of property.

B. Except to the extent that a subordinated interest is permitted for promotional activities pursuant to part 2875.4600, compensation may only be paid for reasonable and necessary goods, property, or services.

C. The application for qualification or registration and the prospectus or offering circular must fully disclose and itemize all compensation which may be

received from the program directly or indirectly by the sponsor, its affiliates and underwriters, what the compensation is for and how and when it will be paid. This shall be set forth in one location in tabular form.

Statutory Authority: *MS s 80A.25*

2875.4570 ORGANIZATION AND OFFERING EXPENSES.

All organizational and offering expenses incurred in order to sell program interests, including commissions, shall be reasonable. In no event shall these expenses exceed 15 percent of the gross proceeds of the offering.

Statutory Authority: *MS s 80A.25*

2875.4580 COMPENSATION FOR ACQUISITION SERVICES.

The total of all acquisition fees paid to the sponsor or an affiliate involved in the transaction by the program and any other person shall not exceed 18 percent of the gross proceeds of the offering. The acquisition fee paid to the sponsor shall be reduced to the extent that other real estate commissions, acquisition fees, finder's fees, or other similar fees or commissions are paid by any person in connection with the transaction.

The sponsor shall set forth in a separate section in the forepart of the prospectus the amount of all acquisition fees which may be received or paid. This amount shall be expressed in both absolute dollars and as a percentage of the gross proceeds of the offering and may in addition be expressed as a percentage of the cost of property.

The sum of the purchase price of the program's properties plus the acquisition fees paid shall not exceed the appraised value of the properties.

Statutory Authority: *MS s 80A.25*

2875.4590 PROGRAM OR PROPERTY MANAGEMENT FEE.

Program or property management fee:

A. A sponsor of a program owning unimproved land shall be entitled to annual compensation not exceeding one-fourth of one percent of the cost of such unimproved land for operating the program until such time as the land is sold or improvement of the land commenced by the limited partnership. In no event shall this fee exceed a cumulative total of two percent of the original cost of the land regardless of the number of years held.

B. A sponsor of a program holding property in government subsidized projects shall be entitled to annual compensation not exceeding one-half of one percent of the cost of such property for operating the program until such time as the property is sold.

C. A sponsor of a program owning improved land other than that specified in item B, shall be entitled to annual compensation not exceeding five percent of gross income from the properties as a property management fee.

Statutory Authority: *MS s 80A.25*

2875.4600 SUBORDINATED INTERESTS.

An adequately subordinated interest in the limited partnership will be allowed as a promotional interest and as an additional management fee. Such an interest shall be within the limitations expressed in either item A or B:

A. an interest equal to 25 percent in the undistributed cash amounts remaining after payment to investors of an amount equal to 100 percent of capital contribution; or

B. an interest equal to:

(1) ten percent of distribution from cash available for distribution; and

(2) 15 percent of cash distributions to investors from the proceeds from the sale or refinancing of properties after payment to investors of an amount equal to 100 percent of capital contributions, plus an amount equal to six percent of capital

contributions per annum cumulative, less the sum of prior cash distributions to investors.

Statutory Authority: *MS s 80A.25*

2875.4610 REAL ESTATE BROKERAGE COMMISSIONS.

Payment of all real estate brokerage commissions shall not be in excess of the standard commission in the area in which the property is located.

If the sponsor or an affiliate is to receive a commission on the resale of property, said commission may not exceed 50 percent of the standard commission in the area in which the property is located.

A program shall not pay, directly or indirectly, a commission or fee to a sponsor in connection with the reinvestment of the proceeds of any resale, exchange, or refinancing of program property.

Statutory Authority: *MS s 80A.25*

CONFLICTS OF INTEREST AND INVESTMENT RESTRICTIONS

2875.5000 SALES AND LEASES TO PROGRAM.

A program shall not purchase or lease property in which a sponsor has an interest unless:

A. the transaction occurs at the formation of the program and is fully disclosed in its prospectus or offering circular; and

B. the property is sold upon terms no less favorable to the program than could be obtained from nonaffiliated third parties, and at a price not in excess of its appraised value; and

C. the cost of the property, and any improvements thereon, to the sponsor is clearly established. If the sponsor's cost was less than the price to be paid by the program, the price to be paid by the program will not be deemed fair, regardless of the appraised value, unless some material change has occurred to the property which would increase the value since the sponsor acquired the property (material factors may include the passage of a significant amount of time, but in no event less than two years, the assumption by the sponsor of the risk of obtaining a rezoning of the property and its subsequent rezoning, or some other extraordinary event which in fact increases the value of the property);

D. the provisions of this part notwithstanding, the sponsor may purchase property in its own name (and assume loans in connection therewith) and temporarily hold title thereto for the purpose of facilitating the acquisition of such property or the borrowing of money or obtaining of financing for the program, or completion of construction of the property, or any other purpose related to the business of the program, provided that such property is purchased by the program for a price no greater than the cost of such property to the sponsor, there is no difference in interest rates of the loans secured by the property at the time acquired by the sponsor and the time acquired by the program, nor any other benefit arising out of such transaction to the sponsor apart from compensation otherwise permitted by these rules.

Statutory Authority: *MS s 80A.25*

2875.5010 SALES AND LEASES TO SPONSOR.

The program will not ordinarily be permitted to sell or lease property to the sponsor except that the program may lease property to the sponsor under a lease-back arrangement made at the outset and on terms no less favorable to the program than those offered other persons and fully described in the prospectus.

Statutory Authority: *MS s 80A.25*

2875.5020 LOANS.

No loans may be made by the program to the sponsor or affiliate.

Statutory Authority: *MS s 80A.25*

2875.5030 ACQUIRING PROPERTY.

A program shall not acquire property from a program in which the sponsor has an interest.

Statutory Authority: *MS s 80A.25*

2875.5040 EXCHANGE OF LIMITED PARTNERSHIP INTERESTS.

The program may not acquire property in exchange for limited partnership interests, except for property which is described in the prospectus which will be exchanged immediately upon effectiveness. In addition, such exchange shall meet the following conditions:

A. a provision for such exchange must be set forth in the partnership agreement, and appropriate disclosures as to tax effects of such exchange are set forth in the prospectus;

B. the property to be acquired must come within the objectives of the program;

C. the purchase price assigned to the property shall be no higher than the value supported by an independent, qualified appraisal;

D. no more than one-half of the interests issued by the program shall have been issued in exchange for property; and

E. no securities sales or underwriting commissions shall be paid in connection with such exchange.

Statutory Authority: *MS s 80A.25*

2875.5050 EXCLUSIVE AGREEMENTS WITH SPONSOR.

A program shall not give a sponsor sole right to sell or exclusive employment to sell property for the program.

Statutory Authority: *MS s 80A.25*

2875.5060 SERVICES RENDERED TO PROGRAM BY SPONSOR.

All services performed by the sponsor for the program must be reasonable in type and amount. As a minimum, self-dealing arrangements must meet the following criteria:

A. the compensation, price, or fee therefor must be comparable and competitive with the compensation, price, or fee of any other person who is rendering comparable services or selling or leasing comparable goods which could reasonably be made available to the program and shall be on competitive terms;

B. the fees and other terms of the contract shall be fully disclosed in the prospectus;

C. the sponsor must be previously engaged in the business of rendering such services or selling or leasing such goods, independently of the program and as an ordinary and ongoing business; and

D. all services or goods for which the sponsor is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid. Said contract shall contain a clause allowing termination without penalty on 60 days' notice.

Statutory Authority: *MS s 80A.25*

2875.5070 COMMINGLING OF FUNDS.

The funds of a program shall not be commingled with the funds of any other person.

Statutory Authority: *MS s 80A.25*

2875.5080 EXPENSES OF PROGRAM.

All expenses of the program shall be billed directly to the program. Reimbursement (other than for the organization and offering expenses) shall be prohibited.

Statutory Authority: *MS s 80A.25*

2875.5090 INVESTMENTS IN OTHER PROGRAMS.

Investments in limited partnership interests of another program shall be prohibited; however, nothing herein shall preclude the investment in partnerships or ventures which own and operate a particular property. In such event, duplicate property management or other fees shall not be permitted, and such partnership or venture shall provide for its limited partners all of the rights and obligations required to be provided by the original program in parts 2875.5140 to 2875.5200. Further, such prohibitions shall not apply to programs under sections 236 or 221(d)(3) of the National Housing Act or any similar programs that may be enacted.

Statutory Authority: *MS s 80A.25*

2875.5100 LENDING PRACTICES.

Subpart 1. **Prohibitions.** On financing made available to the program by the sponsor, the sponsor may not receive interest and other financing charges or fees in excess of the amounts which would be charged by unrelated banks on comparable loans for the same purpose in the locality of the property. No prepayment charge or penalty shall be required by the sponsor on a loan to the program secured by a junior or all-inclusive encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance.

Subp. 2. **Definitions.** An "all-inclusive" or "wrap-around" note and deed of trust (the "all-inclusive note" herein) may be used to finance the purchase of property by the program only if it appears that it would provide significant tangible benefits not available from conventional financing methods. In such cases the all-inclusive note shall provide that:

A. the sponsor under the all-inclusive note shall not receive interest on the underlying encumbrance in excess of that payable to the lender of that underlying encumbrance;

B. the program shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance; and

C. a paying agent, ordinarily a bank, escrow company, or savings and loan, shall collect payments (other than any initial payment of prepaid interest or loan points not to be applied to the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the holder of the all-inclusive note, subject to the requirements of parts 2875.5000 to 2875.5030, or, in the alternative, all payments on the all-inclusive and underlying note shall be made directly by the program.

Statutory Authority: *MS s 80A.25*

2875.5110 DEVELOPMENT OF CONSTRUCTION CONTRACTS.

The sponsor will not be permitted to construct or develop properties, or render any services in connection with such development or construction unless all of the following conditions are satisfied:

A. the transactions occur at the formation of the program;

B. the specific terms of the development and construction of identifiable properties are ascertainable and fully disclosed in the prospectus;

C. the purchase price to be paid by the program is based upon a firm contract price which in no event can exceed the sum of the cost of the land and the sponsor's cost of construction (if the land is acquired from the sponsor, the provisions of parts 2875.5000 to 2875.5030 shall apply); and

D. in the case of construction, the only fee paid to the sponsor in connection with such activity shall consist of a construction fee for acting as a general contractor, which fee must be comparable and competitive with the fee of disinterested persons rendering comparable services (this limitation does not preclude the payment of a real estate commission in connection with the acquisition of the land, if appropriate under the circumstances).

Statutory Authority: *MS s 80A.25*

2875.5120 COMPLETION BOND REQUIREMENT.

The completion of property acquired which is under construction should be guaranteed at the price contracted by an adequate completion bond or other satisfactory arrangements.

Statutory Authority: *MS s 80A.25*

2875.5130 REQUIREMENT FOR REAL PROPERTY APPRAISAL.

All real property acquisitions must be supported by an appraisal prepared by a competent, independent appraiser. The appraisal shall be maintained in the sponsor's records for at least five years, and shall be available for inspection and duplication by any participant. The prospectus shall contain notice of this right.

Statutory Authority: *MS s 80A.25*

2875.5135 NONSPECIFIED PROPERTY PROGRAMS.

Subpart 1. **Scope.** The special provisions of subparts 2 to 8 shall apply to nonspecified property programs.

Subp. 2. **Minimum capitalization.** A nonspecified property program shall provide for a minimum gross proceeds from the offering of not less than \$1,000,000 after payment of all marketing and organization expenses before it may commence business.

Subp. 3. **Experience of sponsor.** For nonspecified property programs, the sponsor or at least one of its principals must establish that the person has had the equivalent of not less than five years' experience in the real estate business in an executive capacity and two years' experience in the management and acquisition of the type of properties to be acquired or otherwise must demonstrate to the satisfaction of the commissioner sufficient knowledge and experience to acquire and manage the type of properties proposed to be acquired by the nonspecified property program.

Subp. 4. **Statement of investment objectives.** A nonspecified property program shall state in detail the types of properties in which it proposes to invest, such as first-user apartment projects, subsequent user apartment projects, shopping centers, office building, unimproved land, etc., and the size and scope of such projects shall be consistent with the objectives of the program and the experience of the sponsors. As a minimum the following restrictions on investment objectives shall be observed:

A. unimproved or nonincome producing property shall not be acquired except in amounts and upon terms which can be financed totally from the program's proceeds or from cash flow;

B. investments in junior trust deeds and other similar obligations shall not exceed ten percent of the gross assets of the program;

C. the manner in which acquisitions will be financed, including the use of an all-inclusive note or wrap-around, and the leveraging to be employed shall all be fully set forth in the statement of investment objectives;

D. the statement shall indicate whether the program will enter into joint venture arrangements and the projected extent thereof.

Subp. 5. **Period of offering and expenditure of proceeds.** No offering of securities in a nonspecified property program may extend for more than one year from the date of effectiveness. While the proceeds of an offering are awaiting investment in real property, the proceeds may be temporarily invested in short-term highly liquid investments where there is appropriate safety of principal, such as U.S. treasury bonds or bills. Any proceeds of the offering of the securities not invested within two years from the date of effectiveness (except for necessary operating capital) shall be distributed pro rata to the participants as a return of capital.

Subp. 6. **Special reports.** At least quarterly, a special report of real property acquisitions within the prior quarter shall be sent to all participants until the proceeds are invested or returned to the participants as set forth in subpart 5. Such notice shall describe the real properties, and include a description of the geographic locale and of the market upon which the sponsor is relying in projecting successful operation of the properties. All facts which reasonably appear to the sponsor to materially influence the value of the property should be disclosed. The special report shall include, by way of illustration and not of limitation, a statement of the date and amount of the appraised value, if applicable, a statement of the actual purchase price including terms of the purchase, a statement of the total amount of cash expended by the program to acquire each property, and a statement regarding the amount of proceeds in the program which remain unexpended or uncommitted. This unexpended or uncommitted amount shall be stated in terms of both dollar amount and percentage of the total amount of the offering of the program.

Subp. 7. **Assessments.** Nonspecified programs calling for assessments shall be prohibited.

Subp. 8. **Multiple programs.** Sponsors shall not offer for sale more than one unspecified property program at any point in time unless the programs have different investment objectives. Similarly, new offerings by the same sponsor shall not be permitted if that sponsor has not substantially committed or placed the funds raised from preexisting unspecified property programs.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5140 MEETINGS OF LIMITED PARTNERS.

Meetings of the limited partnership may be called by the general partners or the limited partners holding more than ten percent of the then outstanding limited partnership interests, for any matters for which the partners may vote as set forth in the limited partnership agreement. A list of the names and addresses of all limited partners shall be maintained as part of the books and records of the limited partnership and shall be mailed on request to any limited partner or that person's representative. Upon receipt of a written request either in person or by registered mail stating the purposes of the meeting, the general partner shall provide all partners, within ten days after receipt of said request, written notice (either in person or by registered mail) of a meeting and the purpose of such meeting to be held on a date not less than 15 nor more than 60 days after receipt of said request, at a time and place convenient to participants.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5150 VOTING RIGHTS OF LIMITED PARTNERS.

The limited partnership agreement shall provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the general partner, vote to amend the limited partnership agreement; dissolve the

program; remove and replace the sponsors; and approve or disapprove the sale of all or substantially all of the assets of the program.

Statutory Authority: *MS s 80A.25*

2875.5160 REPORTS TO HOLDERS OF LIMITED PARTNERSHIP INTERESTS.

The partnership agreement shall provide that the sponsor shall cause to be prepared and distributed to the holders of program interests during each year the following reports:

A. In the case of a program registered under section 12(g) of the Securities Exchange Act of 1934, within 60 days after the end of each of the program quarter, a report containing:

- (1) a current statement of financial condition, which may be unaudited;
- (2) an operating statement for the quarter then ended, which may be unaudited;
- (3) a cash flow statement for the quarter then ended, which may be unaudited; and
- (4) other pertinent information regarding the program and its activities during the quarter covered by report.

B. In the case of all other programs in addition to the annual report required by item D, within 60 days after the end of the program's first six-month period, a semiannual report containing the same information as to the preceding six-month period as that required in quarterly reports under item A.

C. In the case of all programs, within 75 days after the end of each program's fiscal year, all information necessary for the preparation of the limited partner's federal income tax returns.

D. In the case of all programs, within 120 days after the end of each program's fiscal year, an annual report containing:

- (1) a statement of financial condition as of the year then ended, an operating statement for the year then ended, a statement of sources and applications of funds and a cash flow statement, all of which shall be audited by independent certified public accountants, with an opinion expressed therein;

- (2) a report of the activities of the program during the period covered by the report;

- (3) where projections have been provided to the holders of limited partnership interests, a table comparing the projections previously provided with the actual results during the period covered by the report. Such report shall set forth distributions to limited partners for the period covered thereby and shall separately identify distributions from cash flow from operations during the period; cash flow from operations during a prior period which had been held as reserves; proceeds from disposition of property and investments; lease payments on net leases with builders and sellers; and reserves from the gross proceeds of the offering originally obtained from the limited partners.

E. Where assessments have been made during any period covered by any report required by items A, B, and D, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments.

F. And, where any sponsor receives fees for services, including acquisition fees from the program, then the sponsor shall within 60 days of the end of each quarter wherein such fees were received send to each limited partner a detailed statement setting forth the services rendered, or to be rendered by such sponsor, and the amount of the fees received.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5170 ACCESS TO RECORDS.

The limited partners and their designated representatives shall be permitted access to all records of the program at all reasonable times. This requirement may not be circumvented by lump-sum payments to management companies or other entities who then disburse the funds.

Statutory Authority: *MS s 80A.25*

2875.5175 ADMISSION OF PARTICIPANTS.

Subpart 1. **Admission.** Admission of participants to the program shall be subject to subparts 2 and 3.

Subp. 2. **Admission of original participants.** Upon the original sale of partnership units by the program, the purchasers should be admitted as limited partners not later than 15 days after the release from impound of the purchaser's funds to the program, and thereafter purchasers should be admitted into the program not later than the first day of the calendar month following the date their subscription was accepted by the program. Subscriptions shall be accepted or rejected by the program within 30 days of their receipt; if rejected all subscription moneys should be returned to the subscriber forthwith.

Subp. 3. **Admission of substituted participants and recognition of assignees.** The program shall amend the certificate of limited partnership at least once each calendar quarter to effect the substitution of substituted participants, although the sponsor may elect to do so more frequently. In the case of assignments, where the assignee does not become a substituted limited partner, the program shall recognize the assignment not later than the first day of the calendar month following receipt of notice of assignment and required documentation.

Statutory Authority: *MS s 80A.25*

2875.5180 TRANSFERABILITY OF PROGRAM INTERESTS.

Subpart 1. **Assignment.** Assignment of program interests or the economic interests therein are permitted, providing that the opinion of the partnership's counsel is given to the effect:

A. that such assignment is not a violation of the limited partnership laws in effect in the jurisdiction of the program's organization;

B. that the program shall be taxable as a partnership rather than as a corporation or an association under the policies of the Internal Revenue Service. Wherever free transferability of program interests or beneficial interests in a limited partnership interest is allowed, a favorable tax ruling from the Internal Revenue Service shall be required. Furthermore, where beneficial interests of a program's interest are to be sold, the treatment under the Investment Company Act of 1940 must be disclosed.

Subp. 2. **Limited partnership interest.** The assignment of limited partnership interest may not be prohibited, but may be restricted only to the minimum extent required to preserve its tax status.

Statutory Authority: *MS s 80A.25*

2875.5190 ASSESSMENTS.

Limited partnership units shall be nonassessable unless otherwise specified in the prospectus or offering circular. Except as provided in part 2875.5135, subpart 7, assessments shall be limited to not more than 50 percent of the initial investment of the participant. Registration fees upon assessable securities shall be based on the initial investment plus the amount of any assessments and installment payments to be paid.

Statutory Authority: *MS s 80A.25*

2875.5200 DEFAULTS.

In the event of a default in the payment of assessments by a limited partner, that partner's interests shall not be subject to forfeiture, but may be subject to a reasonable penalty for failure to meet the commitment. Provided that the arrangements are fair, this may take the form of reducing the limited partner's proportionate interest in the program, subordinating his or her interest to that of nondefaulting partners, a forced sale complying with applicable procedures for notice and sale, the lending of the amount necessary to meet the commitment by the other participants or a fixing of the value of the limited partner's interest by independent appraisal, or other suitable formula with provision for a delayed payment for his or her interest not beyond a reasonable period, but a debt security issued for such interest should not have a claim prior to that of the other investors in the event of liquidation.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5210 DISCLOSURES IN SALES PROMOTIONAL EFFORTS.

Subpart 1. **Sales literature.** Sales literature, sales presentations (including prepared presentations to prospective investors at group meetings), and advertising used in the offer or sale of partnership interests shall conform in all applicable respects to requirements of filing, disclosure, and adequacy currently imposed on sales literature, sales presentations, and advertising used in the sale of corporate securities.

Subp. 2. **Group meetings.** All advertisements of and oral or written invitations to seminars or other group meetings at which program interests are to be described, offered, or sold shall clearly indicate that the purpose of such meeting is to offer such program interests for sale, the minimum purchase price thereof, and the name of the sponsor, underwriter, and selling agent. No cash, merchandise, or other item of value shall be offered as an inducement to any prospective participants to attend any such meeting. In connection with the offer or sale of program interests, no general offer shall be made of free or bargain price trips to visit property in which the program or proposed program has invested or intends to invest. All written or prepared audiovisual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the commissioner not less than five business days prior to the first use thereof. Subparts 1 and 2 shall not apply to meetings consisting only of representatives of securities broker-dealers.

Statutory Authority: *MS s 80A.25*

2875.5220 PROJECTED FUTURE RESULTS.

Subpart 1. **Projections.** The presentation of predicted future results of operations (projections) of real estate programs shall be permitted but not required. Such projections shall be included in the prospectus, offering circular, or sales material of the partnership only if they comply with the requirements of subparts 2 to 5.

Subp. 2. **Realistic predictions.** Projections shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Projections should be prepared by a qualified person or firm and that person or firm should be identified in the prospectus or offering circular as being responsible for the preparation of the projections. No projections shall be permitted in any sales literature which do not appear in the prospectus or offering circular. If any projections are included in the sales literature, all projections must be presented.

Subp. 3. **Material information.** Projections shall include all of the following information:

A. annual predicted revenue by source, including the occupancy rate used in predicting rental revenue and the average occupancy rate for similar properties in the same locale;

B. annual predicted expenses;

C. mortgage obligation-annual payments for principal and interest, points and financing fees; shown as dollars, not percentages;

D. the required occupancy rate in order to meet debt service and all expenses; rental revenue shall also be predicted based on occupancy rates ten percent below the break-even occupancy rate;

E. predicted annual cash flow; stating assumed occupancy rate;

F. predicted annual depreciation and amortization with full description of methods to be used;

G. predicted annual taxable income or loss and a simplified explanation of the tax treatment of such results; assumed tax brackets may not be used;

H. predicted construction costs, including disclosure regarding contracts; and

I. accounting policies, e.g., with respect to points, financing costs, and depreciation.

Subp. 4. **Additional disclosures and limitations.** Projections shall be for a period at least equivalent to the anticipated holding period for the property, or ten years, whichever is shorter, but they shall definitely project a resale occurrence.

Adequate disclosure shall be made of the changing economic effects upon the participants resulting principally from federal income tax consequences over the life of the partnership property, e.g., substantial tax losses in early years followed by increasing amounts of taxable income in later years.

Projections shall disclose all possible undesirable tax consequences of an early sale of the program property (such as, depreciation, recapture, or the failure to sell the property at a price which would return sufficient cash to meet resulting tax liabilities of the participants.

In computing the return to investors, no appreciation, so-called equity buildup, or any other benefits from unrealized gains or value shall be shown or included.

Subp. 5. **Unimproved land.** Projections shall not be allowed for unimproved land. Instead, a table of deferred payments specifying the various holding costs (i.e., interest, taxes, and insurance) shall be inserted.

Statutory Authority: *MS s 80A.25*

2875.5230 FIDUCIARY DUTY.

The program agreement shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in immediate possession or control, and that the sponsor shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the program.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5240 DEFERRED PAYMENTS.

Except where prohibited by regulation T of the Federal Reserve Board, arrangements for deferred payments on account of the purchase price of program interests may be allowed when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions:

A. The period of deferred payments shall coincide with the anticipated cash needs of the program.

B. Selling commissions paid upon deferred payments are collectible when payment is made on the note.

C. Deferred payments shall be evidenced by a promissory note of the investor. Such notes shall be with recourse and shall not be negotiable and shall be assignable only subject to defenses of the maker. Such notes shall not contain a provision authorizing a confession of judgment.

D. The program shall not sell or assign the deferred obligation notes at a discount to meet financing needs of the program.

Statutory Authority: *MS s 80A.25*

2875.5250 RESERVES.

Provision should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements, and contingencies. Normally, not less than five percent of the offering proceeds will be considered adequate.

Statutory Authority: *MS s 80A.25*

2875.5260 REINVESTMENT OF CASH FLOW AND PROCEEDS ON DISPOSITION OF PROPERTY.

Reinvestment of cash flow shall be prohibited. The partnership agreement and the prospectus shall set forth that reinvestment of proceeds resulting from a disposition or refinancing will not take place unless sufficient cash will be distributed to pay any state or federal income tax (assuming investors are in a specified tax bracket) created by the disposition or refinancing of property. Such a prohibition must be contained in the prospectus.

Statutory Authority: *MS s 80A.25*

2875.5270 FINANCIAL INFORMATION REQUIRED ON APPLICATION.

Subpart 1. **Offerings.** In any offering of interests by a real estate program, the program shall provide as an exhibit to the application, or where indicated below shall provide as part of the prospectus, the following financial information and financial statements. All audited statements shall be prepared by an independent certified public accountant with an opinion expressed thereon.

Subp. 2. **Cash flow statement of program.** As part of the prospectus, if the program has been formed and owns specified assets, an audited cash flow statement for the program for each of the last three fiscal years of the program (or for life of the program, if less) and unaudited statements for any interim period between the end of the latest fiscal year and the date of the balance sheet furnished, and for the corresponding interim period of the preceding years.

Subp. 3. **Balance sheet of program.** As part of the prospectus, an audited balance sheet of the program for the most recent fiscal year and an unaudited balance sheet for a period ending not more than 90 days prior to the date of filing.

Subp. 4. **Balance sheet of corporate sponsor.** An audited balance sheet of any corporate sponsors for the same periods and in the same form required for the program itself in subpart 3. Such statement shall be included in the prospectus.

Subp. 5. **Balance sheet of other sponsors.** A statement for each noncorporate general partner shall be given the commissioner (including individual partners or individual joint ventures of a sponsor) setting forth the estimated net worth of each such sponsor at a time not more than 90 days prior to the date of filing an application; such statement shall be signed and sworn to by such sponsors. A representation of the amount of such net worth must be included in the prospectus.

Subp. 6. **Profit and loss statements for corporate sponsors.** Audited profit and loss statements for the last fiscal year of any corporate sponsor (or for the life of the corporate sponsor, if less) and unaudited statements for any interim period ending not more than 90 days prior to the date of filing an application. The inclusion of such statement in the prospectus shall be at the discretion of the commissioner.

Statutory Authority: *MS s 80A.25*

2875.5280 IMPOUNDMENT OF PROCEEDS.

See part 2875.2440, subpart 1.

Statutory Authority: *MS s 80A.25*

OIL AND GAS PROGRAMS**2875.5600 DEFINITIONS.**

Subpart 1. **Scope.** For purposes of parts 2875.5600 to 2875.5780, the following terms have the meanings given them.

Subp. 2. **Administrative and overhead expenses.** “Administrative and overhead expenses” means all costs and expenses of the sponsor made in connection with administering the program which are not directly allocable to a lease, well, or prospect.

Subp. 3. **Carried interest.** “Carried interest” means a working interest free or partially free of development costs.

Subp. 4. **Development well.** “Development well” means a well drilled to a reservoir proven to be productive of oil or gas and expected to be extended to the drilling area.

Subp. 5. **Exploratory well.** “Exploratory well” means any other well, and in particular a well drilled to search for oil and gas in an unproven area.

Subp. 6. **Intangible costs.** “Intangible costs” means any costs generally accepted as current expense items for purposes of federal income tax reporting.

Subp. 7. **Net profit interest.** “Net profit interest” means that interest in net operating income that becomes payable after recapture by the investor of all costs on a particular lease or drilling prospect.

Subp. 8. **Overriding royalty interest.** “Overriding royalty interest” means a fractional undivided interest or right of participation in an oil and gas lease in the oil or gas, or in the proceeds from the sale of oil or gas, produced from a specific oil or gas property, such interest being free from the expense of development and operation of the property.

Subp. 9. **Participant.** “Participant” means the purchaser of a unit in the oil and gas program.

Subp. 10. **Payout.** “Payout” means that point at which the participant has received or credited to the participant’s account from the proceeds of production of oil and gas an amount, in dollars, equal to the cumulative, acquisition, exploration and development costs, rentals, production taxes, administrative and overhead expenses, lifting costs, and other costs of operation incurred by the sponsor attributable to or charged against the participant’s interest.

Subp. 11. **Program.** “Program” means the total activities in which the proceeds of the offering and any additional proceeds generated thereby will be engaged.

Subp. 12. **Reversionary interest.** “Reversionary interest” means an interest with benefits defined by contract.

Subp. 13. **Royalty.** “Royalty” means an interest in production which is free from the expense of developing and operating the property to the owner.

Subp. 14. **Sponsor.** For the definition of “sponsor,” see part 2875.4500, subpart 15.

Subp. 15. **Tangible costs.** “Tangible costs” means those costs which are generally accepted as capital expenditures for purposes of federal income tax reporting.

Subp. 16. **Working interest.** “Working interest” means the interest in a property which carries with it the obligation to pay a proportionate share of all costs during the period of time the working interest agreement is in effect including such costs as those resulting from exploration, development, and operation of such properties.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5610 EXPERIENCE OF MANAGEMENT.

The sponsor, general partner, the chief operating officer, or an affiliate providing services to the program shall have had not less than four years' relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed.

Statutory Authority: *MS s 80A.25*

2875.5620 CAPITALIZATION OF SPONSOR AND INVESTMENT BY SPONSOR.

The financial condition of the sponsor must be commensurate with any financial obligations assumed in the offering in the operation of the program. At a minimum, the sponsor shall have a financial net worth of the greater of either \$100,000, or an amount at least equal to five percent of all offerings sold within the prior 12 months plus five percent of the gross amount of the current offering, to a maximum net worth of the sponsor of \$1,000,000. In determining net worth for this purpose, promissory notes shall be excluded and evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in computation of net worth.

Sponsor must have a favorable tax ruling assuring flow-through of tax benefits to the public investor or a favorable opinion of qualified tax counsel assuring flow-through tax benefits to the public investor.

The sponsor must purchase a minimum of \$50,000 in participation interests, net of commissions, in any entity which offers its oil and gas participation interests to the public. From this amount may be deducted ten percent of the net equity of the sponsor; or the sponsor has the privilege of investing at least ten percent of the amount paid, or to be paid, into the program by the participants.

Statutory Authority: *MS s 80A.25*

2875.5630 CONFLICT OF INTEREST.

Subpart 1. **Material conflicts.** There is presumed to be a material conflict of interest sufficient to render the proposed program incapable of accomplishing its stated objectives in the best interest of the investors when:

A. program funds or other assets are made available to the sponsor or any affiliate for any purpose not consistent with the stated purposes of the program, whether with or without adequate consideration therefor;

B. the program may purchase property acquired by the sponsor or any affiliate within two years next preceding the date of transfer to the program for consideration in excess of the lower of the cost to the sponsor or its affiliate or its present fair market value; or the program may purchase property held longer than two years by the sponsor or an affiliate for consideration in excess of:

(1) cost if the present fair market value of the property is not more than ten percent above or below the cost to the sponsor or affiliate; or

(2) present fair market value, if, upon appraisal by a qualified independent appraiser it appears the fair market value is more than ten percent above or below its cost to the sponsor or an affiliate;

C. the program is obligated to acquire any of its property or services from the sponsor or an affiliate of the sponsor;

D. the program may acquire services from the sponsor or an affiliate provided the prices are no higher than those normally charged in the same geographical areas by nonaffiliated persons or companies dealing at arm's-length; such persons must be able to demonstrate that they are acting independently and are engaging in a continuing business activity of providing drilling or other material services or supplies to the oil and gas industry (in the alternative, such contracts or arrangements must follow open competitive bidding in which such affiliated persons or companies are the lowest responsible bidders);

E. the sponsor reserves the right to arbitrarily classify costs as either tangible or intangible, or to arbitrarily place any costs or activities of the program in any classification which might affect the interests of the participants, unless such classification is made in accordance with generally accepted accounting principles and industry practices, or unless there appears to be sufficient justification for allowing such discretion;

F. any contract or other arrangement between the sponsor or an affiliate and the program cannot be terminated upon 60-day written notice without delay; and

G. any other self dealing between the program and the sponsor or any affiliate of the sponsor exists which might in any way benefit the sponsor or affiliate without a corresponding equal benefit to the program. This shall include, but not be limited to, the use of program assets for the purpose of proving-up adjacent properties or properties in the geographical prospect area belonging to sponsors or affiliates.

Subp. 2. **Cost to sponsor or equivalent.** For purposes of subpart 1, cost to the sponsor or affiliate shall include the sales price of the property paid by the sponsor or affiliate plus any reasonable charges attributable to mineral evaluation, title examination, delay rentals, and any reasonable sales commissions paid by the sponsor or affiliate provided that no such sales commissions, or any profit on the sale inured to the benefit of any affiliate of the program's sponsor on such a sale made within the two-year period next preceding the transfer to the program.

Statutory Authority: *MS s 80A.25*

2875.5640 COMPENSATION.

Subpart 1. **Deductions.** No deduction for any purpose other than commitment of the capital to the proposed exploration and development activities, other than specified in items A to C, shall be made from program capital.

A. Organization and offering expenses: the sponsor shall be entitled to reimbursement out of program capital for the actual and necessary costs of the organization of the program, and reasonable costs attributable to the offering of the securities. Total deductions from subscription proceeds inclusive of offering expenses, management fees, and sales commission cannot exceed 15 percent.

B. Management fees: the management fee, whether accruing to the sponsor or third party operating or management company, shall be reasonable in light of the nature and extent of the services required to be rendered under the program agreement and the nature and scope of the proposed activities. A management fee, which together with sales commissions payable from program capital exceeds 12-1/2 percent of the program capital is presumed unreasonable.

C. Sales commissions: a sales charge payable directly out of program capital or by the sponsor which exceeds ten percent of program capital shall be unreasonable.

Subp. 2. **Administrative and overhead expenses.** Administrative and overhead expenses shall not exceed five percent of the gross proceeds of the offering, over the life of the program. Such expenses shall be actual and necessary and shall be paid only when incurred.

Subp. 3. **Sponsor's compensation.** Compensation to the sponsor (and its affiliates) of a program is limited as follows. The participation in program revenues by the sponsor and any affiliate shall be reasonable, taking into account all relevant factors. Sponsors' retained interests may be considered reasonable if they meet one of the standards set forth in items A to F. Any other combinations of fees, overriding royalty interests, and working or net profits interest, which are generally accepted as reasonable in the industry and are justified, in light of the entire offering, may be considered reasonable by the commissioner:

A. unless specifically provided for herein, overriding royalty interests and any other interests free of the burden of operating expenses will be looked upon with disfavor, as will be any form of compensation arrangement in which the sponsor or an

affiliate engages in, or proposes to engage in, any activities which are unprofitable to the drilling program;

B. a 33-1/3 percent working interest or net profits interest in a lease, after payout, if there is no overriding royalty interest reserved by the sponsor;

C. a 1/16 overriding royalty interest, convertible after payout into not to exceed a 25 percent working interest or net profits interest in a lease;

D. a 1/16 overriding royalty interest plus not to exceed a 20 percent working interest or net profits interest, after payout, in a lease;

E. under cost sharing arrangements by which the public investor bears all cost of exploration and the sponsor bears substantially all costs of development, a reversionary interest to the sponsor not in excess of 40 percent after payout may be deemed to be fair, and application of all revenue from development wells to accomplish payout of cost of development wells in such cases may be held to be reasonable; provided no money interest is charged to investors or to the program for the sponsor's funds committed to the program with respect to drilling costs in computing payouts; and

F. in any other program in which a portion of the program costs are borne by the sponsor, an interest based upon the estimated percentage of drilling block or well costs, including costs of lease acquisition, to be borne by the sponsor, plus any additional interest deemed equitable in light of the entire offering may be permissible.

In no event will the sponsor be allowed more than a 50 percent interest in program revenues. In no case may an overriding royalty interest of a sponsor and affiliates exceed 3/32, and royalty payments in any year for any lease may not exceed the net operating profits from the lease.

Statutory Authority: *MS s 80A.25*

2875.5650 OFFERS AND AGREEMENTS TO REDEEM.

Subpart 1. **Offer.** The sponsor may not, in the prospectus or otherwise, make any mention of a possible offer to redeem or repurchase the securities issued by the program unless:

A. under the partnership agreement the sponsor has an absolute liability to repurchase or redeem the securities on a specific date, or upon the happening of a specific event, or upon tender for redemption by the purchaser, subject to the sponsor's financial ability to redeem or repurchase at the time of tender; and

B. the sponsor appears to possess sufficient financial ability at the time of offering to redeem or repurchase 50 percent of all units to be outstanding; and

C. sufficient cautionary language is contained in the prospectus respecting the possibility of the sponsor's continued ability to redeem or repurchase being affected by subsequent events.

Subp. 2. **Agreement.** The sponsor may not, in the prospectus or otherwise, agree to redeem a participant's interest in the program unless all the requirements of subpart 1 are met; and the terms of repurchase are specifically described in offering circular including the method of valuation to be used to ascertain the repurchase price and a description of all adjustments which may result in deduction therefrom. Qualified independent petroleum engineers shall be employed to appraise properties for purposes of such valuation, and any valuation by company personnel must be based on such independent appraisals.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5660 PERIODIC REPORTS.

Subpart 1. **Duty of sponsor.** The partnership or joint venture agreement shall provide that the sponsor shall cause to be prepared and distributed to the holders of program interests during each year the reports in subparts 2 to 7.

Subp. 2. **Quarterly report content.** In the case of a program registered under section 12(g) of the Securities Exchange Act of 1934, within 60 days after the end of each of the program quarter, a report containing a current statement of financial condition, which may be unaudited; an operating statement for the quarter then ended, which may be unaudited; a cash flow statement for the quarter then ended, which may be unaudited; and other pertinent information regarding the program and its activities during the quarter covered by the report.

Subp. 3. **Semiannual report content.** In the case of all other programs in addition to the annual report required by subpart 4, within 60 days after the end of the program's first six-month period a semiannual report containing the same information as to the preceding six-month period as that required in quarterly reports under subpart 2.

Subp. 4. **Fiscal year report content.** In the case of all programs, within 90 days after the end of each program's fiscal year, all information necessary for the preparation of the participant's federal income tax returns.

Subp. 5. **Subsequent fiscal year report content.** In the case of all programs, within 120 days after the end of each program's fiscal year, an annual report containing:

A. a statement of financial condition as of the year then ended, an operating statement for the year then ended, a statement of sources and applications of funds, and a cash flow statement, all of which shall be audited by independent certified public accountants with an option expressed thereon;

B. a report of the activities of the program during the period covered by the report; and

C. where projections have been provided to the holders of program interests, a table comparing the projections previously provided with the actual results during the period covered by the report. Such report shall set forth distributions to participants for the period covered thereby and shall separately identify distributions from: cash flow from operations during the period; cash flow from operations during a prior period which had been held as reserves; and reserves from the gross proceeds of the offering originally obtained from the participants.

Subp. 6. **Assessments.** Where assessments have been made during any period covered by any report required by subparts 2, 3, and 4, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments.

Subp. 7. **Sponsor fees.** Where any sponsor receives fees for services, the sponsor shall, within 120 days after the end of each program's fiscal year, send to each participant a detailed statement setting forth the services rendered, or to be rendered by such sponsor and the amount of the fees received.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5670 FUTURE EXCHANGES AND AUTOMATIC REINVESTMENT OF REVENUES.

Any future exchanges shall be made solely upon compliance with applicable securities regulations, both federal and state.

Automatic reinvestment of revenues shall be prohibited. Optional reinvestment of revenues must follow complete information to the unit holder of the amount of revenue to which the holder is entitled as well as a full disclosure of the program into which revenues will be reinvested at the unit holder's election. The entity into which reinvestment is made must be registered with the appropriate minimums, as well as other standards, applicable to the entity as in a new program.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5680 PURCHASE OF PRODUCING PROPERTIES BY DRILLING PROGRAMS.

For drilling programs, purchase of producing properties in excess of ten percent of the subscriptions to the program shall not be allowed.

Statutory Authority: *MS s 80A.25*

2875.5690 LIABILITY.

Sponsors shall not be indemnified by the participants for acts of negligence or misconduct or for the breach of any fiduciary obligation imposed upon the sponsors by law.

Statutory Authority: *MS s 80A.25*

2875.5700 MINIMUM UNIT.

The minimum purchase of a program may not be less than \$5,000 and the initial investment by a participant shall be no less than \$5,000, all of which must be paid within 12 months from the date the program commences. Assignability of the unit must be limited so that no assignee (transferee) or assignor (transferor) may hold less than a \$5,000 interest except by gifts or by operation of law.

Statutory Authority: *MS s 80A.25*

2875.5710 ASSESSMENTS.

Subpart 1. **Offering circular.** If the securities for which application for registration is made are subject to additional assessments, the following information concerning such assessments is required:

A. The amount of additional assessments to which the securities may be subject, and whether the payment of such assessment will be mandatory or optional.

B. The penalizing effect of refusal or inability to make payment of any additional assessments. An optional assessment in which a participant is required to forfeit any interest, except as provided below, or is subjected to any penalty for failure to participate will be deemed to be a mandatory assessment. Any interest charge occasioned by late payment of any mandatory assessment or any unpaid portion of the original subscription price must bear a reasonable relationship to costs incurred by the sponsor or program by virtue of the late payment. Any interest charge which exceeds the maximum rate allowable under Minnesota Statutes 1971, section 334.01 is presumed unreasonable. In the event that a participant fails to contribute his or her portion of an optional assessment, the only penalty which may be imposed upon the participant shall be an 80 percent reduction in the amount of income from the properties developed by the assessments that the participant would otherwise be entitled to receive after the contributing participants have been returned the amount of their assessments.

C. The conditions upon which additional assessments may be made. Additional assessments may be made only for the following: completion of wells already initiated; initiation of wells on leaseholds already owned or under contract; or to acquire and develop leaseholds contiguous to those already owned, the acquisition of which is necessary to fully develop previously discovered reserves.

Subp. 2. **Management fees.** Management fees payable out of and additional assessments whether optional or mandatory, shall be deducted only when payment of the assessment is made.

Subp. 3. **Limitation.** Program interests shall not be subject to mandatory assessments in excess of 50 percent of the original subscription price.

Subp. 4. **Registration fees.** The aggregate amount upon which the registration fees are computed shall include the dollar amount for which the securities being registered

may be additionally assessed. If the securities for which application is made are subject to unlimited optional assessments the maximum fee must be paid.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5720 ADVERTISING MATERIALS.

Subpart 1. **History of sponsor and other programs.** Sponsor's history of operations shall be fully disclosed, and when applicable, sponsor's income from other programs shall be scheduled on a program-by-program basis. Such scheduling shall include total gross income (broken down to disclose separately management fees, operator's fees, sales commissions, general and administrative overhead expenses reimbursed, and other sources of income) as well as any profits or losses, on an annual basis for the preceding three years, received by the program sponsor or persons or companies affiliated with the sponsor from such programs.

Subp. 2. **Other sales literature.** See part 2875.5210.

Subp. 3. **Group meetings.** See part 2875.5220.

Statutory Authority: *MS s 80A.25*

2875.5730 COMMISSIONS.

Compensation to broker-dealers shall be a cash commission. Indeterminate compensation to broker-dealers, such as overriding interests and net profit interests, for example, is prohibited. In the absence of a firm underwriting, warrants or options to broker-dealers are prohibited.

Compensation to wholesale dealers must be a cash commission, and such commission must be reasonable and fully disclosed.

Sales commissions based on assessment of units are prohibited.

Statutory Authority: *MS s 80A.25*

2875.5740 SUITABILITY OF PARTICIPANT.

Standards to be imposed: given the limited transferability, the relative lack of liquidity, and the specific tax orientation of many oil and gas programs, the sponsor and its selling representatives should be cautious concerning the persons to whom such securities are marketed. Suitability standards for investors will, therefore, be imposed which are reasonable in view of the foregoing and of the type of program to be offered. Sponsors will be required to set forth in the prospectus the investment objectives of the program, a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it. The suitability standards proposed by the sponsor will be reviewed for fairness by the commissioner in processing the application. In determining how restrictive the standards must be, special attention will be given to the existence of such factors as high leverage, and uncertain or no cash flow from certain program properties. Programs which involve more than ordinary investor risk should emphasize suitability standards involving substantial net worth of the investor.

Statutory Authority: *MS s 80A.25*

2875.5750 APPLICATION OF PROCEEDS.

The prospectus or offering circular shall contain a full and clear disclosure of the use to which the proceeds of the offering will be applied. A full and clear disclosure requires, at a minimum, the following information:

A. a statement of the minimum amount of capital necessary to activate the program, which minimum amount shall be determined by, and subject to, the following considerations:

(1) the amount designated as the minimum required capitalization or go-point should adequately reflect the amount necessary to pursue bona fide exploration

activities. The adequacy of the minimum capital requirement shall be determined in light of the nature and scope of proposed activities (a minimum capital requirement which is less than \$250,000 shall be prohibited);

(2) all funds received prior to activation of the program must be deposited with an independent custodian, trustee, or escrow agent whose name and address shall be disclosed in the prospectus;

(3) no portion of any funds derived from the sale of these securities shall be expended for any purpose prior to realization of the required minimum capital; in the event the proceeds of the offering do not equal or exceed the amount designated as the go-point, all funds previously collected must be returned in full to the subscribers;

B. a statement of the proposed application of proceeds of the offering containing at a minimum:

(1) a disclosure of the net amount of proceeds, after front end deductions authorized by part 2875.5640, which will be available for exploration and development activities, both if the minimum and maximum capitalization is achieved;

(2) a statement of the amount of proceeds, expressed as a percentage, to be applied to all proposed expenditures including, but not limited to: acquisition of leaseholds, exploration and developmental activities, sales commissions, management fees, and the costs of organizing the program and offering these securities;

C. a statement of the date by which the amount designated as the minimum capital must be subscribed, such date being not later than 120 days after commencement of sales in this state.

Statutory Authority: *MS s 80A.25*

2875.5760 RIGHTS AND OBLIGATIONS OF PARTICIPANTS.

Subpart 1. **Meetings.** Meetings of the limited partnership may be called by the general partners or the limited partners holding more than ten percent of the then outstanding limited partnership interests, for any matters for which the partners may vote as set forth in the limited partnership agreement. A list of the names and addresses of all limited partners shall be maintained as part of the books and records of the limited partnership and shall be mailed on request to any limited partner or the partner's representative. Upon receipt of a written request either in person or by registered mail stating the purposes of the meeting, the general partner shall provide all partners, within ten days after receipt of said request, written notice (either in person or by registered mail) of a meeting and the purpose of such meeting to be held on a date not less than 15 nor more than 60 days after receipt of said request, at a time and place convenient to participants.

Subp. 2. **Voting rights of limited partners.** The limited partnership agreement shall provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the general partner, vote to: amend the limited partnership agreement; dissolve the program; remove and replace the sponsors; and approve or disapprove the sale of all or substantially all of the assets of the program. The agreement shall provide for a method of valuation of the general partner's interest upon the general partner's removal.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5770 FIDUCIARY DUTY.

The program's organization documents shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in immediate possession or control, and that the sponsor shall not employ, or permit another to employ such funds or assets in any manner except for

the exclusive benefit of the program. The sponsor shall be liable for gross negligence or willful misconduct.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.5780 FINANCIAL INFORMATION REQUIRED ON APPLICATION.

Subpart 1. **Financial statements.** In any offering of interests, the program shall provide as an exhibit to the application, or where indicated below shall provide as part of the prospectus, the following financial information and financial statements. Such audited statements shall be prepared by an independent certified public accountant with an opinion expressed thereon.

Subp. 2. **Cash flow statement of program.** As part of the prospectus, if the program has been formed and owns specified assets, an audited cash flow statement for the program for each of the last three fiscal years of the program (or for life of the program, if less) and unaudited statements for any interim period between the end of the latest fiscal year and the date of the balance sheet furnished, and for the corresponding interim period of the preceding years.

Subp. 3. **Balance sheet of program.** As part of the prospectus, an audited balance sheet of the program for the most recent fiscal year and an unaudited balance sheet for a period ending not more than 90 days prior to the date of filing.

Subp. 4. **Balance sheet of corporate sponsor.** An audited balance sheet of any corporate sponsors for the same periods and in the same form required for the program itself in subpart 3. Such statement shall be included in the prospectus.

Subp. 5. **Balance sheet of other sponsors.** A statement for each noncorporate sponsor shall be given the commissioner (including individual partners or individual joint ventures of a sponsor) setting forth the estimated net worth of each such sponsor at a time not more than 90 days prior to the date of filing an application; such statement shall be signed and sworn to by such sponsors. A representation of the amount of such net worth must be included in the prospectus.

Subp. 6. **Profit and loss statements for corporate sponsors.** Audited profit and loss statements for the last fiscal year of any corporate sponsor (or for the life of the corporate sponsor, if less) and unaudited statements for any interim period ending not more than 90 days prior to the date of filing an application. The inclusion of such statement in the prospectus shall be at the discretion of the commissioner.

Statutory Authority: *MS s 80A.25*

CATTLE FEEDING PROGRAMS

2875.6100 DEFINITIONS.

Subpart 1. **Affiliate dealings.** "Affiliate dealings" means dealings in which feed is purchased, directly or indirectly, from the sponsor or an affiliate, or cattle are fed in feed lots owned by the sponsor or an affiliate; provided, however, the sale of proprietary feed supplements by an affiliate to independent feed lots shall not be deemed affiliate dealings if such sales are at prices not greater than those in completely unrelated sales.

Subp. 2. **Basic feed cost.** "Basic feed cost" means costs of the ration ingredients, plus the milling charge. This excludes the markup charge for yardage and management.

Subp. 3. **Custom feeding.** "Custom feeding" includes the feeding of all cattle other than those fed for publicly offered ventures and those fed for the account of the sponsor and/or any affiliate of the sponsor.

Subp. 4. **Hedging.** "Hedging" means the sale of futures against a purchase of spots (cattle or other commodities) or the purchase of futures against commitments for spot purchases. Hedging is a medium through which offsetting commitments are employed

to eliminate or minimize the impact of an adverse price movement on inventories or other previous commitments.

Subp. 5. **Net assets.** "Net assets" means total assets less total liabilities.

Subp. 6. **Payout.** "Payout" means that point at which public investors have received a 100 percent return of their investment, before taxes, and without considering any tax deductions.

Subp. 7. **Speculation.** "Speculation" means frequent movement in and out of the commodity futures market, holding either long or short positions, or both, without corresponding sales or purchases of commodities on the cash market.

Subp. 8. **Sponsor.** "Sponsor" means any corporation, partnership, or individual which issues, promotes, and/or manages a cattle feeding venture; for example, a general partner in a limited partnership set up for that purpose. "Sponsor" does not include wholly independent third parties such as attorneys, accountants, investment advisers, and underwriters whose only compensation is for professional services rendered in connection with the offering of venture interests.

Statutory Authority: *MS s 80A.25*

2875.6110 THE PLAN OF BUSINESS.

The form of the business entity (herein sometimes referred to as the venture) should be structured, insofar as possible, to attempt to limit the liability of public investors to the amounts of their respective investments and attempt to assure the flow-through, insofar as possible, of tax deferral benefits to such public investors. In addition, adequate capitalization and investment (as specified in parts 2875.6120 and 2875.6130) must be provided for the venture by the sponsors of the venture.

Statutory Authority: *MS s 80A.25*

2875.6120 MANAGEMENT EXPERIENCE.

At least one principal of the sponsor must have adequate experience in the cattle feeding business, including buying, selling, feeding, and maintenance of beef cattle. Such experience must be of at least five years duration, with three of such years in feed lot operations exceeding 1,000 head capacity, and recently preceding the commencement of the publicly financed venture.

Statutory Authority: *MS s 80A.25*

2875.6130 CAPITALIZATION OF SPONSOR AND INVESTMENT BY SPONSOR.

The prospectus shall contain audited financial statements of all sponsors which are corporations or partnerships indicating an ability to perform any commitment which is made in regard to the venture. The prospectus shall contain a representation of the net worth of any individual who is a sponsor.

The corporation or partnership, acting as a sponsor, must have a net worth sufficient to meet the requirements of the ruling branch of the Internal Revenue Service. This part shall be deemed to be satisfied if the sponsor has received either a favorable tax ruling, or an opinion of qualified tax counsel (acceptable to the commissioner), assuring flow-through of tax benefits to the public investor. The commissioner may, in his or her discretion, require further evidence of net worth sufficient to perform its obligations under the proposed plan of business.

The sponsor must purchase for cash at the public offering price less underwriting discounts and commissions, a minimum of \$100,000 in participation interests (which will be treated equally with investments by public investors) in any entity which offers its cattle feeding interest to the public. If the aggregate offering of the entity (less underwriting discounts and commissions) is less than \$1,000,000, the sponsor may, in lieu of this requirement, purchase ten percent of the offering, less underwriting discounts and commissions. In either case, the sponsor's required investment in participation interests may be reduced by ten percent for each \$35,000 in tangible net equity possessed by the sponsor. In lieu of the sponsor making the above-described

investment (if any is required), such investment may be made by any person or company owning 50 percent or more of the voting control of the sponsor. In unusual circumstances, the commissioner may waive this part if the sponsor guarantees a favorable cost per pound of weight gain or favorable stop-loss.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.6140 COMPENSATION TO SPONSOR AND AFFILIATES.

Subpart 1. **Limitation.** Compensation to the sponsor (and its affiliates) of a venture is to be limited as in subparts 2 to 5.

Subp. 2. **Organizing expenses.** All expenses of organizing the venture and selling interests therein to the public, including underwriting discounts and commissions, if any, must be borne solely by the sponsor if the sponsor is to receive up to the full 12-1/2 percent first year management fee described in subparts 3 and 4, but such management fee shall not exceed the actual expenses of organizing the venture and selling interests therein to the public. If the publicly owned venture (limited partnership, etc.) is to pay such expenses, the total of such expenses it shall pay, together with the first year management fee, shall not exceed 12-1/2 percent of the gross receipts of the public offering.

Subp. 3. **Ventures that do not engage in affiliate dealings.** A maximum of 12-1/2 percent of the dollar amount of gross cash receipts from a public offering is allowable to the sponsor as a management fee for the first year of operation. For each year thereafter, five-eighths percent per month of the venture's net assets is allowable to the sponsor as a management fee. Following payout to public investors, the sponsor may participate in the venture's profits in the following ratio: 25 percent to the sponsor and 75 percent to the public investors. The sponsor must pay all its administrative and overhead expenses. Other expenses of the limited partnership, including, but not limited to, buying services, transportation, interest on borrowed funds, legal, accounting, and reporting expenses, branding and feed cost, where required to be paid by the venture, shall be billed to and paid directly by the venture to facilitate auditing. Veterinary services and medicines may be allocated, where direct billing is impractical.

Subp. 4. **Ventures that engage in affiliate dealings.** A maximum of 12-1/2 percent of the dollar amount of gross cash receipts from a public offering is allowable to the sponsor as a management fee for the first year of operation. Reasonable and competitive feed markups on feed sold to the partnership will be allowable. Basic feed costs shall not exceed those charged to other nonaffiliated customers of the feed lot for the same types and grades of feed generally prevailing in the locale, at the time of purchase. The mark up on feed sold to the partnership shall in no event exceed 20 percent of the basic feed cost. If any "yardage," "per head," or other handling charges of a general nature are to be made, the total of such charges together with the mark up on feed shall not exceed 20 percent of the basic feed cost for any feeding cycle. If the sponsor deems it necessary to raise the foregoing limitations as to feed mark up and handling charges, it may do so only annually and only upon written notice to investors in the venture at least 60 days prior to the beginning redemption date mentioned in part 2875.6250, subpart 6. Following payout to public investors, the sponsor may participate in the venture's profits in the following ratio: 25 percent to the sponsor and 75 percent to the public investors. The sponsor must pay all its administrative and overhead expenses. Other expenses of the limited partnership, including, but not limited to, buying services, transportation, interest on borrowed funds, legal, accounting, and reporting expenses, branding and feed cost, where required to be paid by the venture, shall be billed to and paid directly by the venture to facilitate auditing. Veterinary services and medicines may be allocated, where direct billing is impractical.

Subp. 5. **Other fees and compensation in ventures that engage in affiliate dealings.** The prospectus must clearly describe all dealings that the venture will have with the sponsor or its affiliates. Such description must contain a detailed disclosure of the fees to be paid to such parties. In addition, the prospectus must contain a schedule setting

out, in summary, all fees and compensation to be paid directly to the sponsor as well as indirect fees to be paid to the sponsor or its affiliates.

Statutory Authority: *MS s 80A.25*

2875.6150 PERIODIC REPORTS.

The sponsor shall provide periodically, at least quarterly, each public investor with a report that states the current value of the investor's interest (on a cost basis or otherwise) and progress of the venture, in clear and concise terms in accordance with practices in general usage in the industry. Annual audited financial reports and tax information shall be furnished to the investor in a form which may be used in the preparation of the investor's individual income tax return.

The information to be provided in such report should comply with part 2875.6250, subpart 2, and should include any other pertinent information regarding fixed and variable costs.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.6160 FUTURE EXCHANGES.

Any future exchanges of interests in the venture for common stock or other securities of any other entity shall be made solely upon compliance with the act and these rules and must be in compliance with financial and other requirements generally applicable to initial public offerings by such entities. The public investors must be advised, in the prospectus, that any future exchange offers may not be available to them if the exchange offer fails to meet the registration requirements of this state. The sponsor must undertake to continue management, on the same terms, of the interest of investors who do not exchange their interests for interests in the new entity, until orderly liquidation of all cattle in the venture is completed.

Statutory Authority: *MS s 80A.25*

2875.6170 EXCULPATORY CLAUSE.

The sponsor of a venture shall be deemed to be in a fiduciary relationship to the public investors, and the prospectus shall so state. Sponsors and affiliates shall not be exonerated by any provision of any agreement from liability to investors for any losses caused by gross negligence or willful misconduct.

Statutory Authority: *MS s 80A.25*

2875.6180 INSURANCE AND DEATH LOSS.

Casualty insurance or full mortality insurance may be maintained on all cattle belonging to the venture, in the discretion of the sponsor, and if in the best judgment of the sponsor the costs of such insurance are economically feasible.

The sponsor, at no additional cost to the venture, must guarantee against death loss above four percent occurring during the term of the venture or upon earlier termination of the management agreement. Such guarantee must include a specified indemnity which will be made at the earlier of termination of the venture or termination of the management agreement. Proof of loss must be produced in order for the sponsor to receive credit toward the four percent (in some manner subject to audit). The sponsor must provide for indemnification for any death loss whatever brought about due to negligence or misconduct on the part of the sponsor and/or its employees. In circumstances where an unusually favorable stop-loss provision exists, the commissioner may waive the requirement of a guarantee against death loss.

Statutory Authority: *MS s 80A.25*

2875.6190 LEVERAGE.

A venture may not engage in leveraging in excess of four to one and a limitation of the leveraging to be used must be set out in the prospectus, along with a clear explanation of the risk involved in leveraging.

Statutory Authority: *MS s 80A.25*

2875.6200 HEDGING AND SPECULATION.

If the plan of business of the venture includes the purchase or sale of commodities futures contracts, such purchases and sales must be limited in extent and frequency to those instances deemed reasonably necessary to protect the venture against price fluctuations in the cattle or grain market. The purchase or sale of commodities futures contracts may be for the purposes of hedging only and such transactions may not be for purposes of speculation. The public investors must be notified, in writing, at the earliest practicable time (at least monthly) of the terms of any commodity futures contract transactions for the ventures.

Statutory Authority: *MS s 80A.25*

2875.6210 FACILITIES.

Feed lots in which the venture's cattle are to be fed must have a capacity of 5,000 head or more. The sponsor must have reasonable assurance that it will have access to feed lots with combined total capacity of 20,000 head or more for feeding of the venture's cattle prior to the public offering. All such feed lots must have available the services of a veterinarian and nutritionist and must keep detailed records of all cattle processed, including the venture's cattle, and all services and goods provided for all cattle in the feed lot, and must agree to make all such records available to the venture's auditors and to the sponsor. In geographic areas where feed lots of 5,000-head capacity or more are unusual, the numbers mentioned in this part may be reduced by the commissioner.

Statutory Authority: *MS s 80A.25*

2875.6220 BRANDING AND ACCOUNTABILITY OF PROPERTY.

Cattle belonging to the venture must be clearly distinguishable, (e.g. branded with the venture's brand) at the earliest practicable time, and not more than 24 hours after placement in the feed lot under normal circumstances.

All cattle, feed, and funds belonging to the venture must be strictly accounted for, and identified to the extent practicable, throughout the life of the venture. The cost of feed and services to the venture shall not be in any way artificially increased (other than customary mark ups mentioned elsewhere herein).

The weighing of all feed and cattle to be sold to the venture and all cattle to be sold by the venture shall be done on sealed certified scales, certified by the governmental authority (if any) having jurisdiction thereof in the particular locality. The weighing of feed ration upon delivery to the venture's cattle shall be done on certified scales when practicable, and otherwise on truck scales which are daily compared for accuracy with certified scales.

Statutory Authority: *MS s 80A.25*

2875.6230 CONFLICTS OF INTEREST.

The prospectus must fully describe all conflicts of interest between the public investors and the sponsor and its affiliates.

No fees, commissions, or other remuneration of any kind may be received by the sponsor or its affiliates in connection with the venture, directly or indirectly, which are not set out and fully disclosed in the prospectus.

No fee may be charged the venture upon the sale of venture cattle.

The venture's cattle may not be sold to the sponsor or its affiliates, directly or indirectly, except that finished cattle may be sold to an affiliated packer on a dressed carcass basis with payment on the basis of USDA quality and yield grades, provided the packer reports to the public investors prices paid for other cattle on the same date and reports the nearest USDA Market News Quotations of comparable grade and yield.

The venture's cattle may not be purchased from the sponsor or its affiliates unless purchased at the lesser of fair market value in the locality or the sponsor's cost (animals plus feed). When an affiliate acts as a commission buyer, the affiliate may be paid commissions on the purchase of cattle for the venture at rates not exceeding those customary in the industry, and may take title to the cattle on behalf of the registered ventures during any necessary interim while pen-size lots are being formed.

All transactions between the venture and the sponsor, or an affiliate, shall be represented by a written contract and shall be terminable upon 60 days' written notice without penalty.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.6240 PLAN OF DISTRIBUTION AND SUITABILITY.

Subpart 1. **Minimum investment.** The minimum investment by a public investor shall be \$5,000 and the initial investment by a public investor shall be no less than \$5,000, all of which must have been paid at the date the venture commences. Assignability of a public investor's interest must be limited so that no assignee (transferee) or assignor (transferor) may hold less than a \$5,000 interest, except by gift, inheritance, or court decree.

Subp. 2. **Public investors.** Public investors' interests in a cattle feeding venture may not be assessed (the public investors may not be compelled in any way to make additional capital contributions to the venture).

Subp. 3. **Advertising materials.** Sales of the venture interests must be made by and through a prospectus. Supplementary material must be submitted to the commissioner in advance of use, and its use must either be preceded by or accompanied with an effective prospectus. Informational material may, and should be, distributed on a periodic basis to public investors already in the venture.

Subp. 4. **Investor suitability.** The broker-dealer, or the sponsor in the case of direct sales, shall take all action reasonably required to assure that venture interests are sold only to purchasers for whom such interests are suitable.

Judgment of suitability of any particular venture interest for an individual investor shall be based on the financial capacity of the purchaser, including the purchaser's net worth and income tax bracket, after as reasonable inquiry into the purchaser's financial condition and other related and relevant factors as may be appropriate.

The broker-dealer or sponsor shall retain all records necessary to substantiate the fact that interests were sold only to purchasers for whom such securities were suitable. The commissioner shall require broker-dealers or sponsors to obtain from the purchaser a letter justifying the suitability of such investment.

Statutory Authority: *MS s 80A.25*

2875.6250 PROSPECTUS.

Subpart 1. **Term of venture.** The prospectus must clearly state the period of time for which the venture will operate. Such term may not initially exceed ten years in duration. If the sponsor retains the right to extend the period of the venture beyond the initial term, such right of continuance must be disclosed in the prospectus. No venture shall be formed with a contemplated term of less than three years, except in unusual circumstances where a favorable stop-loss provision is present.

Subp. 2. **History of operations.** The sponsor's history of operation shall be fully disclosed and all fees and remunerations, direct and indirect, received by the sponsor

or an affiliate in each publicly owned venture shall be scheduled. The prospectus must contain a schedule setting out, on an annual or other accounting period basis, information for the preceding three-year period or for such shorter period as the sponsor has been engaged in cattle feeding operations. Information for the year preceding the program should be presented in a fashion to show the economic results if cattle were placed on feed at least on a quarterly basis. The information required by this part shall include:

- A. average purchase weight of feeder cattle, by sex;
- B. average weight into the feed lot, by sex;
- C. average cost per head;
- D. buying commissions paid;
- E. average freight costs into the yard;
- F. average length of time on feed, by sex;
- G. average total cost of gain (per pound); specifying basis of computation of weight gain (pay weight to pay weight or in-weight to pay weight);
- H. average feed cost of gain (per pound); specifying basis of computation of weight gain (pay weight to pay weight or in-weight to pay weight);
- I. average interest rate on borrowed operating capital;
- J. other management or selling charges, if any;
- K. death loss (percent);
- L. average sales weight, by sex (after four percent shrink at feed lot);
- M. average sales price per cwt, by sex;
- N. average profit or loss per head, by sex (estimated if not known); and
- O. average equity investment per head, by sex (estimated if not known).

Subp. 3. **Affiliate dealings.** For ventures which engage in affiliate dealings, the prospectus must set out the information in subparts 1 and 2 for each feed lot, for the following categories: custom feeding, to the extent such information is known; cattle fed for the account of the sponsor and/or all affiliates. This information shall also be furnished to the public investors in the venture on at least an annual basis.

Subp. 4. **Area of operations.** A general description of the areas in which it is anticipated that the venture's activities will be conducted shall be set out.

Subp. 5. **Maximum and minimum.** The prospectus shall indicate the maximum amount of subscriptions to be sought from the public and the minimum amount of subscriptions necessary to activate the venture. The minimum amount of funds to activate the venture shall be sufficient to accomplish the objectives of the venture, including "spreading the risk" and shall be set out in the prospectus. Any minimum less than \$250,000 will be presumed to be inadequate to spread the risk of the public investors. Provision must be made for the return to public investors of 100 percent of paid subscriptions in the event that the established minimum to activate the venture is not reached. The minimum amount shall be placed in an impoundment account. The impoundment agent shall be named in the prospectus.

Subp. 6. **Repurchase of venture interests.** No representations shall be made that venture interests are readily marketable. Public investors must be allowed to withdraw from the venture on at least an annual basis, following the first full year of operation of the venture. The beginning redemption date for each year shall be specified in the prospectus, and public investors desiring to withdraw shall give written notice to the sponsor at least 30 days prior to such beginning redemption date. As to all cattle owned by the venture on the beginning redemption date, the withdrawing investor shall have a liquidating interest, and the investor's account will be credited with his or her pro rata share of the proceeds of sales of all such cattle. As soon as practicable after the liquidation of all such cattle, the withdrawing investor shall be paid a pro rata share of such proceeds. A penalty, not to exceed ten percent of the proceeds credited to the investor's account, may be charged the investor who chooses to withdraw prior to the end of the venture. No penalty may be charged at the termination date of the venture,

nor at any time thereafter if the termination date is extended, nor after the venture has been in existence for five years, whichever time is earlier. The ten percent penalty for early withdrawal must be credited to the venture.

Subp. 7. Tax considerations. The sponsor of the venture must obtain an Internal Revenue Service ruling, or an opinion of qualified tax counsel (acceptable to the commissioner) stating that the desired income tax treatment will be accorded the venture.

The prospectus must fully disclose all tax benefits and liabilities associated with investment in the venture. It shall be clearly disclosed in the prospectus that the venture is not a tax shelter.

Subp. 8. Use of proceeds. The prospectus must clearly account for the use of the proceeds of the offering. Proposed use should be set out in dollar amounts as well as percentages of the total offering proceeds. Funds to be obtained through leveraging are also subject to these requirements.

Subp. 9. Examples. The prospectus shall contain, in summary form, a schedule setting forth examples of an investment in a cattle feeding venture. Such schedule must contain three examples: showing a loss on investment; showing a break-even on investment; and showing a profit on investment, commensurate with the loss shown in the first schedule.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.6260 RIGHTS AND OBLIGATIONS OF PARTICIPANTS.

Subpart 1. Meetings. Meetings of the limited partnership may be called by the general partners or the limited partners holding more than ten percent of the then-outstanding limited partnership interests, for any matters for which the partners may vote as set forth in the limited partnership agreement. A list of the names and addresses of all limited partners shall be maintained as part of the books and records of the limited partnership and shall be mailed on request to any limited partner or representative of that partner. Upon receipt of a written request either in person or by registered mail stating the purposes of the meeting, the general partner shall provide all partners, within ten days after receipt of said request, written notice (either in person or by registered or certified mail) of a meeting and the purpose of such meeting to be held on a date not less than 15 nor more than 60 days after receipt of said request, at a time and place convenient to participants.

Subp. 2. Voting rights of limited partners. The limited partnership agreement shall provide that a majority of the then-outstanding limited partnership interests may, without the necessity for concurrence by the general partner, vote to: amend the limited partnership agreement; dissolve the program; remove and replace the sponsors; and approve or disapprove the sale of all or substantially all of the assets of the program.

Subp. 3. Exemption. This part shall not apply to programs that are not structured as limited partnerships.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

REAL ESTATE INVESTMENT TRUSTS

2875.7100 DEFINITIONS.

Subpart 1. Net assets. "Net assets" means total assets at cost less total liabilities.

Subp. 2. Net income. "Net income" means income as reported on the income statement of the trust, after taxes but before deduction of advisory and servicing fees and expenses, provisions for depreciation and consideration of extraordinary, nonrecurring items.

Subp. 3. **Operating expenses.** "Operating expenses" shall include aggregate expenses of every character paid or incurred by the trust except the following:

A. interest;

B. taxes;

C. legal, audit, accounting, underwriting, brokerage, listing, registration and other fees, printing, engraving, and other expenses, and taxes incurred in connection with the issuance, distribution, transfer, registration, and stock exchange listing of the trust's securities;

D. cost of preparation and distribution of reports and other communications to shareholders;

E. expenses, other than expenses of employees of the trust and the investment adviser, connected with the acquisition, disposition, and ownership of real estate interests, mortgage loans, or other property, including the costs of foreclosure, insurance premiums, legal services, brokerage and sales commissions, maintenance, repair, and improvement of property;

F. expenses connected with payments of dividends or interest or distributions in cash or otherwise made or caused to be made by the trustees to holders of securities of the trust;

G. additions to reserves for depreciation, depletion, and losses.

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*

2875.7110 TRUSTEES.

Subpart 1. **Qualifications.** A REIT shall have a minimum of three trustees, all of whom are elected annually by a vote of a majority of the outstanding shares of beneficial interest. A majority of the trustees shall not be affiliated with the manager or adviser or any other affiliate, or an affiliate of an affiliate of the trust.

Subp. 2. **Liability.** The declaration of trust or other instrument forming the REIT shall not contain any provision relieving any trustee from liability to the REIT or its securities' holders to which the trustee or the trust might otherwise be subjected by reason of acts constituting bad faith, willful misfeasance, gross negligence, or reckless disregard of duties.

Subp. 3. **Management of REIT.** The trustees shall have absolute and exclusive control over the management of the REIT and its property and the disposition thereof, provided that the trustees may delegate the administration of the day-to-day investment operations and administrative functions of the REIT to another person subject to guidelines and policies established by the trustees and set forth in the contract entered into by the REIT and such other person.

Subp. 4. **Removal.** A trustee of a REIT shall be subject to removal by the vote or written consent of the holders of a majority of the outstanding securities of the trust.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.7120 AFFILIATE TRANSACTIONS WITH THE REIT.

Subpart 1. **Transfers of property.** No affiliate, or affiliate of an affiliate, of a REIT shall sell, transfer, or lend any assets or property to the trust or purchaser, borrow or otherwise acquire any assets of property from the trust, directly or indirectly, unless the transaction comes within one or more of the following exceptions:

A. the transaction consists of the acquisition of property or assets at the formation of the trust or shortly thereafter, and is fully disclosed in the prospectus; or

B. the transaction is a borrowing of money by the trust on terms not less favorable than those then prevailing for comparable arms-length borrowings; or

C. the transaction consists of the acquisitions by the trust of federally insured or guaranteed mortgages at prices not exceeding the currently quoted prices at which the Federal National Mortgage Association is purchasing comparable mortgages; or

D. the transaction consists of the acquisition of other mortgages on terms not less favorable to the trust than similar transactions involving unaffiliated parties; or

E. the transaction consists of the acquisition by the trust of other property at prices not exceeding the fair value thereof as determined by independent appraisal.

Subp. 2. **Conditions of permission.** All transactions in subpart 1 and all other transactions in which any such persons have any direct or indirect interest shall be permitted only if:

A. such transaction has been approved by the affirmative vote of a majority of the trustees who are not affiliated with the trust or the adviser; and

B. if the property is a mortgage, the purchase or acquisition of such mortgage from any such person is on terms not less favorable to the trust than those then prevailing for arms-length transactions in comparable mortgages; and

C. each such transaction is in all respects on such terms as at the time of the transaction and under the circumstances then prevailing, fair and reasonable to the shareholders of the trust.

Statutory Authority: *MS s 80A.25*

2875.7130 COMMISSIONS.

Any commission or other remuneration received by an affiliate, or affiliate of an affiliate, of a REIT in connection with the acquisition or disposal of trust assets shall be included in the advisory fee and subject to the limitations thereon.

Statutory Authority: *MS s 80A.25*

2875.7140 ADVISORY OR MANAGEMENT CONTRACT.

Any advisory contract entered into by the trustees initially may not be for a period longer than three years, and any such contract entered into thereafter shall be for a period not longer than one year. Any such advisory or management contract shall provide that it may be terminated at any time without penalty by the trustees or a majority of the holders of outstanding securities of the trust upon not more than 60 days' written notice to the adviser or manager. It shall be approved annually by a majority of the unaffiliated trustees.

Statutory Authority: *MS s 80A.25*

2875.7150 FEES AND EXPENSES.

Total operating expenses of a REIT, including advisory fees and mortgage servicing fees and all other expenses, shall not exceed 1-1/2 percent of the average net assets of the trust or 25 percent of net income of the trust, whichever is greater, calculated at least quarterly. In no event shall aggregate annual expenses exceed 1-1/2 percent of the total invested assets of the trust.

The adviser shall reimburse the trust at least annually for the amount by which operating expenses of the trust exceed the above limitations.

All figures used in the foregoing computations shall be determined in accordance with generally accepted accounting principles applied on a consistent basis. The compensation of the investment adviser shall be computed by an independent certified public accountant at the end of each year and any necessary adjustments made between the compensation so computed and that already paid.

The limitations on selling expenses pursuant to part 2875.3050 shall apply to real estate investment trusts.

Statutory Authority: *MS s 80A.25*

2875.7160 INVESTMENT POLICY.

The investment policies to be followed by the trustees shall be stated with reasonable particularity.

Statutory Authority: *MS s 80A.25*

2875.7170 LIABILITY OF SHAREHOLDERS.

The holders of the shares of beneficial interest shall not be personally liable on account of any obligations of the REIT. All written contracts to which the REIT is a party shall include a provision that the shareholders shall not be personally liable on such obligations. The trustees must be required to maintain adequate insurance against possible liability on the part of the trust.

Statutory Authority: *MS s 80A.25*

2875.7180 REPORTS.

The trust shall prepare an annual report concerning its operations for each fiscal year ending after the public offering of its securities, including financial statements prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by independent certified public accountants. The annual report shall be delivered to each public shareholder and debenture holder within 120 days after the end of such fiscal year. A copy of the annual report shall be filed with the commissioner.

Statutory Authority: *MS s 80A.25*

2875.7190 MEETINGS AND INSPECTION OF RECORDS.

There shall be an annual meeting of shareholders of the trust upon reasonable notice following delivery of the annual report required by part 2875.7180. Special meetings may be called upon written request of holders of beneficial interests holding together not less than 20 percent of the outstanding shares of the REIT entitled to vote at such meeting. The call shall state the nature of the business to be transacted, and no other business shall be considered.

The declaration of trust, or other instrument shall provide for the inspection of the trust records by a holder of beneficial interest or beneficiary of the trust as permitted by local law to the same extent as is permitted corporate shareholders.

Statutory Authority: *MS s 80A.25*

2875.7200 DISTRIBUTIONS.

Any distribution to shareholders shall be accompanied by a statement in writing advising the source of the funds so distributed, or if the source thereof has not been determined, the communication shall so state; and in such event the statement as to such source shall be sent to the shareholders not later than 60 days after the close of the fiscal year in which the distribution was made.

Statutory Authority: *MS s 80A.25*

2875.7210 AMENDMENT OF DECLARATION OF TRUST.

The declaration of trust of a REIT shall provide that no amendment thereto may be made unless approved by the vote or written consent of the holders of a majority of the voting securities of the trust; and that no amendment that would change any rights with respect to any outstanding securities of the trust, or by diminishing or eliminating any voting rights pertaining thereto, may be made unless also approved by the vote or written consent of the holders of two-thirds of the outstanding securities so affected.

Statutory Authority: *MS s 80A.25*

2875.7220 TERMINATION OF TRUST.

All real estate investment trusts shall be subject to termination at any time by the vote or written consent of a majority of the persons holding shares of beneficial interest in the trust.

Statutory Authority: *MS s 80A.25*

2875.7230 PROHIBITED ACTIVITIES.

The REIT shall not engage in any of the following activities:

A. invest more than ten percent of its total assets in unimproved real property or mortgages on unimproved real property, excluding property being developed or property where development will be completed within a reasonable period;

B. invest more than ten percent of its total assets in junior mortgages, excluding wrap-around type junior mortgage loans;

C. issue debt securities to the public unless the cash flow of the trust for the last fiscal year excluding extraordinary, nonrecurring items, is sufficient to cover the interest on all debt securities to be outstanding;

D. issue options or warrants to purchase its securities to any affiliate of the trust, or at exercise prices less than the fair market value of such securities on the date of grant;

E. engage in trading as compared with investment activities;

F. issue redeemable equity securities or equity securities of more than one class;

G. invest in commodities;

H. engage in any short sale;

I. engage in underwriting or agency distribution of securities issued by others;

or

J. knowingly hold securities in any company holding investments or engaging in activities prohibited by this part.

Statutory Authority: *MS s 80A.25*

2875.7240 TERMS AND CONDITIONS OF SECURITIES.

The declaration of trust of a REIT shall not permit the issuance by the trust of securities that are assessable; redeemable securities; or warrants, options, or similar evidences of a right to buy its securities unless issued to all of its security holders ratably or as part of a financing arrangement.

Statutory Authority: *MS s 80A.25*

2875.7250 LEVERAGE.

The aggregate borrowings of the trust, secured and unsecured, shall not be unreasonable in relation to the net assets of the trust. The maximum amount of such borrowings in relation to net assets shall be stated in the prospectus. Leveraging in excess of 500 percent of net assets shall be prohibited.

Statutory Authority: *MS s 80A.25*

2875.7260 SAVINGS CLAUSE.

The provisions of the declaration of trust giving the shareholders the right to elect and remove trustees and the right to amend and terminate the declaration of trust shall be subject to the requirements of the Internal Revenue Code of 1954, as amended, and the rules and regulations promulgated thereunder. If any provisions granting or limiting such shareholder right shall conflict with the requirements of the Internal Revenue Code of 1954 and the rules and regulations promulgated thereunder, such provisions shall be deemed to be without force and effect. In the event that the provision relating to the election of trustees by the beneficiaries of the trust shall be deemed to be without force and effect, the trustees in office shall be deemed to be the qualified and

acting trustees until such time as a successor trustee or (trustees) has been named and qualified; provided, however, that on or before the next meeting of the shareholders, after the trustees shall have notified the shareholders that any or all shareholders' rights create such a conflict and, therefore, shall be without force and effect, there shall be submitted to the shareholders for their approval or disapproval, by a majority of those voting, the question whether such shareholder right or rights should be continued.

Statutory Authority: *MS s 80A.25*

2875.7270 MINIMUM NET CAPITAL.

The net assets of the trust prior to registration, as defined in part 2875.7100, shall be \$200,000, represented by the outstanding securities of the trust.

Statutory Authority: *MS s 80A.25*

2875.7280 MINIMUM CAPITALIZATION.

The minimum capitalization of REIT excluding the minimum net capital set forth in part 2875.7270 and after payment of organization and offering expenses shall be \$2,000,000.

Statutory Authority: *MS s 80A.25*

2875.7290 RECORDING.

The declaration of trust and any amendments, or a memorandum of the declaration of trust and any amendments, shall be filed for record in the registry in the county where the principal place of business of the REIT is located or in any other place required by local law.

Statutory Authority: *MS s 80A.25*

COMMODITY POOLS

2875.8100 DEFINITIONS.

Subpart 1. **Scope.** As used in these rules, the following terms shall have the meanings given them.

Subp. 2. **Adviser.** "Adviser" means a person who for any consideration engages in the business of advising others, either directly or indirectly, as to the value, purchase, or sale of commodity futures contracts or commodity options.

Subp. 3. **Capital contributions.** "Capital contributions" means the total investment in a program by a participant or by all participants, as the case may be.

Subp. 4. **Clearing broker.** "Clearing broker" means any person who engages in the business of effecting transactions in commodities futures contracts for the account of others or for his or her own account.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subp. 6. **Commodity futures contract.** "Commodity futures contract" means a contract providing for the delivery or receipt at a future date of a specified amount and grade of a traded commodity at a specified price and delivery point.

Subp. 7. **Net assets.** "Net assets" means the total assets, less total liabilities, of the program determined on the basis of generally accepted accounting principles. "Net assets" shall include any unrealized profits or losses on open positions, and any other credit or debit accruing to the program but unpaid or not received by the program.

Subp. 8. **Net asset value per unit.** "Net asset value per unit" means the net assets divided by the number of units outstanding.

Subp. 9. **Net profits.** "Net profits" means the sum of the net of any profits and losses realized on all trades closed out during the period, and the net of any unrealized profits and losses on open positions as of the end of the period; minus:

A. the net of any unrealized profits or losses on open positions as of the end of the preceding period;

B. all expenses incurred or accrued during the period; and

C. cumulative net realized losses, if any, carried forward from preceding periods.

Subp. 10. **Organization and offering expenses.** "Organization and offering expenses" means all expenses incurred by the program in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriter's attorneys), expenses for printing, engraving and mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositories, and experts; and expenses of qualification of the sale of securities under federal and state law, including taxes and fees and accountants' and attorneys' fees.

Subp. 11. **Participant.** "Participant" means the holder of a program interest.

Subp. 12. **Person.** "Person" means a natural person, partnership, corporation, association, or other legal entity.

Subp. 13. **Program.** "Program" means the limited partnership, joint venture, or incorporated organization formed and operated for the purpose of investing in commodity futures contracts.

Subp. 14. **Program interest.** "Program interest" means a limited partnership or other form of ownership in a program.

Subp. 15. **Pyramiding.** "Pyramiding" means a method of using all or a part of an unrealized profit in a commodity futures contract position to provide margin for additional commodity futures contracts of the same or related commodities.

Subp. 16. **Sponsor.** "Sponsor" means any person directly or indirectly instrumental in organizing a program or any person who will be responsible for the management of a program. "Sponsor" shall include an adviser or a clearing broker who pays any portion of the organizational expenses of the program, a general partner, and any other person who regularly performs or selects the persons who perform services for the program. Sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of the units. The term "sponsor" shall be deemed to include affiliates of any sponsor otherwise coming within this definition.

Subp. 17. **Valuation date.** "Valuation date" means the date as of which the net assets of the fund are determined.

Subp. 18. **Valuation period.** "Valuation period" means a regular period of time between valuation dates.

Statutory Authority: *MS s 80A.25*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279*

2875.8110 SPONSORS, ADVISERS, AND CLEARING BROKERS.

Subpart 1. **Experience.** Any person providing management, advisory, or clearing services to the program shall have at least three years of relevant experience in the area of trading commodity futures contracts. Such experience must include the trading of commodity futures contracts for others or must otherwise demonstrate sufficient knowledge of such person to perform the services proposed and to carry out the program policies and objectives.

Subp. 2. **Financial condition.** The financial condition of a sponsor must be commensurate with any financial obligations assumed in the offering and in the management and operation of the program. At a minimum, the net worth shall be the greater of:

A. an amount equal to five percent of the participants' capital in all existing programs in which a sponsor or an affiliate has potential liability, plus five percent of the total subscriptions in the program being offered; or

B. fifteen percent of the gross amount of the current offering with respect to offerings of less than \$2,500,000, or, if the offering exceeds \$2,500,000, the net worth must be at least ten percent of the gross amount of the offering, up to \$1,000,000 of net worth, but in no case less than \$50,000.

Subp. 3. Determining net worth. Net worth of individual sponsors shall be determined exclusive of home, furnishings, and automobiles. Audited balance sheets of sponsors shall be furnished except that in the event a sponsor is an individual, an unaudited balance sheet prepared by a certified public accountant and signed and sworn to by such individual sponsor may be accepted for the purpose of determining required net worth. Also, evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in the computation of net worth.

Subp. 4. Investment in program. A sponsor must make a permanent investment in the program equal to the lesser of three percent of the public investors' interest or \$50,000.

Subp. 5. Tax ruling or opinion. A program organized in the form of a limited partnership must obtain a favorable tax ruling from the Internal Revenue Service or favorable opinion of qualified tax counsel in a form acceptable to the commissioner concerning the tax status as a limited partnership. A favorable tax ruling or opinion is one that concludes that the program will be treated as a partnership for tax purposes.

Subp. 6. Liability and indemnification. The sponsors shall not attempt to pass on to participants the liability imposed upon a sponsor by law except that the program agreement may provide for indemnification of the sponsors under the following circumstances and in the manner and to the extent indicated:

A. In any threatened, pending, or completed action, suit, or proceeding to which a sponsor was or is a party or is threatened to be made a party by reason of the fact that he or she is or was a sponsor of the program (other than an action by or in the right of the program), the program may indemnify such sponsor against expenses, including attorneys' fees, judgments, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit, or proceeding if the sponsor acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the program, and provided that the conduct does not constitute gross negligence, willful or wanton misconduct, or a breach of fiduciary obligations to the participants. The termination of any action, suit, or proceeding by judgment, order, or settlement shall not, of itself, create a presumption that the sponsor did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the program.

B. In any threatened, pending, or completed action or suit by or in the right of the program, to which a sponsor was or is a party or is threatened to be made a party, involving an alleged cause of action by a participant or participants for damages arising from the activities of a sponsor in the performance of management of the internal affairs of the program as prescribed by the program agreement or by the law of the state of organization, or both, the program may indemnify such sponsor against expenses, including attorneys' fees, actually and reasonably incurred in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the program as specified in this clause, except that no indemnification shall be made in respect of any claim, issue, or matter as to which the sponsor shall have been adjudged to be liable for negligence, misconduct, or breach of fiduciary obligation in the performance of his or her duty to the program as specified in this clause, unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

C. To the extent that a sponsor has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in item A or B, or in defense of any claim, issue, or matter therein, the program shall indemnify a sponsor against the expenses, including attorneys' fees, actually and reasonably incurred in connection therewith; and

D. Any indemnification under item A or B, unless ordered by a court, shall be made by the program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the sponsor is proper in the circumstances because he or she has met the applicable standard of conduct set forth in items A and B.

Subp. 7. **License and registration.** Any sponsor, adviser, or clearing broker must present evidence that it is or will be in compliance with applicable licensing or registration requirements under the Commodity Exchange Act, as amended.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.8120 STANDARDS.

Subpart 1. **Disclosures.** In view of the limited transferability, the relative lack of liquidity, and the high risk of loss of many commodity pool programs, suitability standards related to the risks to be undertaken will be required for the participants, and must be set forth in both the prospectus and a written instrument to be executed by each participant. The prospectus shall set forth the investment objectives of the program, a description of the type of participant who could benefit from the program, and the suitability standards to be applied in marketing the program.

Subp. 2. **Sales to appropriate persons.** A sponsor and each person selling program interests on behalf of the sponsor shall make every reasonable effort to assure that those persons being offered or sold the interests meet the suitability standards set forth in this subpart. The following shall be evidence thereof:

A. that the participant has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following: the nature of employment experience; the education level achieved; access to advice from qualified sources, such as an attorney, accountant, or tax adviser; and prior experience with investments of a similar nature;

B. that the participant has an apparent understanding of the fundamental risks and possible financial hazards of the investment; of the lack of liquidity of the investment; that the investment will be directed and managed by the sponsor; and of the tax consequences of the investment;

C. that the participant can bear the financial risks involved.

Subp. 3. **Maintenance of suitability records.** A sponsor shall retain for at least three years all records necessary to substantiate the facts that program interests were sold only to participants for whom such securities were suitable.

Subp. 4. **Minimum investment.** The minimum subscription shall not be less than \$2,500 and shall be paid in cash at the time of purchase. Assessments of any kind shall be prohibited.

Statutory Authority: *MS s 80A.25*

2875.8130 FEES, COMPENSATION, AND EXPENSES.

Subpart 1. **Organizational and offering expenses.** All organizational and offering expenses, including commissions, incurred in order to sell program interests shall be reasonable. In no event shall these expenses exceed 15 percent of the gross proceeds of the offering.

Subp. 2. **Maximum expenses.** The aggregate annual expenses of every character paid or incurred by a program, including management and advisory fees based on the net assets of the program but excluding commodity brokerage commissions, incentive

fees, legal, audit, and extraordinary expenses, calculated at least quarterly on a basis consistently applied, shall be reasonable but in no event shall exceed one-half of one percent of the program's net assets per month; provided a sponsor shall not receive a management fee if the sponsor receives any portion of the brokerage commissions under subpart 4.

The sponsors shall reimburse the program quarterly for the amount by which such aggregate monthly expenses exceed the amounts herein provided, up to an amount not exceeding its management and advisory fees for the period for which reimbursement is made, prior to publication of the program's quarterly report and shall promptly notify the commissioner if the aggregate expense limitation is exceeded by reason of any extraordinary expenses.

Subp. 3. Incentive fees. A sponsor or adviser will be entitled to an incentive fee. The total of the incentive fee shall not exceed 15 percent of the net profits of the program, calculated not more often than quarterly on the valuation date, over the highest previous valuation date. For purposes of this calculation, program losses shall be carried forward but shall not be carried back.

Subp. 4. Brokerage commissions. The program shall seek the best price and services available in its commodity futures brokerage transactions. The program shall not effect any transactions in commodities futures contracts with any clearing broker affiliated directly or indirectly with a sponsor or with any adviser providing the sponsor with research information, recommendations, or other services which might be of value to any sponsor, unless such transactions are effected at competitive brokerage rates. In no event will the program be allowed to enter into any exclusive brokerage contract. If any person receives any portion of the brokerage commissions from program operations, the adviser may not be affiliated with such person.

Subp. 5. Other income. Any interest or other income earned by any portion of the program assets shall accrue solely to the benefit of the program or the management fee shall be reduced by any amount which does not so accrue.

Subp. 6. Expenses of program. All expenses of the program shall be billed directly to and paid by the program. Reimbursements (other than for organizational and offering expenses) to any person or affiliate shall not be allowed, except for reimbursement of the actual direct costs to the sponsor or affiliate of legal and audit services used for or by the program. Expenses incurred in connection with administration of the program, including but not limited to salaries, rent, travel expenses, and such other items generally falling under the category of overhead, shall not be charged to the program.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.8140 RIGHTS AND OBLIGATIONS OF PARTICIPANTS.

Subpart 1. Meetings. Meetings of the participants may be called by a sponsor or by participants holding more than ten percent of the then outstanding units for any matters for which the participants may vote as set forth in a program agreement. Such call for a meeting shall be deemed to have been made upon receipt by a sponsor of a written request from holders of the requisite percentage of units stating the purpose of the meeting. The sponsor shall deposit in the United States mail within 15 days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on a date not less than 30 nor more than 60 days after the date of mailing of said notice at a reasonable time and place.

Subp. 2. Voting rights. The program agreement must provide that holders of a majority of the then outstanding units may, without the necessity for concurrence by the sponsors, vote to amend the program agreement; dissolve the program; remove a general partner and elect a new general partner; elect a new general partner if a general partner elects to withdraw from the program; and cancel any contract for services with any sponsor or an affiliate without penalty upon 60 days' written notice. A

general partner shall not withdraw from a partnership without 90 days' prior written notice thereof to the participants.

Subp. 3. **Access to program records.** The program agreement shall require the maintenance of a list of the names and addresses and interests owned of all participants at the principal office of the program. Such list shall be made available for the review of any participant or a representative at reasonable times, and upon request, either in person or by mail. A participant or a representative shall be furnished a copy of such list upon payment of the cost of reproduction and mailing.

The participants and their representatives shall be permitted access to all records of the program, after adequate notice, at any reasonable time. Records shall be maintained and preserved for a period of not less than six years.

Subp. 4. **Annual and periodic reports.** Annual and periodic reports.

A. The program agreement shall provide for the transmittal to each participant of an annual report, within 120 days after the close of the fiscal year, containing at least the following information:

(1) a balance sheet as of the end of its fiscal year and statements of income, participants' equity, and changes in financial position for the year then ended, all of which shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion (without material qualification) of an independent certified public accountant or independent public accountant;

(2) a statement showing the total fees, compensation, brokerage commissions, and expenses paid by the program, segregated as to type, and stated both in aggregate dollar terms and as a percentage of net assets.

B. Participants shall be furnished with quarterly reports, which may be unaudited, containing the same information required in item A within 60 days after the end of the quarter.

C. All participants shall be provided all information necessary for the preparation of the participants' income tax returns by not later than March 15 of each year.

D. The net assets of the program shall be calculated daily and the net asset value per unit shall be made available upon the request of a participant.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.8150 FIDUCIARY DUTY.

The program agreement shall provide that the sponsors shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in its immediate possession or control, and that it shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the program.

Statutory Authority: *MS s 80A.25*

2875.8160 REDEMPTIONS.

The program shall provide an opportunity at least quarterly for the redemption of program interests at the net asset value as of the valuation dates upon the written request of any participant. The participant must notify a sponsor of intent to redeem at least 30 days prior to the redemption date. The prospectus and program agreement must indicate the valuation dates for redemption. Such requests must be honored within 30 days following the valuation date, unless the quantity of redemptions would be detrimental to the tax status of the program. In that case, redemptions may be selected by lot, and participants notified within 30 days whether or not their program interests were redeemed. The program agreement may provide for the suspension of

redemptions if the effect of substantial redemptions would impair the ability of the program to operate in pursuit of its objectives.

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279*

2875.8170 INVESTMENT GEMS.

A diamond, ruby, emerald, or sapphire constitutes an "investment gem" pursuant to Minnesota Statutes 1978, section 80A.14, clause (j), as amended.

Statutory Authority: *MS s 80A.25*

PROSPECTUS; DISCLOSURES

2875.8200 MINIMUM PROGRAM CAPITAL.

The minimum amount of funds required to activate a program shall be sufficient to accomplish the objectives of the program, including diversification. Any minimum less than \$500,000, after deduction of any organizational and offering expenses, including commissions, will be presumed to be inadequate to diversify. Provision must be made for the return to participants of 100 percent of paid subscriptions in the event that the established minimum to activate the program is not reached. All funds received prior to activation of the program must be deposited with an independent custodian, trustee, or escrow agent whose name and address shall be disclosed in the prospectus.

Statutory Authority: *MS s 80A.25*

2875.8210 SALES LITERATURE.

Sales literature, sales presentations (including prepared presentations to prospective participants at group meetings), and advertising used in the offer or sale of program interests shall conform in all applicable respects to the requirements of filing, disclosure, and adequacy currently imposed by parts 2875.0510 to 2875.0550 on sales literature, sales presentations, and advertising used in the sale of corporate securities.

Statutory Authority: *MS s 80A.25*

2875.8220 INFORMATION ON COVER PAGE.

There should be set forth briefly on the cover page, or the following two printed pages of the prospectus, a summary which should include the following: the title and general nature of the program interests being offered; the minimum and maximum aggregate amount of the offering; the minimum and maximum amount of net proceeds; the subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid (or if none, whether such commissions are to be paid by the sponsors).

Statutory Authority: *MS s 80A.25*

2875.8230 SALES TO APPROPRIATE PERSONS.

There shall be set forth a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it.

Statutory Authority: *MS s 80A.25*

2875.8240 DEFINITIONS.

Technical terms used in the prospectus should be defined in a glossary.

Statutory Authority: *MS s 80A.25*

2875.8250 RISK FACTORS.

A participant should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before

making an investment in a program. The paragraphs should include a cross reference to further information in the prospectus.

Statutory Authority: *MS s 80A.25*

2875.8260 BUSINESS EXPERIENCE.

The business experience of the principal officers of all sponsors shall be prominently disclosed in the prospectus. Such disclosure shall indicate their business experience for the past five years. Disclosure shall also be made regarding the experience of any commodity trading adviser and any clearing broker who is utilized by the program. The terms of any material contracts entered into by the program shall be summarized in the prospectus.

Statutory Authority: *MS s 80A.25*

2875.8270 COMPENSATION.

All direct and indirect fees and compensation of every type and from every source which may be paid by the program to any person shall be summarized in tabular form in one location in the forepart of the prospectus. A sponsor shall not receive any compensation, direct or indirect, other than that disclosed in the compensation section.

Statutory Authority: *MS s 80A.25*

2875.8280 USE OF PROCEEDS.

The prospectus shall state the purposes for which the proceeds of the program are intended to be used and the approximate amount intended to be used for each such purpose.

Statutory Authority: *MS s 80A.25*

2875.8290 PROSPECTUS: INVESTMENT OBJECTIVES AND POLICIES.

Describe the investment objectives and policies of the program, indicating which policies may be changed by the sponsors without a vote of the participants. Describe the plan for distribution of income of the program.

Statutory Authority: *MS s 80A.25*

2875.8300 PRIOR PERFORMANCE.

Prior performance:

A. The previous relevant program experience of any sponsor or adviser shall be disclosed in the prospectus for all programs during the past three years that: involved a public offering registered under state or federal securities laws; involved a private or limited offering.

B. Information on previous programs shall include, but not be limited to, the following:

- (1) identification of the program, including the name and location;
- (2) the effective date of the offering, the date it commenced operations, and the date of dissolution or termination or, if it is continuing, that fact;
- (3) the total amount of units, the gross amount of capital raised by the program, the number of participants, and the dollar amount of investment of the sponsor, if applicable;
- (4) income credited and cash distributed to participants and to any sponsor, adviser, or clearing broker;
- (5) Compensation and fees to any sponsor, segregated as to type;
- (6) compensation and fees paid to other relevant parties such as advisers and clearing brokers; and
- (7) the net asset value per unit as of the end of each valuation period previously used.

C. All of the information in items A and B shall be set forth on a cumulative basis for each program in tabular form wherever possible and include a brief description of any material differences between a prior program and the program to be offered.

D. The following caveat should be prominently featured in the presentation of the foregoing information: "It should not be assumed that participants in the offering covered by this prospectus will experience returns, if any, comparable to those experienced by participants in prior programs."

E. The information in items A to D shall be supported in the application for registration by an affidavit that the performance summary is a fair presentation of the information contained in the audited financial statement or the federal income tax returns of the program or in other reports or data.

Statutory Authority: *MS s 80A.25*

2875.8310 CONFLICTS OF INTEREST AND TRANSACTIONS WITH AFFILIATES.

Conflicts of interest and transactions with affiliates:

A. Any conflicts of interest between the program and any sponsor, adviser, clearing broker, or any affiliate thereof must be fully disclosed. This would include at a minimum the following:

- (1) any conflicts arising out of involvement with previous programs;
- (2) any conflicts arising out of involvement in the area of activities not related to the management, advising, or other services performed for commodity pools;
- (3) any other agreements, arrangement, or transactions, proposed or contemplated, that may be a potential conflict of interest;
- (4) the sponsor shall also be required to disclose the steps that will be taken to alleviate any real or potential conflict of interest; and
- (5) If the program pays higher than the minimum commission rates for commodity brokerage transactions, such fact shall be set forth along with a justification.

B. Certain material conflicts of interest are presumed to be sufficient to render the proposed program incapable of accomplishing its stated objectives in the best interest of the participants and shall be controlled as follows:

- (1) No loans may be made by the program to any sponsor or any other person.
- (2) The funds of a program shall not be commingled with the funds of any other person. Funds used to satisfy margin requirements will not be considered commingling.
- (3) No rebates or give ups may be received by any person nor may any person participate in any reciprocal business arrangements which could circumvent these guidelines. Furthermore, the prospectus and program agreement shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with affiliates or other interested parties.
- (4) The program agreement shall prohibit the commodity trading adviser or any other person acting in such capacity from receiving an advisory fee if they share or participate, directly or indirectly, in any commodity brokerage commissions generated by the program.
- (5) The maximum period covered by any contract of the program with any adviser, clearing broker, sponsor, or affiliate thereof shall not exceed one year. Any contract must be terminable without penalty upon 60 days' written notice by the program, which provisions shall be set forth in the program agreement.
- (6) Any other agreement, arrangement, or transactions, proposed or contemplated, may be restricted in the discretion of the commissioner if it would be considered unfair to the participants in the program.

Statutory Authority: *MS s 80A.25*

2875.8320 FEDERAL TAX CONSEQUENCES.

The prospectus shall disclose the following tax aspects: tax treatment of the program; tax treatment of the participants; method of allocation of losses or profits and cash distributions; any other pertinent information applicable to the tax aspects of the investment; and the possibility that the filing of state tax returns will be required in the states in which interests are held.

Statutory Authority: *MS s 80A.25*

2875.8330 COMMODITIES FUTURES MARKETS.

At a minimum, the prospectus should disclose the following characteristics of the commodities markets: that the commodities markets are extremely volatile and the risk of loss is great; and the procedures used in trading commodities futures contracts including but not limited to the margin requirements on the commodities to be invested in by the program, the exchanges, or board of trade on which the program anticipates trading, and a description of the applicable exchange requirements.

Statutory Authority: *MS s 80A.25*

2875.8340 LICENSING AND REGISTRATION.

The prospectus shall disclose any licensing or registration requirements of the program, including those imposed by the Commodity Futures Trading Commission.

Statutory Authority: *MS s 80A.25*

2875.8350 PROHIBITIONS.

The prospectus shall disclose that the program agreement specifically prohibits the following activities:

- A. A program shall not engage in pyramiding.
- B. A program shall not utilize borrowing.
- C. A program shall not enter into an open position during a delivery month.
- D. A program shall not permit the investment of its funds deemed "customer's funds" under the Commodity Exchange Act, as amended, in any securities other than as permitted by the Commodity Futures Trading Commission.
- E. A program shall not commit more than 15 percent of its equity in the trading account at any time for margin in any one commodity irrespective of the delivery month. For this purpose gold and silver bullion, coins, and futures contracts shall be considered one commodity.
- F. A program's trading policy shall specifically exclude the purchasing, selling, writing, or trading in commodity options or purchasing or selling securities, other than those mentioned in item D.
- G. A program shall not engage in cash commodity transactions unless the cash commodity is fully hedged.
- H. A sponsor shall not commit more than two-thirds of the net assets of a program as margin for commodity futures contracts and the balance of such assets shall be retained in cash or cash equivalent to apply as needed for additional margin or for redemption.
- I. A sponsor shall not permit the churning of the program's account so as to generate a commission for itself or for the benefit of any other person.

Statutory Authority: *MS s 80A.25*

2875.8360 NOTIFICATION.

Each participant shall be notified within seven business days from the date of any decline in the net value per unit to less than 50 percent of the amount on the last valuation date. Included in the notification shall be a description of the participants' voting rights pursuant to part 2875.8140, subpart 2.

Statutory Authority: *MS s 80A.25*

2875.8370 MATERIAL CHANGES.

Any material changes in the program's basic investment or trading policies or structure shall require prior written approval by a majority of program interests held by participants. This shall include, specifically, any transfer or withdrawal of any sponsor's required interest in the program.

Statutory Authority: *MS s 80A.25*

2875.8380 SUMMARY OF LIMITED PARTNERSHIP REQUIRED IN PROSPECTUS.

Summary of any limited partnership agreement or other program agreement.

Statutory Authority: *MS s 80A.25*

2875.8390 LEGAL PROCEEDINGS.

Briefly describe any legal proceedings to which the program or any person is or was a party, which is material to the program and any material legal proceedings between any sponsor and participants in any prior program of the sponsor.

Statutory Authority: *MS s 80A.25*

2875.8400 FINANCIAL INFORMATION REQUIRED ON APPLICATION.

Subpart 1. **Exhibit to application.** A sponsor and the program shall provide as an exhibit to the application for registration or where indicated below shall provide as part of the prospectus, the following financial information and financial statements:

Subp. 2. **Balance sheet of program.** As part of the prospectus, a balance sheet of the program as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant, and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing.

Subp. 3. **Balance sheet of corporate sponsor.** A balance sheet of a corporate sponsor as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing. Such statements shall be included in a prospectus.

Subp. 4. **Balance sheet of individual sponsor.** A balance sheet for each individual sponsor as of a time not more than 90 days prior to the date of filing an application; such balance sheet may be audited and should conform to generally accepted accounting principles and shall be signed and sworn to by such sponsor. A representation of the individual's net worth must be included in the prospectus.

Subp. 5. **Statement of income for corporate sponsor.** A statement of income for the last fiscal year of a corporate sponsor (or for the life of a corporate sponsor, if less) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or independent public accountant, and an unaudited statement for any interim period ending not more than 90 days prior to the date of filing an application.

Statutory Authority: *MS s 80A.25*

2875.8450 WAIVER.

The requirements of parts 2875.4500 to 2875.8400 may be waived by the commissioner upon proof of substantial compliance with rules, statements of policy or guidelines of national or regional securities regulatory organizations composed of securities administrators of this and other states.

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Any such waiver shall be granted upon a determination by the commissioner that compliance with such rules, statements of policy, or guidelines is consistent with the purposes fairly intended by the policy and provisions of Minnesota Statutes 1978, sections 80A.01 to 80A.31, as amended; appropriate for the protection of investors; and promotive of uniformity of regulation.

Statutory Authority: *MS s 80A.25*

FORMS

2875.9900 FORM U-1: APPLICATION TO REGISTER SECURITIES.

[APPLICATION TO REGISTER SECURITIES]
(Form U-1 will be acceptable in lieu of this form.)

Application to _____ of the State of _____
pursuant to Section _____ of the _____

1. Name and address of issuer and principal office in this state:
2. Name, address, and telephone number of correspondent to whom notices and communications regarding this application may be sent:
3. Name and address of applicant:
4. Registration or acceptance for filing is sought for the following described securities in the amounts indicated:

Description Of Securities	Offering Price Or Proposed Offering Price	Total Offering		Offering In This State	
		No. of Shares Or Units	Amt. \$	No. of Shares Or Units	Amt. \$
		Totals	\$		\$

Indicate the maximum commission to be charged: ____%

5. Amount of filing and examination fees which are enclosed: \$ _____
6. A Registration Statement was filed with the Securities and Exchange Commission on _____ (date) and (became) (will become) effective on _____ (date).
7. (a) List the states in which it is proposed to offer the securities for sale to the public.
(b) List the states, if any, in which the securities are eligible for sale to the public.
(c) List the states, if any, which have refused, by order or otherwise, to authorize sale of the securities to the public, or have revoked or suspended the right to sell the securities, or in which an application has been withdrawn.

DO NOT WRITE BELOW THIS LINE

8. Submitted herewith as a part of this application are the following documents (documents on file may be incorporated by reference):
 - (a) One copy of the Registration Statement and two copies of Prospectus in the latest form.
 - (b) Underwriting Agreement, Agreement among Underwriters, and Selected Dealers Agreement.

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- (c) Indenture.
- (d) Issuer's charter or articles of incorporation as amended to date.
- (e) Issuer's bylaws as amended to date.
- (f) Signed copy of opinion of counsel filed with Registration Statement.
- (g) Manually signed consent of accountant.
- (h) Consent to service of process accompanied by appropriate corporate resolution.
- (i) One copy of all advertising matter to be used in connection with the offering.
- (j) Others (list each):

9. The applicant hereby applies for registration or acceptance for filing of the above registered securities under the law cited above and in consideration thereof agrees so long as the registration remains in effect that it will:

(a) Advise the above named state authority of any change prior to registration in this state in any of the information contained herein or in any of the documents submitted with or as a part of this application.

(b) File with the above named state authority within two business days after filing with the Securities and Exchange Commission (i) any amendments other than delaying amendments to the federal registration statement, designating the changed, revised, or added material or information by underlying the same; and (ii) the final prospectus, or any further amendments or supplements thereto.

(c) Notify the above named state authority within two business days (i) upon the receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court, concerning the securities covered by this application or other securities of the issuer currently being offered to the public; and (ii) upon the receipt of any notice of effectiveness of said registration by the Securities and Exchange Commission if applicable.

(d) Notify the above named state authority at least two business days prior to the effectiveness of any registration with the Securities and Exchange Commission of (i) any request by the issuer or applicant to any state or regulatory authority for permission to withdraw any application to register the securities described herein; and (ii) a list of all states in which applications have been filed where the issuer or applicant has received notice from the state authority that the application does not comply with state requirements and cannot or does not intend to comply with such requirements.

(e) Furnish promptly all such additional information and documents in respect to the issuer or the securities covered by this application as may be requested by the above named state authority prior to registration or acceptance for filing.

Date: _____

Name of Applicant

By _____
(Name and Title)

STATE OF _____)
COUNTY OF _____)

The undersigned, _____, being first duly sworn, deposes and says:

That . . . he has executed the foregoing application for and on behalf of the applicant named therein; that . . . he is _____ of such applicant and is fully authorized to execute and file such application; and that . . . he is familiar with application; and that to the best of h. . . knowledge, information, and belief the

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statements made in such application are true and documents submitted therewith are true copies of the originals thereof.

Name

Subscribed and sworn to before me
this ____ day of _____, ____

NOTARY PUBLIC

In and for the County of _____
State of _____
My Commission Expires: _____
(Notarial Seal)

Statutory Authority: *MS s 80A.25*
History: *17 SR 1279; L 1998 c 254 art 1 s 107*

2875.9905 FORM 137: BLANKET BOND FOR AGENTS.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
5th Floor Metro Square Building
Seventh and Robert Streets
St. Paul 55101

BLANKET BOND FOR AGENTS

ACTING FOR ISSUER OR BROKER/DEALER IN SECURITIES

BOND # _____

KNOW ALL BY THESE PRESENTS: That we, _____
of _____, in the state of _____, as Principal, and
_____ of _____, a corporation duly organized and exist-
ing under the laws of the state of _____ and authorized to do business in the
state of Minnesota, as Surety, are hereby held and firmly bound unto the state of
Minnesota, for the use and benefit of any original purchaser or seller of securities from
or through said Principal or for the use and benefit of any other person damaged by
any breach of the conditions of this obligation, in the sum of
_____ Dollars (\$____), *lawful money of the United States, for the
payment of which sum well and truly to be made we bind ourselves, our successors and
assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH THAT:

WHEREAS, The above-named Principal is a broker/dealer licensed under the
provisions of Chapter 80A, Minnesota Statutes, as amended, or issuer of securities
make registered pursuant to the provisions of said Act, and has made or is about to
make application to the Commissioner of Commerce for licenses to sell securities
within the State of Minnesota by agents of said Principal; and

WHEREAS, The above-named Principal may, at its option, file a blanket surety
bond herein;

NOW, THEREFORE, If the agents of said Principal shall faithfully observe the
provisions of the laws of the State of Minnesota relating to the sale of securities, as set
forth in Chapter 80A, Minnesota Statutes, as amended, and shall faithfully account for
all moneys and securities of another received by said agents as salespersons of said

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Principal, and shall promptly and faithfully pay all of the obligations and claims for damages for which they may become liable, based upon fraud, deceit, misrepresentation, or otherwise, in the course of their said agency in the sale in Minnesota of any security or securities sold or dealt in by said Principal through said agents under their licenses and within the period thereof, then this obligation shall be void; otherwise to be and remain in full force and effect.

The liability of the surety on this bond, not exceeding \$5,000.00 for any one agent of a Broker Dealer or \$5,000.00 for any one agent of an issuer, shall be the sum total of any and all recoveries hereunder and shall not exceed _____ Dollars (\$_____).*

This bond may be canceled by either the Principal or the Surety by giving thirty (30) days notice thereof in writing to the other and mailing by registered mail a copy of said notice to the Commissioner of Commerce of the State of Minnesota. In the event of such cancellation, which shall take effect at the expiration of said thirty (30) days, no claim having been made hereunder, the Surety shall refund the unearned premium.

No suit may be maintained to enforce any liability on the Bond, unless brought within three years after the sale or other act upon which it is based.

*For agents of broker dealer, a maximum of \$50,000; for Agents of an issuer, a maximum of \$50,000 or 10% of the aggregate amount of securities offered, whichever is less.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this ____ day of _____, ____.

(Corporate Seal if a corporation) _____ Principal

(Corporate Seal) By _____

APPROVED THIS ____ DAY OF _____, _____ Surety

_____, _____ By _____ Commissioner of Securities

NOTE: ACKNOWLEDGMENT REQUIREMENTS ON REVERSE SIDE HEREOF.

(ACKNOWLEDGMENT OF INDIVIDUAL)

STATE OF _____)
COUNTY OF _____) SS.

On this _____, _____, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, as Principal, and acknowledged to me that . . he executed the same as a free act and deed.

(NOTARIAL SEAL) _____ Notary Public, _____ County, _____ My commissioner expires _____

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(ACKNOWLEDGMENT OF PARTNERSHIP)

STATE OF _____)
COUNTY OF _____) SS.

On this _____ day of _____, _____, before me personally appeared _____, to me known to be a member of the firm who executed the foregoing instrument, and . . he duly acknowledged to me that . . he executed the same as and for the act and deed of said firm.

(NOTARIAL SEAL)

Notary Public, _____
County, _____
My commission expires _____

(ACKNOWLEDGMENT OF CORPORATION)

STATE OF _____)
COUNTY OF _____) SS

On this _____ day of _____, _____, before me personally came _____ and says that . . he is the _____ of _____, Principal heretofore named; that . . he executed the instrument for and in its behalf, by authority of its Board of Directors, and affixed its seal thereto.

(NOTARIAL SEAL)

Notary Public, _____
County, _____
My commission expires _____

Statutory Authority: MS s 80A.25

History: L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279; L 1998 c 254 art 1 s 107

2875.9910 FORM ADV: APPLICATION FOR REGISTRATION AS INVESTMENT ADVISER.

For Form ADV, see: "Application for Registration as an Investment Adviser or to Amend Such an Application Under the Investment Advisers Act of 1940," as referred to at Code of Federal Regulations 1980, title 17, section 279.1, as amended.

Available from the Securities and Exchange Commission.

FORM 101

"APPLICATION FOR INVESTMENT ADVISER'S LICENSE."

[REPEALED, 1981.]

*FORM ADV

"APPLICATION FOR REGISTRATION AS AN INVESTMENT ADVISER OR TO AMEND SUCH AN APPLICATION UNDER THE INVESTMENT ADVISERS ACT OF 1940," as referred to at 17 Code of Federal Regulations, section 279.1 (1980), as amended.

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REGULATION OF SECURITIES 2875.9920

Approved by the Department of Commerce this ____ day of _____, ____.

By _____
Commissioner of Commerce

Statutory Authority: MS s 80A.25

History: L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279; L 1998 c 254 art 1 s 107

2875.9920 FORM 104-54: RESOLUTION AUTHORIZING APPOINTMENT OF ATTORNEY.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

5th Floor Metro Square

St. Paul, Minnesota 55101

[DIRECTORS RESOLUTION AUTHORIZING
CORPORATE APPOINTMENT OF ATTORNEY]

On motion, the following resolution was duly passed and adopted:

WHEREAS, this corporation is organized under the laws of the State of _____, and proposes to make application for Dealer/Broker/Investment Adviser License within the State of Minnesota, and (delete categories not applicable),

WHEREAS, under the Securities Laws of the State of Minnesota, it is necessary to appoint an attorney to receive legal process,

BE IT RESOLVED, that in conformity with the laws of the State of Minnesota, the President and the Secretary of this corporation are hereby authorized and directed to execute and file with the commissioner of commerce of the State of Minnesota, in the form prescribed by the said commissioner, the appointment of the commissioner of commerce of the State of Minnesota, a successor or successors, as its true and lawful attorney upon whom may be served all legal process in any action or proceeding in which this corporation may be a party and which relates to or involves any transaction covered by the Securities Laws of the State of Minnesota. Be it further resolved that this corporation does hereby expressly consent and agree that service on said attorney shall be as valid and binding as if due and personal service had been made on this corporation, and that such appointment shall be and is irrevocable.

I, _____, Secretary of _____, hereby certify that the foregoing is a true and exact copy of a resolution of the board of directors of the _____ which resolution was duly adopted by said board of directors effective on the ____ day of _____, ____.

(CORPORATE SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this _____, day of _____, ____.

Secretary

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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

[CORPORATE APPOINTMENT OF ATTORNEY FOR SERVICE OF PROCESS]
KNOW ALL BY THESE PRESENTS:

That in compliance with the Laws of the State of Minnesota, _____, a corporation organized and existing under the laws of _____, does hereby appoint the commissioner of commerce of the State of Minnesota, a successor or successors, as its true and lawful attorney upon whom may be served all legal process in any action or proceeding in which it may be a party and which relates to or involves any transaction covered by the Securities Laws of the State of Minnesota, and does hereby expressly consent and agree that service upon such attorney shall be as valid and binding as if due and personal service had been made upon it and that such appointment shall be irrevocable.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its president and secretary and its corporate seal to be affixed this _____ day of _____, _____.

(CORPORATE SEAL)

By _____
President

And _____
Secretary

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____, _____, before me, a notary public in and for said County and State, personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument and who, being by me first duly sworn, did say that they are the president and secretary, respectively, of _____, the corporation described in the foregoing instrument, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was executed in behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

(NOTARIAL SEAL)

Notary Public, _____ County, _____

My Commission expires _____

Statutory Authority: MS s 80A.25

History: L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279; L 1998 c 254 art 1 s 107

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REGULATION OF SECURITIES 2875.9925

2875.9925 FORM 106: INDIVIDUAL APPOINTMENT OF ATTORNEY FOR SERVICE OF PROCESS.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
5th Floor Metro Square
St. Paul, Minnesota 55101

[INDIVIDUAL APPOINTMENT OF ATTORNEY FOR SERVICE OF PROCESS]
KNOW ALL BY THESE PRESENTS:

That in compliance with the Laws of the State of Minnesota,
_____ a nonresident, does hereby
appoint the commissioner of commerce of the State of Minnesota, a successor or
successors, as the true and lawful attorney upon whom may be served all legal process
in any action or proceeding in which he or she may be a party and which relates to or
involves any transaction covered by the Securities Laws of the State of Minnesota, and
does hereby expressly consent and agree that service upon such attorney shall be as
valid and binding as if due and personal services had been made upon him or her and
that such appointment shall be irrevocable.

IT WITNESS WHEREOF, I have hereunto set my hand this ____ day of
_____, ____.

Address

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____ personally appeared before me, a notary
public in _____ and for said County _____ and State,
_____ to me
known to be the person described in and who executed the foregoing instrument and
who, being by me first duly sworn, acknowledged that . . . he executed the same as a free
act and deed.

(NOTARIAL SEAL) _____
Notary Public, _____ County _____
My Commission Expires _____

Statutory Authority: MS s 80A.25
History: L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279; L 1998 c
254 art 1 s 107

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2875.9930 FORM 102A: ANNUAL REPORT.

DEPARTMENT OF COMMERCE
STATE OF MINNESOTA, ST. PAUL, MINNESOTA
[ANNUAL REPORT]
(Pursuant to Minn. Stat., section 80A.12, subdivision 10)
ANNUAL REPORT FEE \$100

(1) For the fiscal year _____ Date of Report _____

(2a) _____

(Exact name of issuer)

(2b) _____

(Exact name of security registered)

(3) _____ Minnesota File Number
(State or other jurisdiction of incorporation or organization)

(4) _____ Zip Code
(Address of principal executive offices)

(5) Issuer's telephone number, including area code _____

(6a) Number of shares or other units outstanding at end of last fiscal year

(b) Number of shares or other units outstanding at the end of this fiscal year

(c) Explanation of increase or decrease in outstanding shares or units during this fiscal year:

Table with 4 columns: Date issued, Number of shares or units, Consideration received, Exemption claimed (Minnesota Statute). Includes 4 rows of blank lines for data entry.

(e) Explanation of other securities of the issuer which were issued during this fiscal year _____

Table with 4 columns: Type of security, Date issued, Consideration received, Exemption claimed (Minnesota Statute). Includes 3 rows of blank lines for data entry.

(g) The persons or class of persons to whom any securities were sold:

(h) The name of any broker-dealer or agent participating in any sales and the amount of commissions or other remuneration paid, if applicable:

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REGULATION OF SECURITIES 2875.9930

(7) A description of all securities of the registrant repurchased or otherwise reacquired by the registrant within the fiscal year covered by the report:

(8) The names and addresses of all officers and directors, or persons occupying similar status or performing similar functions:

(9) A description of the business of the registrant, including its products and services, competitive conditions, sources of supply, the number and general function of employees, its market area, and any other factors which materially affect the business or operations of the registration:

(10) A summary of operations for the fiscal year covered by the report including, without limitation, gross revenues, cost of goods sold or services provided, net income, debt service and earnings per share of each class of equity security outstanding, together with a comparison of similar figures for the fiscal year immediately preceding the fiscal year covered by the report. The comparison required by this paragraph may be presented in columnar form:

(11) A brief description of the location and general character of plants, mines, and other materially important physical properties of the registrant:

(12) A description of any material legal proceedings pending against the company:

(13) A description of all parents and subsidiaries of the registrant, and an explanation of the manner in which each is affiliated with the registrant:

(14) The approximate number of holders of record of each outstanding class of equity securities:

(15) A list in tabular form of the name and address of each officer, and any person known to the registrant who beneficially owns ten percent or more of any class of outstanding voting securities of the registrant, showing for each the title of the class owned, the type of ownership, the amount owned, and the percent of class owned:

(16) A list in tabular form of the amount of remuneration received and the capacity in which such remuneration was received for each officer and director (in the case of officers, only those officers who received in excess of \$25,000 during this fiscal year need be listed):

(17) A list and description of the number and exercise price of all options outstanding which are beneficially owned by any officer or director:

(18) A description of any transactions in the last fiscal year or any currently pending transaction to which the issuer or any of its subsidiaries was a party and in which any director, officer, ten percent shareholder, or any affiliate had or will have a direct or indirect material interest, and a description of the nature of such interest.

(19) Financial statements certified by an independent accountant complying with the requirements of parts 2875.0970 and 2875.0980.

Authorized Signature

Position

Statutory Authority: *MS s 80A.25*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

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2875.9935 REGULATION OF SECURITIES

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2875.9935 FORM 111: SECURITIES AGENT BOND.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
5th Floor Metro Square
St. Paul, Minnesota 55101

[SECURITIES AGENT BOND]

No. _____

KNOW ALL BY THESE PRESENTS, that _____ (Securities agent or applicant) of _____ Minnesota, as principal, and _____ of _____ a corporation duly organized and existing under the laws of the State of _____ and authorized to do business in the State of Minnesota, as surety, hereby are jointly and severally held and firmly bound to the State of Minnesota, in the sum of \$5,000 as Agent for Broker-Dealer, or \$5,000 as Agent for Issuer, for the use and benefit of the public including persons injured or suffering financial loss by reason of the failure of Principal to perform or satisfy the obligations and conditions hereinafter specified, for the payment of which, well and truly to be made, we bind ourselves, and each of use, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH THAT:

WHEREAS, the said Principal is licensed, or has made or is about to make application to be licensed, as a securities agent pursuant to the provisions of Minnesota Statutes, chapter 80A, as amended, and

WHEREAS, Principal as such agent is required to file and maintain in effect a surety bond in accordance with the provisions of said law, as a condition for issuance of such securities agent license.

NOW, THEREFORE, if the said Principal shall faithfully observe all provisions of the laws of the State of Minnesota relative to the sale of securities, including the provisions of Minnesota Statutes, chapter 80A, as amended, and shall faithfully perform and pay all obligations devolving upon said Principal by virtue of the agency and the laws relative to the sale of securities, and shall promptly pay all claims for damages for which said Principal may be or become liable through fraud, deceit, misrepresentation, or otherwise arising out of or in any way connected with any misfeasance or malfeasance of Principal as a securities agent or holding out as a securities agent, then and in the event, the foregoing obligations shall be void; otherwise to remain in full force and effect.

This bond shall be effective and run concurrently with the one year period of the securities agent license issued or to be issued to said Principal, from the date said license is granted, except that the liability upon the bond shall continue notwithstanding said expiration of the period of the bond, for or arising out of any and all acts of the said Principal during said stated period of the bond. The total liability of the surety hereunder shall in no event exceed the sum of _____ Dollars (_____).

No suit may be maintained to enforce any liability on the bond unless brought within three years after the sale or other act upon which it is based.

Signed this _____ day of _____, _____.

Signed, Sealed and
Delivered in the Presence of:
(as to Principal)

Principal

Surety (Seal)

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(as to Surety)

_____ By _____
Attorney in Fact

Acknowledgment of Principal

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

On this _____ day of _____, _____, personally came _____ to me well known to be the identical person described in and who executed the foregoing instrument and he/she acknowledged the same to be his/her own free and deed.

Notary Public

(SEAL)

(ATTACH ACKNOWLEDGMENT OF OFFICER OF SURETY)

Countersigned by Minnesota Resident Agent _____

Statutory Authority: MS s 80A.25

History: L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279; L 1998 c 254 art 1 s 107

2875.9940 ESCROW AGREEMENT.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made and entered into this _____ day of _____, _____, by and between _____ (herein collectively referred to as Depositors); _____, a corporate fiduciary with principal office in _____ (hereinafter called the Escrow Agent); _____ a corporation with principal offices in _____ (hereinafter called the Issuer) and the commissioner of commerce for the State of Minnesota (hereinafter called the commissioner);

WITNESSETH THAT:

Each of the Depositors is the owner of _____ (description of security) of the Issuer and each owns the number of units of such security listed opposite his or her name on Annex A, attached hereto and made a part hereof.

The Issuer has applied to the commissioner for registration of its securities for sale to residents of Minnesota, and as a condition of registration the Depositors, the Escrow Agent and the Issuer agree to be bound by this Agreement and the applicable rules and regulations of the commissioner.

Each of the Depositors has deposited the securities listed opposite his or her name on Annex A with the Escrow Agent, and the Escrow Agent hereby acknowledges receipt thereof. These securities are herein collectively referred to as "escrowed securities."

THEREFORE, the parties agree as follows:

1. The Escrow Agent agrees to hold the escrowed securities until such time as Escrow Agent shall receive a written release issued by the commissioner permitting the release from escrow of all or a part of the escrowed securities held under this Agreement. Upon receipt of such release, the Escrow Agent may release to each Depositor all or a part of the escrowed securities in accordance with the order of the commissioner.

Subject to the above provisions, the term of escrow under this Agreement shall run for a period of _____ years from the date of the Order of Registration, unless at an earlier date the Issuer shall have demonstrated annual net earnings, after taxes and excluding extraordinary items, determined in accordance with generally accepted accounting principles, for any two consecutive years after the date of the Order of Registration, of at least _____ percent on an amount determined by multiplying the total number of outstanding shares of the Issuer, including the escrowed securities, by the average price per share paid by public investors. The existence of the required annual net earnings shall be demonstrated by certification to that effect furnished to the commissioner by an independent certified public accountant or an authorized officer of the issuer. In addition, the Issuer and each of the Depositors shall furnish the commissioner a written statement that none of the escrowed securities nor any interests therein have been sold, transferred or otherwise disposed of (except as permitted by paragraph #4) as a condition of the release from escrow.

2. Notwithstanding any provision of paragraph 1, the commissioner may, in his or her discretion, terminate the term of escrow with respect to all or any part of the escrowed securities of any Depositor before the expiration of the period of occurrence of the event specified in paragraph 1 and release such securities if the commissioner determines that the release of such securities to the Depositor(s) will not be detrimental to the Issuer, the public investors or any other party concerned. At the time of release by the commissioner of any securities from escrow, the application of this Agreement shall terminate with respect to the securities so released.

3. While it is held in escrow pursuant to this Agreement, no escrowed security nor any interest therein, nor any right or title thereto, may be sold or transferred, by means of transfer of the security separate from the certificate representing it or otherwise, without the prior written release of the commissioner, except that the release of the commissioner need not be obtained to transfer escrowed shares by will or the laws of descent and distribution or otherwise by order or process of any Court.

4. Upon receipt of such written release from the commissioner directing that some or all of the escrowed securities of the Depositor held under this Escrow Agreement be released for the purpose of transfer to another person against concurrent deposit of the securities so transferred, the Escrow Agent may release such securities but only against such deposit under this Agreement of all of the transferred securities. The commissioner shall authorize such transfer of the escrowed securities only upon receipt of a signed statement by the proposed transferee that he or she has full knowledge of the terms of this Escrow Agreement and that the proposed transferee accepts such securities subject to the conditions of this Escrow Agreement.

5. The Depositors agree that they shall be entitled to receive cash and property dividends with respect to the escrowed securities while such securities are held in escrow pursuant to this agreement to the same extent as other security holders of the same class of security and that said cash or property dividends shall be placed under the terms of this Escrow Agreement.

6. Upon declaration of any dividend in shares of the Issuer or a subsidiary to which the escrowed securities are entitled pursuant to a share dividend or split authorized by a vote of the shareholders, the Depositors and the Escrow Agent shall forthwith enter into a Supplemental Escrow Agreement, covering such share dividend, which Supplemental Escrow Agreement shall incorporate all the conditions of escrow contained in this Agreement. The shares received as dividend shall be forthwith deposited in escrow

with the Escrow Agent pursuant to such Supplemental Escrow Agreement, and the Escrow Agent shall deliver to the commissioner a receipt for the shares thus escrowed.

7. During the term of escrow, the Depositors shall not be entitled to and hereby waive all rights to participate in any distribution of assets of the Issuer in the event of liquidation, dissolution, or winding up, until the public investors shall have received cash or property in an amount or value equal to the price paid by public investors for securities purchased by such public investors; and thereafter the Depositors shall participate without the public investors until they shall have received cash or other property in an amount or value equal to the price paid by the Depositors for the escrowed securities; and thereafter the public investors and the Depositors shall participate equally according to the terms of their securities. Any Depositor(s) seeking release of all or any part of the escrowed securities pursuant to this paragraph 7 shall furnish the commissioner a written statement that none of the escrowed securities nor any interests therein have been sold, transferred (except as provided in paragraph 4) or otherwise disposed of, without the consent of the commissioner, as a condition of the release from escrow.

8. This Escrow Agreement shall not be construed to prohibit any Depositor from participating in any distribution of securities of any corporation other than the Issuer resulting from the sale of assets of the Issuer or a merger or consolidation of the Issuer with or into any other corporation or corporations. In the event of such a transaction, the Escrow Agent should obtain written authorization from the commissioner prior to the release of the escrowed securities, and, any such distribution payable in securities of any corporation other than the Issuer paid with respect to the escrowed securities shall be delivered to the Escrow Agent and held pursuant to a Supplemental Escrow Agreement prepared and executed as described in paragraph 7, above. In the event of the merger or consolidation of the Issuer with or into any other corporation or corporations, any securities shall be delivered to the Escrow Agent and held pursuant to a Supplemental Escrow Agreement prepared and executed as described in paragraph 6, above.

9. The Escrow Agent may conclusively rely upon and shall be protected in acting upon any statement, certificate, notice, request, consent, order, or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall have no duty or liability to verify any such statement, certificate, notice request, consent, order, or other document and its sole responsibility shall be to act only as expressly set forth in this Escrow Agreement. The Escrow Agent shall be under no obligation to institute or defend any action, suit, or proceeding in connection with this Escrow Agreement unless first indemnified to its satisfaction. The Escrow Agent may consult counsel in respect of any question arising under this Escrow Agreement and the Escrow Agent shall not be liable for any action taken or omitted in good faith upon advice of such counsel. All securities held by Escrow Agent pursuant to this Escrow Agreement shall constitute trust property for the purposes for which they are held and the Escrow Agent shall not be liable for any interest thereon.

10. The Escrow Agent shall be entitled to receive from the Company reasonable compensation for its services as contemplated herein. In the event that the Escrow Agent shall render any additional service not provided for herein or that any controversy shall arise hereunder or that the Escrow Agent shall be made a party or shall intervene in any action, suit or proceeding pertaining to this Escrow Agreement, it shall be entitled to receive reasonable compensation from the Company for such additional services.

11. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, and assigns.

12. This Escrow Agreement shall terminate in its entirety when all escrowed securities covered hereby and by any Escrow Agreements supplemental hereto have been released as provided in paragraph 1.

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IN WITNESS WHEREOF, the parties have executed this Escrow Agreement on the date first above written.

Escrow Agent:

Depositors:

By _____

Its _____

and _____

Its _____

(Corporate Seal)

Issuer:

By _____

Its _____

and _____

Its _____

Accepted for filing:

Commissioner of Commerce

Statutory Authority: *MS s 80A.25*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279; L 1998 c 254 art 1 s 107*

2875.9945 IMPOUNDMENT AGREEMENT.

THIS IMPOUNDMENT AGREEMENT made and entered into this _____ day of _____, _____, by and between _____ (hereinafter called the Issuer), _____ (a national or state) banking association or trust company with principal offices in _____ (hereinafter called the Impoundment Agent), and _____ whose address is _____ (hereinafter called the Underwriter);

WITNESS THAT:

WHEREAS, Issuer has applied to the commissioner of commerce for the State of Minnesota (hereinafter called the commissioner) for registration of _____ (description of securities) for sale to the residents of the State of Minnesota; and

WHEREAS, as a condition of registration of such offering under the Securities Laws of the State of Minnesota the commissioner requires that the Issuer provide for the impoundment of the proceeds to be received from such offering of securities; and

WHEREAS, the Issuer, the Impoundment Agent and the Underwriter desire to enter into an agreement with respect to the said impoundment of proceeds;

NOW, THEREFORE, in consideration of the premises and agreements set forth herein, the parties hereto agree as follows:

1. PROCEEDS TO BE PLACED IN ESCROW:

All proceeds received from the sale of the securities subject to this Impoundment Agreement on or after the date hereof shall be paid to the Impoundment Agent within two business days from the date of sale and deposited by Impoundment Agent in an escrow account. During the term of this Impoundment Agreement, the Issuer and Underwriter shall cause all checks received by them in payment for such securities to be either payable to the Impoundment Agent or endorsed forthwith to the Impoundment Agent.

2. IDENTITY OF SUBSCRIBERS:

The Issuer and Underwriter shall cause to be delivered to the Impoundment Agent two signed counterparts of each Subscription Agreement which shall contain, among other things, the name and address of each subscriber thereto, the date and amount subscribed, and the amount paid, or, in the alternative, shall furnish to the Impoundment Agent with each deposit of funds in the impoundment a list of the persons who have subscribed the money, showing the name, address, date and amount of subscription, and amount of money paid. All proceeds so deposited shall remain the property of the subscriber and shall not be subject to any liens or charges by the Impoundment Agent or Underwriter, or judgments or creditors' claims against the Issuer until released to the Issuer as hereinafter provided.

3. DISBURSEMENT OF FUNDS:

Upon the receipt by Impoundment Agent of amounts paid in of not less than \$_____, the Impoundment Agent shall forthwith notify the commissioner in writing of the impoundment of such amounts. Upon receipt by Impoundment Agent of written authorization from the commissioner, then said Impoundment Agent, on demand of the Issuer, shall pay over to the Issuer all impounded funds. If the specified minimum amount of proceeds have not been impounded during the term of impoundment, then, within three business days after the last day of the term of impoundment, the Impoundment Agent shall notify the commissioner in writing that the conditions of impoundment have not been satisfied, and shall within a reasonable time, but in no event not more than thirty (30) days after the last day of the term of impoundment, refund to each subscriber at the address appearing on the Subscription Agreement or list of subscribers, or at such other address as shall be furnished the Impoundment Agent by the subscriber in writing, all sums paid pursuant to the subscription, and shall then notify the commissioner in writing of such refund.

4. TERM OF IMPOUNDMENT:

This impoundment shall terminate on the _____ day following the effective date of the registration of the Issuer's securities in the State of Minnesota, unless extended by the consent in writing of the parties hereto and all subscribers to the securities subscribed to date and the commissioner. Upon termination hereof, whether after extension or otherwise, the Impoundment Agent shall disburse the funds in the impoundment account in the manner and upon the terms directed in paragraph three hereof. The Issuer may abandon the sale of securities anytime prior to the date above. Upon the receipt of a copy of the Resolution authorizing said abandonment, duly attested to by the Secretary of the Issuer, accompanied by the written consent of the commissioner, Impoundment Agent shall be authorized to refund the moneys received from the subscribers.

5. TERMINATION BY REVOCATION OR SUSPENSION:

If at anytime prior to the termination under paragraph four of this impoundment, said Impoundment Agent is advised by the commissioner that the registration to sell securities has been revoked or suspended, said Impoundment Agent shall thereupon return all funds to the respective subscribers.

6. CONSENT OF COMMISSIONER TO RELEASE FUNDS:

No funds shall be released to the Issuer hereunder except upon the express written authorization of the commissioner. If the commissioner finds that any conditions of this Agreement have not been satisfied, or that any provisions of the Minnesota Securities Laws or regulations have not been complied with, then the commissioner may withhold

such authorization for release of funds by the Impoundment Agent to the Issuer and may direct the Impoundment Agent to return the funds to the subscribers. In making a determination hereunder, the commissioner may require from the Issuer a statement of all expenses and/or all amounts paid into the escrow, certified by an independent certified public accountant or an officer of the Issuer and any further financial or other information as the commissioner may deem appropriate or helpful in making such determination.

7. INSPECTION OF RECORDS:

The commissioner may, at any time, inspect the records of the Impoundment Agent, insofar as they relate to this Impoundment Agreement, for the purpose of determining compliance with and conformance to the provisions of this Impoundment Agreement.

8. DUTY AND LIABILITY OF THE IMPOUNDMENT AGENT:

The sole duty of the Impoundment Agent, other than as herein specified, shall be to receive said funds and hold them subject to release, in accordance with the written instructions of the commissioner, and the Impoundment Agent shall be under no duty to determine whether the Issuer is complying with requirements of the commissioner in tendering to the Impoundment Agent said proceeds of the sale of said securities.

The Impoundment Agent may conclusively rely upon and shall be protected in acting upon any statement, certificate, notice, request, consent, order or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Impoundment Agent shall have no duty or liability to verify any such statement, certificate, notice, request, consent, order or other document and its sole responsibility shall be to act only as expressly set forth in this Impoundment Agreement. The Impoundment Agent shall be under no obligation to institute or defend any action, suit or proceeding in connection with this Impoundment Agreement unless first indemnified to its satisfaction. The Impoundment Agent may consult counsel in respect of any question arising under this Impoundment Agreement and the Impoundment Agent shall not be liable for any action taken or omitted in good faith upon advice of such counsel. All funds held by Impoundment Agent pursuant to this Impoundment Agreement shall constitute trust property for the purposes for which they are held and the Impoundment Agent shall not be liable for any interest thereon.

9. IMPOUNDMENT AGENT'S FEE:

The Impoundment Agent shall be entitled to reasonable compensation for its services. The fee agreed upon for services rendered hereunder is intended as full compensation for the Impoundment Agent's services as contemplated by this Agreement; provided, however, in the event that the conditions of this Impoundment Agreement are not fulfilled, or the Impoundment Agent renders any material service not contemplated in this Agreement, or there is any assignment of interest in the subject matter of this Impoundment Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Impoundment Agent is made a party to or justifiably intervenes in any litigation pertaining to this Impoundment Agreement, or the subject matter hereof, the Impoundment Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation, or event, and the same may be recoverable from the Issuer only.

10. BINDING AGREEMENT AND SUBSTITUTION OF IMPOUNDMENT AGENT:

The terms and conditions of this Agreement shall be binding on the heirs, executors and assigns, creditors or transferees, or successors in interest, whether by operation of law or otherwise, of the parties hereto. If, for any reason, the Impoundment Agent named herein should be unable or unwilling to continue as such Impoundment Agent, then the other parties to this Agreement may substitute, with the consent of the commissioner, another Impoundment Agent. Any apportionment of the fees provided for in paragraph nine will be subject to agreement of the parties.

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11. ISSUANCE OF CERTIFICATES:

Until the terms of this Agreement have been met and the funds hereunder released to the Issuer, the Issuer may not issue any certificates or other evidences of securities, except subscription agreements.

IN WITNESS WHEREOF, the parties hereto have executed this Impoundment Agreement on the date first above written.

Issuer

By _____

Impoundment Agent

By _____

Its _____

(an authorized signature)

Underwriter or Agent

By _____

Its _____

(an authorized signature)

Accepted for filing:

Commissioner of Commerce

Statutory Authority: *MS s 80A.25*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279; L 1998 c 254 art 1 s 107*

2875.9950 FORM U-2: UNIFORM CONSENT TO SERVICE OF PROCESS.

UNIFORM CONSENT TO SERVICE OF PROCESS

KNOW ALL BY THESE PRESENTS:

That the undersigned, _____ (a corporation organized under the laws of the state of _____) (a partnership) (an individual) (other _____) for the purpose of complying with the laws of the state of _____ relating to either the registration or sale of securities, hereby irrevocably appoints _____, and the successors in such office, its attorney in the state of _____ upon whom may be served any notice, process or pleading in any action or proceeding against it arising out of or in connection with the sale of securities or out of violation of the aforesaid laws of said state; and the undersigned does hereby consent that any such action or proceeding against it may be commenced in any court of competent jurisdiction and proper venue within said state by service of process upon said officer with the same effect as if the undersigned was organized or created under the laws of said state and had lawfully been served with process in said state.

It is requested that a copy of any notice, process or pleading served hereunder be mailed to:

(Name and address)

MINNESOTA RULES 2005

Dated: _____, ____.

(Seal) By _____

Title: _____

By _____

Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

On this ____ day of _____, ____, before me _____, the undersigned officer, personally appeared _____ and _____, known personally to me to be the ____ President and ____ Secretary, respectively, of the above named corporation, and that they, as such officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

(Notarial Seal) _____
Notary Public

My Commission Expires _____

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

On this ____ day of _____, ____, before me _____, the undersigned officer, personally appeared _____, to me personally known and known to be the same person(s) whose name(s) is(are) signed to the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

(Notarial Seal) _____
Notary Public

My Commission Expires _____

Statutory Authority: MS s 80A.25
History: 17 SR 1279; L 1998 c 254 art 1 s 107

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2875.9955 FORM U-2A: UNIFORM RESOLUTION TO REGISTER SECURITIES.

UNIFORM FORM OF CORPORATE RESOLUTION OF

(Name of Corporation)

RESOLVED, that it is desirable and in the best interest of this Corporation that its securities be qualified or registered for sale in various states; that the President or any Vice President and the Secretary or an Assistant Secretary hereby are authorized to determine the states in which appropriate action shall be taken to qualify or register for sale all or such part of the securities of this Corporation as said officers may deem advisable; that said officers are hereby authorized to perform on behalf of this Corporation any and all such acts as they may deem necessary or advisable in order to comply with the applicable laws of any such states, and in connection therewith to execute and file all requisite papers and documents, including, but not limited to, applications, reports, surety bonds, irrevocable consents and appointments of attorneys for service of process; and the execution by such officers of any such paper or document or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefor from this Corporation and the approval and ratification by this Corporation of the papers and documents so executed and the action so taken.

CERTIFICATE

The undersigned hereby certifies that . . . he is the ____ Secretary of _____, _____, a corporation organized and existing under the laws of the State of _____; that the foregoing is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of said corporation held on the ____ day of _____, _____, at which meeting a quorum was at all times present and acting; that the passage of said resolution was in all respects legal; and that said resolution is in full force and effect.

Dated this ____ day of _____, _____.

(Corporate Seal)

Secretary

Statutory Authority: *MS s 80A.25*

History: *17 SR 1279; L 1998 c 254 art 1 s 107*

2875.9960 STATEMENT OF ISSUER.

STATEMENT OF ISSUER

Minnesota Statutes 80A.15 Subd. 2(h)

\$50 FEE REQUIRED

This form is to be prepared and filed pursuant to Minnesota Statutes, 1980, section 80A.15, subdivision 2, paragraph (h), and mailed to:

MINNESOTA RULES 2005

State of Minnesota
Department of Commerce
Fifth Floor
Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

1. State the name and address of the issuer, and date and state of organization.
2. If the issuer is a foreign corporation, state the name and address of the agent within Minnesota upon whom service of process may be obtained.
3. State the name, address, telephone, and position held by the person to whom inquiries pertaining to information herein or notice of objection by the commissioner of commerce should be directed.
4. State the nature of the business enterprise or enterprises engaged in by the issuer.
5. State whether the issuer of these securities has, within the past five years, made application to register any of its securities with the Minnesota Department of Commerce.

Yes No

6. State the aggregate dollar amount, number of units, price per units, and set forth a description of the securities to be sold. Set forth the minimum dollar amount which may be purchased by any individual or corporation.
7. State whether commissions will or will not be paid. If commissions are to be paid, indicate the amount of such commissions in dollar amount and as a percentage of the offering price, and identify the persons to whom they will be paid.
8. State the date on which it is proposed to commence the sale of these securities.
9. State the date by which it is proposed to terminate the offering.
10. The issuer proposes to make sales to not more than _____ persons.
11. With reference to the sales of securities made within a twelve-month period preceding the proposed date of the distribution described herein, state the number of sales, the dollar amount paid, the number of shares issued, and the dates of said sales. If exemption for the sale of said securities is claimed, designate the exemption relied upon with specific reference to Minnesota statutes.
12. The issuer, through its authorized agent whose signature appears below, certified that:
 - (a) The information contained in this Statement of Issuer and the Exhibits appended hereto are accurate and complete to the best knowledge and belief of the undersigned.
 - (b) The issuer represents that it will sell the securities only to buyers who it reasonably believes are purchasing for investment only. In support of this representation, the issuer will require each purchaser to sign a copy of an Investment Letter or other instrument disclosing an investment intent in the form of Exhibit A hereto. The issuer will maintain copies of such letter of instrument in its files and will make the same available to the Department of Commerce for inspection upon a reasonable request, for a period of three (3) years from the date of the last sale made pursuant to this filing. The issuer will cause all certificates issued pursuant to this filing to bear the following legend: "The securities represented by this certificate have not been registered under Chapter 80A of the Minnesota Securities Laws and may not be sold, transferred or otherwise disposed of except pursuant to registration, or an exemption

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therefrom"; or will cause to be placed upon each of said certificates language equivalent thereto.

13. Attach the following Exhibits to this form:

Exhibit A - Investment Letter.

Exhibit B - A copy of any offering circular or other offering documents (such as financial or other business information) intended to be distributed to all offerees.

Exhibit C - A description of the present capitalization of the issuer and, (1) if a corporation, the names of all officers and all shareholders owning five percent or more of the outstanding common stock, or: (2) if a limited partnership, the name of the general partner and, if a corporate general partner, the names of its officers and all shareholders owning five percent or more of its outstanding common stock.

Exhibit D - A detailed description of the use to which the proceeds of the offering will be applied.

Exhibit E - If a nonresident, a statement that it consents to service of process in Minnesota and designates an agent for the receipt of such service.

Exhibit F - The opinion of issuer's counsel that the issuer is validly organized and authorized to issue the securities to be sold.

THE ISSUER CONSENTS TO PERMIT INSPECTION OF ITS BOOKS, RECORDS, ACCOUNTS, AND FILES BY THE COMMISSIONER OF COMMERCE OR THE COMMISSIONER'S DESIGNEE WITH REFERENCE TO THE SALE OF SECURITIES DESCRIBED HEREIN, AND AGREES TO PROVIDE THE COMMISSIONER WITH SUCH ADDITIONAL INFORMATION WITH RESPECT TO THE SALE OF THESE SECURITIES AS THE COMMISSIONER MAY REQUIRE FOR A PERIOD OF THREE YEARS FROM THE DATE OF THE LAST SALE MADE PURSUANT TO THIS FILING. THE ISSUER RECOGNIZES THAT THE COMMISSIONER DOES NOT HEREBY WAIVE STATUTORY AUTHORITY TO REQUIRE THE AFORESAID INFORMATION AT ANY TIME BY SUBPOENA OR OTHERWISE.

The undersigned certifies that . . . he has read the contents of the above form and the Exhibits appended hereto and certifies personal knowledge of the contents hereof and knows the responses set forth are true and accurate.

Dated this ____ day of ____

ISSUER

BY ITS

Subscribed and sworn to
before me this ____ day
of _____

Minnesota Securities Rules prohibit the use of advertising and other methods of mass communication in the distribution of securities under this exemption.

Statutory Authority: *MS s 80A.25*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279*

2875.9965 FORM BD: UNIFORM APPLICATION FOR BROKER-DEALER LICENSE.

For Form BD, see: "UNIFORM APPLICATION FOR REGISTRATION, LICENSE OR MEMBERSHIP AS A BROKER/DEALER OR TO AMEND SUCH AN APPLICATION UNDER THE SECURITIES EXCHANGE ACT OF 1934, OR UNDER THE LAWS OF THE JURISDICTIONS OR UNDER THE CONSTITUTIONS AND RULES OF THE SELF-REGULATORY ORGANIZATIONS ACCEPTING THIS FORM," as referred to at Code of Federal Regulations 1980, title 17, section 249.501, as amended.

2875.9970 FORM U-4: UNIFORM APPLICATION FOR INDUSTRY REPRESENTATIVE OR AGENT.

GENERAL INSTRUCTIONS FOR PREPARING AND FILING FORM U-4

1. This form is to be used to apply for registration, licensing, or for certain types of financial participation in broker/dealer firms. It is accepted by a number of agencies, jurisdictions, and/or organizations.
2. All information must be typed or neatly printed in **BLACK INK**.
3. In examining the form, you will note that there are two sets of boxes. The larger elongated boxes should be left blank.
4. Page 1 requires the signature of the appropriate signatory; Pages 2, 3, and 4 require the signature of the applicant.
5. All questions on the form must be answered unless specifically directed otherwise. Failure to do so will cause the agency, jurisdiction or organization to which the form is sent to return it unprocessed and thus delay registration and increase cost.
6. All attachments must be submitted in the same format as the questions to which response is made, and should be typewritten on 8½ by 11 bond paper. Space permitting, the answers to more than one question may appear on an attachment sheet, so long as the questions are clearly identified. Be certain the name of both the applicant and the member firm appear on every attachment sheet.
7. For the purposes of this form, the term "agency" means any regulatory body of the Federal Government (e.g. The Securities and Exchange Commission).
8. For the purposes of this form, the term "jurisdiction" means a state, a territory, the District of Columbia, the Commonwealth of Puerto Rico, a province of the Dominion of Canada or any subdivision or regulatory body thereof.
9. For the purposes of this form the terms "self-regulatory organization" or "organization" mean any national securities exchange, any registered national securities association (e.g. the NASD), or any registered clearing agency.
10. All information required by Form U-4 must be submitted on the officially prescribed form, or mechanical reproduction thereof. All pages containing this information may be mechanically reproduced by any method producing clear, legible copies of identical type size. All required signatures must be originals; mechanical reproductions of signatures will not be accepted. See "Index for Addenda to Form U-4" for special instructions on filing addenda.

The purpose of Form U-4 is to bring uniformity and resultant simplicity to the registration and licensing of principals, representatives and/or agents. Therefore, it is essential that each applicant consult the following instructions before completing questions 13-54.

Instructions for Completing Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4)**Questions #1 - 12 MUST BE COMPLETED BY THE EMPLOYER**

- Question #1 & 2:**
Fill in applicant's full legal name (indicate Mr. or Ms.) and social security number.
- Question #3:**
Give date applicant first started employment with the member firm.
- Question #4:**
Give the firm's computerized NASD identification number (if known and applicable).
- Questions #5 & 6:**
Give complete name of your organization and the address of the firm's main office. (Including zip code)
- Question #7:**
Give address of the office in which applicant will be employed.
- Question #8:**
Identify city of NASD district office having jurisdiction over the applicant's registered office of employment (does not apply to non-NASD member organizations).
- Question #9:**
Check whether applicant will be registered with: 1) the NASD, or 2) SECO. Also, check all applicable boxes which correctly indicate the registered national securities or commodities exchange(s) with which applicant will be registered.

Question #10:

Check all appropriate boxes to indicate the jurisdictions with which applicant will be registered/licensed.

Question #11:

Since the applicant could be classified in more than one category, be certain to check all applicable boxes (e.g., the applicant could be applying as a registered representative, vice president and non-voting stockholder). Consult the rules and statutes of the appropriate exchange, association and/or jurisdiction. "Part-time" and "full-time" refer to all standard registration categories. The appropriate designation must be made for all applicants requesting registration with the NASD or SECO, along with the specific registration category(ies) sought. For NASD purposes, a non-OSJ branch office manager should check the appropriate box under standard registration as well as "branch office manager" under intermediate registration. If the position applied for does not appear, check the box marked "other" and specify position.

Question #12:

State what measures your organization has taken to verify applicant's employment background spanning the last three years. An appropriate signatory must sign and date the application. Please also type or print the principal's name. For the exchanges and the NASD an appropriate signatory normally means a "registered principal"; for SECO purposes an appropriate signatory means a principal officer, general partner, sole proprietor or managing agent.

THE REMAINDER OF THE FORM MUST BE COMPLETED BY THE APPLICANT**PERSONAL HISTORY****Question #13:**

Give FULL legal name including maiden name, if applicable. DO NOT use nicknames, former names or aliases.

Question #14:

If federal law does not require you to have a social security record, such as foreign nationals working in foreign offices, write "Not Applicable—Foreign National."

Questions #15 & 16:

This should be your CURRENT legal address. If you expect to move within three months from the date on which the application is submitted and know the new address, give the new address on a separate attachment or notify the agency, jurisdiction or organization with which you are registering immediately after the new address is known.

Question #17:

Give full date: Month, day, year.

Question #18:

Give city and state. If born outside the U.S., give city and country.

Question #19:

Check appropriate box.

Question #20:

Give current marital status: Single, married, divorced, separated or widowed.

Question #21:

Include any names by which you are or have been known, other than your current legal name. This would include any nicknames by which you have been known since adulthood.

Question #22:

Give either FULL name of husband or FULL name of wife including her maiden name. Do not use nicknames or aliases.

Questions #23 & 24:

Give FULL maiden name of mother and FULL name of father. Do not use nicknames or aliases.

Question #25:

Give a complete list of schools attended, dates of attendance, major courses taken, day or evening classes (or both), type of degree awarded (if applicable). Do not list pre-high school education, unless it was the last school attended. Answers must be precise, accurate and complete if costly delay in processing is to be avoided.

Question #26:

Show all employment, self-employment and military service for the last ten years. Be certain to include accurate dates, and the full names and addresses of all previous employers. Answers must be precise, accurate and complete if costly delay in processing is to be avoided.

NOTE:

1. ALL TIME MUST BE ACCOUNTED FOR—even periods of unemployment.
2. DO NOT list a school in the employment section unless you were employed by that school.
3. List all part-time employments that were in the securities industry.
4. Extended vacations (more than one month) are treated as periods of unemployment and must be listed on the application.
5. If you were unemployed for SIX months or more at a time, submit three letters of reference from persons not related to you verifying this unemployment. (Not required for NASD or SECO purposes)
6. If you were self-employed, submit three letters of reference, preferably from persons with whom you did business, verifying the trade name of your business, and stating that your business was honestly conducted, the type of business, and the dates you were associated with it. (Not required for NASD or SECO purposes)
7. If you worked for a company that you know has since gone out of business, submit three letters from persons unrelated to you who knew you during this period of time attesting that you worked for the company during the period indicated. (Copies of W-2 forms are also acceptable if the letters cannot be obtained) (Not required for NASD or SECO purposes)
8. If you worked for a company that has moved or merged or is a subsidiary of another company, furnish the new address or the name and address of the company where the employment records are kept.
9. Attach Form DD-214 (separation papers) if you have served in the Armed Forces. (Not required for NASD or SECO purposes)

Question #27:

List all home addresses for the last 10 years starting with your present address. Please do not give post office boxes.

Question #28:

If you have never had a brokerage account, indicate "None" on the application. If you had or have an account, list the name of the firm or bank; the account number; the type of account (cash or margin); the status (open or closed); and give the approximate dates.

Question #29:

Read this statement carefully before signing.
THE TEN YEAR LIMIT DOES NOT APPLY TO QUESTIONS 30 THROUGH 55. IF THE ANSWER TO ANY QUESTIONS IS "YES", ATTACH COMPLETE DETAILS. WHERE ADDITIONAL SPACE IS NEEDED, SEE #6 UNDER GENERAL INSTRUCTIONS FOR PREPARING AND FILING FORM U-4.

Question #30:

Furnish the requested details if the answer to any part of this question is "Yes".

Question #31:

List all state and Federal agencies (SEC, Department of Agriculture, etc.) with whom you were registered or licensed to deal in securities or commodities and the dates of registration. State whether the registration(s) or license(s) are currently in effect. List all employers with whom you were associated during these periods unless they have been indicated in question 26. So state this if they have.

Question #32:

The following information should be furnished:

1. The full name and address of the business,
2. the nature of the business,
3. your title or position,
4. a brief description of your duties,
5. the amount of time you devote to the business,
6. whether it is during securities trading business hours, and
7. the amount of compensation you receive.

Question #33:

Excluding companies registered under the Investment Company Act of 1940, indicate complete name(s) of investment club(s), partnership(s), hedge fund(s), or joint account(s) and nature of investment(s). Attach a copy of the Partnership Agreement or Articles of Incorporation, if one exists. If one does not exist, so state.

Questions #34 & 35:

State whether your insurance or real estate license is active or inactive. If you will not use your license on behalf of the firm listed in response to question #5, please so indicate.

Question #36:

Give the name of the insurance company under which you are bonded and the amount of your coverage. This information can be obtained from your employer.

Questions #37 and 38:

If your response to either #37 or #38 is "Yes", give name and address of insurance company and when and why it refused the bond or paid out funds in your behalf.

Question #39:

Read this question carefully, as it is often answered incorrectly. For the purposes of this question, "Member" means anyone who owns a seat on an exchange, or was admitted as an associate member of an exchange. If answer is "Yes", list the exchange with which you were a member, along with the corresponding dates of such membership.

Question #40:

If your response to question #40 is "Yes", indicate the name of the firm, your exact capacity with the firm, the circumstances leading to its liquidation, and whether liquidation was conducted by the Securities Investor Protection Corporation or through any other means.

Questions #41 - 49 Disciplinary Action:

For each question answered "Yes", supply the following information:

1. Who was involved.
2. When it happened.
3. What the circumstances were, in your own words.
4. What the final determination was, if any.
5. A copy of the proceeding, if available.

Question #50:

If "Yes", be specific. Any customer complaints or legal proceedings must be listed, whether resolved or pending at the present time. A major complaint includes any written complaint which involves any: 1) claim of actual damages in excess of \$10,000; or 2) claim for damages which is settled for an amount exceeding \$2,500; or 3) allegations of theft of funds or securities, or of forgery of documents or similar dishonesty. If you were terminated by an employer for this reason or had your business connection severed in any way, be sure to supply all details. These should include firm name, approximate date, name of customer filing the complaint, a description of the complaint, and what action, if any, was taken.

Question #51:

If answered "Yes", explain in your own words the circumstances which led to the bankruptcy. If the bankrupt has been discharged, furnish a copy of the court's Discharge of Bankrupt; if the bankrupt has not been discharged, provide the following:

1. A list of all creditors. (Not required for NASD or SECO purposes).
2. Letters from three or more of the major creditors stating that to the best of their knowledge they felt that the bankruptcy was due to mismanagement or economic conditions and was legitimate rather than due to fraud, nor was it any reflection on the individual's personal integrity. (Not required for NASD or SECO purposes).
3. A letter from your lawyer stating the same. (Not required for NASD or SECO purposes).
4. A letter, if possible, from the court or court appointed Referee or Trustee in bankruptcy stating the same. (Not required for NASD or SECO purposes).

Questions #52 - 54 Criminal and Litigation:

Give a complete explanation of the circumstances in your own words, including the final determination if one has been rendered. Include specific details such as dates, city, state, court and docket number.

Question #53:

Give complete details such as dates, city, state, court, docket number and the name of the firm involved. Be sure to supply an explanation of what occurred in your own words as well as the final outcome if you know it.

Question #54:

Give complete details including dates, city, state, court, docket number and an explanation of the circumstances in your own words. Attach a copy of the judgment if available.

Notarization of applicant's signature is not required for NASD purposes.

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INDEX FOR ADDENDA TO FORM U-4

STATES	REGISTERED REPRESENTATIVE	ALLIED MEMBER/PRINCIPAL	FINANCIAL PARTICIPANT	BRANCH MANAGER & OFFICER	MEMBERSHIP
STATES	A ¹	A ¹	A ¹	A ¹	—
AMERICAN STOCK EXCHANGE, INC.	B-1	B-2	B-3	B-1	—
BOSTON STOCK EXCHANGE	C	—	—	—	—
CINCINNATI STOCK EXCHANGE	D-1	D-1 & 2	D-1 & 2	D-1	—
DETROIT STOCK EXCHANGE	—	—	—	—	E
MIDWEST STOCK EXCHANGE, INC.	F-1	F-1 & 3	F-1 & 2	F-1 OR F-4	—
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.	N-1 ²	N-1 ²	N-1 ²	N-1 ²	—
NEW YORK STOCK EXCHANGE, INC.	G-1	G-2&3&4&5	G-2 & 3	G-1	G-2&3&4&5&6&7
PACIFIC STOCK EXCHANGE	—	H	H	—	H

¹ Plus the special state addendum, where required.

² The ORIGINAL N-1 must be filed with the NASD. Copies thereof are not acceptable.

STATE INFORMATION

State	Abbr.	Registration Fee	Photograph	Fingerprints	Bond	Letters of Reference	Physical Description
ALABAMA	AL.	\$20.00	NO	NO	NO	NO	NO
ALASKA	AK.	\$75.00	YES	YES	YES	YES	NO
ARIZONA	AZ.	\$ 5.00	NO	YES	NO	YES	YES
ARKANSAS	AR.	\$40.00	YES	YES	YES	YES	NO
CALIFORNIA	CA.	\$30.00	NO	YES	NO	NO	YES
COLORADO	CO.	\$20.00	YES	YES	NO	NO	YES
CONNECTICUT	CT.	\$20.00	YES	NO	NO	NO	NO
DELAWARE	DE.	\$10.00	NO	NO	NO	NO	NO
DISTRICT OF COLUMBIA	D.C.	\$12.50	NO	YES	NO	NO	YES
FLORIDA	FL.	\$20.00	YES	YES	NO	NO	YES
GEORGIA	GA.	\$30.00	YES	NO	YES	NO	NO
HAWAII	HI.	\$ 5.00	NO	NO	NO	NO	NO
IDAHO	ID.	\$20.00	YES	YES	NO	NO	NO
ILLINOIS	IL.	\$10.00	NO	NO	NO	NO	NO
INDIANA	IN.	\$15.00	NO	NO	NO	NO	NO
IOWA	IA.	\$10.00	NO	NO	NO	YES	YES
KANSAS	KS.	\$15.00	NO	YES	YES	NO	NO
KENTUCKY	KY.	\$15.00	YES	NO	NO	NO	YES
LOUISIANA	LA.	\$20.00	NO	NO	NO	NO	NO
MAINE	ME.	\$10.00	YES	NO	NO	YES	YES
MARYLAND	MD.	\$15.00	NO	NO	NO	NO	NO
MASSACHUSETTS	MA.	\$20.00	YES	NO	NO	NO	NO
MICHIGAN	MI.	\$10.00	YES	YES	NO	NO	YES
MINNESOTA	MN.	\$30.00	NO	NO	YES	NO	NO
MISSISSIPPI	MS.	\$10.00	YES	NO	NO	YES	YES
MISSOURI	MO.	\$10.00	YES	NO	YES	YES	NO
MONTANA	MT.	\$10.00	YES	NO	YES	YES	YES
NEBRASKA	NE.	\$15.00	NO	NO	NO	YES	NO
NEVADA	NV.	\$25.00	YES	YES	YES	YES	YES
NEW HAMPSHIRE	NH.	\$30.00	YES	NO	NO	NO	YES
NEW JERSEY	N.J.	\$30.00	YES	YES	NO	NO	YES
NEW MEXICO	N.M.	\$10.00	YES	NO	NO	YES	YES
NEW YORK	N.Y.	\$10.00	YES	YES	NO	NO	NO
NORTH CAROLINA	N.C.	\$10.00	YES	NO	YES	YES	YES
NORTH DAKOTA	N.D.	\$12.50	NO	NO	NO	YES	YES
OHIO	OH.	\$15.00	YES	NO	NO	YES	NO
OKLAHOMA	OK.	\$10.00	YES	NO	YES	NO	YES
OREGON	OR.	\$25.00	NO	NO	NO	NO	NO
PENNSYLVANIA	PA.	\$30.00	YES	YES	NO	NO	YES
RHODE ISLAND	R.I.	\$20.00	NO	NO	NO	YES	NO
SOUTH CAROLINA	S.C.	\$10.00	YES	NO	YES	NO	YES
SOUTH DAKOTA	S.D.	\$15.00	YES	NO	YES	YES	NO
TENNESSEE	TN.	\$10.00	YES	NO	NO	NO	YES
TEXAS	TX.	\$15.00	YES	NO	NO	NO	YES
UTAH	UT.	\$10.00	YES	NO	NO	NO	NO
VERMONT	VT.	\$15.00	YES	NO	NO	YES	NO
VIRGINIA	VA.	\$10.00	YES	NO	NO	NO	NO
WASHINGTON	WA.	\$25.00	YES	NO	NO	NO	NO
WEST VIRGINIA	W.V.	\$15.00	YES	NO	NO	YES	NO
WISCONSIN	WI.	\$20.00	NO	NO	NO	NO	NO
WYOMING	WY.	\$10.00	NO	NO	NO	NO	NO
PUERTO RICO	PR.	\$ 5.00	YES	NO	YES	NO	NO

*Unnecessary to submit Form U-4 if representative is registered with the NASD.

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UNIFORM APPLICATION FOR SECURITIES AND COMMODITIES INDUSTRY REPRESENTATIVE and/or AGENT

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Mr. _____
 Ms. _____
 1. APPLICANT'S NAME LAST FIRST Middle (If None, so specify) _____
 2. SOCIAL SECURITY NUMBER _____ 3. DATE OF EMPLOYMENT _____
 4. NASD FIRM NUMBER _____ 5. FIRM NAME _____
 6. FIRM ADDRESS _____
 7. OFFICE OF EMPLOYMENT OF APPLICANT _____
 8. NASD DISTRICT IN WHICH OFFICE IS LOCATED _____

9. TO BE REGISTERED WITH THE FOLLOWING: (Check All Applicable)
 NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD) _____
 SECURITIES AND EXCHANGE COMMISSION ONLY (SECO) _____
 American Stock Exchange _____ Chicago Mercantile Exchange _____ New York Stock Exchange _____
 Boston Stock Exchange _____ Cincinnati Stock Exchange _____ Pacific Stock Exchange _____
 Chicago Board of Trade _____ Detroit Stock Exchange _____ PBW Stock Exchange _____
 Chicago Board Options Exchange _____ Intermountain Stock Exchange _____ Spokane Stock Exchange _____
 _____ Midwest Stock Exchange _____ Other (Specify) _____

10. TO BE REGISTERED WITH THE FOLLOWING JURISDICTIONS: (Check all applicable)
 AL DE IN MA NV ND SC VA
 AK DC IA MI NH OH SD WA
 AZ FL KS MN NJ OK TN WV
 AR GA KY MS NM OR TX WI
 CA HI LA MO NY PA UT WY
 CO ID ME MT NC RI VT PR
 CT IL MD NE

11. TYPE OF APPROVAL REQUESTED:
STANDARD REGISTRATION (Registered Representative)
 FULL REGISTRATION/GENERAL SECURITIES _____
 LIMITED REGISTRATION _____
 REGISTERED COMMODITY REPRESENTATIVE _____
 AGENT OF ISSUER _____
 INV. CO. & VARIABLE CONTRACTS PRODUCTS _____
 SECURITIES TRADER _____
 REAL ESTATE SECURITIES _____
 DIRECT PARTICIPATION PROGRAMS _____
 OTHER (Specify) _____
 PART TIME (NASD or SECO) _____
 FULL TIME (NASD or SECO) _____
INTERMEDIATE REGISTRATION
 BRANCH OFFICE MANAGER _____
 SUPERVISORY ANALYST _____
 OFFICER (Title) _____
 OTHER (Specify) _____
PRINCIPAL REGISTRATION
 Member (Exchange) _____
 Regular _____
 Associate _____
 Approved Person (Exchange) _____
 Holder of Voting Stock _____
 Holder of Non-Voting Stock _____
 Subordinated Lender _____
 Holder of Debentures _____
 Director _____
 General Partner _____
 Limited Partner _____
 Officer (Title) _____
 Allied Member/Gen. Securities _____
 Principal _____
 Sole Proprietor _____
 Manager Office of Supv. Jurisdiction _____
 Financial and Operations Principal _____
 Direct Participation Programs _____
 Investment Co. & Variable Contracts _____
 Products _____
 Underwriter Principal _____
 Other (Specify) _____

12. To the best of my knowledge and belief the applicant at the time of approval will be familiar with the statute(s), constitution(s) and rules of the agency, jurisdiction or organization with which this application is being filed, and the rules governing registered persons, and will be fully qualified for the position for which application is being made herein. I agree that notwithstanding the approval of such agency, jurisdiction or organization, which hereby is requested, I will not employ the applicant in the capacity stated herein without first receiving the approval of any authority which may be required by law. This firm has communicated with all the previous employers of the applicant during the past three years, as set forth below:

EMPLOYER	NAME AND POSITION OF PERSON CONTACTED	EMPLOYED FROM/TO	CONTACTED BY PHONE, LETTER OR INTERVIEW

In addition, I have taken appropriate steps to verify the statements contained in this application and to inquire into the past record and reputation of the applicant.

Date _____ Print Name of Appropriate Signatory _____ Signature of Appropriate Signatory _____
 (See Instruction 12)

DO NOT WRITE IN THIS SPACE

Experience _____	Clearance _____
Further Training Required _____	Exam Taken: Date _____
Exam Required _____	Grade _____
Issue _____	Date Approved: Cond. _____
Exam Grade OK _____	Final _____

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PERSONAL HISTORY

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Mr. 13. Ma. _____ 14. _____

Last Name First Middle Maiden (If Applicable) Social Security Number

15. _____ 16. _____

Address City State Zip

17. / / _____ 18. _____ 19. Citizen Yes No

Date of Birth Place of Birth If no, state country of citizenship

20. _____ 21. _____

Marital Status Alias (If None, Indicate)

22. _____ 23. _____

If Married, Full Name of Spouse & Maiden Name (If Applicable) Mother's Full Maiden Name

24. _____

Father's Full Name

IF MORE SPACE IS NEEDED FOR ANY OF THE FOLLOWING QUESTIONS, ATTACH A SEPARATE SHEET

25. EDUCATION

Educational Institutions Attended: HIGH SCHOOL COLLEGE GRADUATE SCHOOL

Specify Highest Year Completed: 9 10 11 12 1 2 3 4 1 2 3 4

NAME AND ADDRESS OF INSTITUTION (STREET, CITY, STATE, ZIP CODE)	FROM MO.	YR.	TO MO.	YR.	COURSE	DAY OR EVENING	DID YOU GRADUATE	DEGREE

26. EMPLOYMENT HISTORY

The following is a complete, consecutive statement of my business history for the past ten years starting with my current position. (All time must be accounted for including self-employment, unemployment, part-time securities, commodities, insurance and real estate industries or related positions and all military service.)

NAME OF EMPLOYER AND COMPLETE ADDRESS (STREET, CITY, STATE, ZIP CODE)	FROM MO.	YR.	TO MO.	YR.	POSITION HELD	REASON FOR LEAVING	FULL OR PART-TIME

27. RESIDENTIAL HISTORY (Give all home addresses starting with present address for the past 10 years.)

ADDRESS (Street, City, State, Zip Code)	FROM MO.	YR.	TO MO.	YR.

28. The following is a complete list of all brokers, dealers or banks with which I am carrying accounts in securities or commodities or with which I have carried such during the past ten years. (If "none", so state.)

NAME AND ADDRESS OF FIRM OR BANK	ACCOUNT NUMBER	CASH OR MARGIN	FROM/TO	OPEN OR CLOSED

I authorize and request any and all of my former employers and any other person to furnish to the agency, jurisdiction or organization with which this application is being filed, or any agent acting on its behalf, any information they may have concerning my credit worthiness, character, ability, business activities, educational background, general reputation, together with, in the case of former employers, a history of my employment by them and the reasons for the termination thereof. Moreover, I hereby release each such employer and each such other person from any and all liability of whatever nature by reason of furnishing such information to the agency, jurisdiction or organization or any agent acting on its behalf.

Further, I recognize that I may be the subject of an investigative consumer report ordered by the agency, jurisdiction, or organization with which this application is being filed, and that I have the right to request complete and accurate disclosure by such agency, jurisdiction, or organization of the nature and scope of the investigation requested.

29. _____ Date _____ Signature of Applicant _____

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THE TEN YEAR LIMIT DOES NOT APPLY TO QUESTIONS 30 THROUGH 54.

30. A. Have you ever taken and passed a qualifying examination for registration in any capacity with the NASD, a national securities or commodities exchange or SECD? If yes, state below the type of examination, the approximate date taken and with what regulatory body application was made. . . . Yes___ No___

Type of Exam	Approximate Date Taken	Regulatory Body
--------------	------------------------	-----------------

B. Have you ever been granted a waiver of qualifying examination with an agency or organization? If yes, state below the type of examination, the approximate date and by what agency or organization. . . . Yes___ No___

Type of Exam	Approximate Date	Regulatory Body
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C. Have you ever taken a qualifying examination for any jurisdiction? If yes, state below the type of examination, the approximate date taken and the name of the jurisdiction administering it. . . . Yes___ No___

Type of Exam	Approximate Date Taken	Regulatory Body
--------------	------------------------	-----------------

D. Have you ever been exempted or excluded from taking a qualifying examination by any jurisdiction? If yes, state below the type of examination, the approximate date and the name of the jurisdiction issuing the exemption or exclusion. . . . Yes___ No___

Type of Exam	Approximate Date	Regulatory Body
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IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS YES, ATTACH COMPLETE DETAILS:

31. Have you ever been registered or licensed by any agency or jurisdiction to sell or to deal in securities or commodities as a principal or employee with any registered broker-dealer or to function as an investment adviser? If yes, specify the name of the broker-dealer or investment adviser, dates registered and agency or jurisdiction with which you were registered. . . . Yes___ No___

32. Are you currently engaged in any other business either as a proprietor, partner, officer, director, trustee, employee or otherwise? Yes___ No___

33. Do you or any member of your immediate family have any beneficial interest in any investment partnership or corporation (including hedge funds, investment clubs, etc.) or any other domestic or foreign accounts whose primary function is investing in securities or commodities (excluding companies registered under the Investment Company Act of 1940)? Yes___ No___

34. Are you now or have you ever been licensed to sell insurance? Yes___ No___
 Type of License(s) and jurisdiction(s) where licensed _____

35. Are you now or have you ever been licensed to sell real estate? Yes___ No___
 Type of License(s) and jurisdiction(s) where licensed _____

36. Are you currently bonded? (If yes, specify insurance company and amount.) Yes___ No___

37. Have you ever been refused a fidelity bond? Yes___ No___

38. Has any surety company paid out any funds on your coverage or canceled your bond? Yes___ No___

39. Are you now or have you ever been a regular or associate member of any stock exchange or commodity exchange/contract market? Yes___ No___

40. Have you ever been an officer, director, general partner, owner of ten (10) percentum or more of the voting securities, or controlling person of, or otherwise engaged in any other managerial or supervisory capacity with any broker or dealer for which a trustee has been appointed pursuant to the provisions of the Securities Investor Protection Act of 1970, or that has been liquidated under any other circumstances? Yes___ No___

41. To your knowledge, are you now or have you ever been the subject of any investigation or proceeding by any securities, commodities or insurance agency, jurisdiction or organization? Yes___ No___

42. Are you now or have you ever been a defendant in any litigation alleging the violation of any agreement with or provision of a securities or commodities industry self-regulatory organization's constitution, by-laws or rules, or any securities, commodities or insurance law or regulation? Yes___ No___

43. Are you now or have you ever been a director, controlling stockholder, partner, officer, sole proprietor, or associated person with a broker-dealer or insurer which during the time of such association was suspended, expelled, or had its registration denied or revoked by any agency, jurisdiction or organization? Yes___ No___

44. Are you now or have you ever been subject to an order of the NASD, a securities or commodities exchange, an agency or any jurisdiction which revokes, suspends or denies membership or registration? Yes___ No___

45. Has any permanent or temporary injunction ever been entered against you or any broker-dealer, insurer, investment adviser or commodities firm with which you were associated in any capacity at the time such injunction was entered? Yes___ No___

46. Are you now or have you ever been (whether or not publicly disclosed) suspended, expelled, fined, barred, censured or otherwise disciplined, or found to have violated any securities or commodities law or rule by any securities or commodities agency, jurisdiction or organization; or been refused membership therein or withdrawn your application for such membership; or been refused a license to sell insurance or had one suspended or revoked for cause by any jurisdiction or agency? Yes___ No___

47. Are you now or have you ever been named as an aider, abettor, or a co-conspirator in, or cause of, any action mentioned in questions 40, 41, 42, 43, 44, 45 and 46, taken with respect to a broker-dealer or insurer? Yes___ No___

Date	Signature of Applicant
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- 48. Are you now or have you ever been suspended, expelled, fined, barred, censured or otherwise disciplined by an employer in the securities, commodities or insurance industry?
49. Have you ever had denied, suspended or revoked a license, permit, certificate, registration or membership required to engage in securities, commodities, insurance or other business or profession?
50. In your previous business connections or employment, have you ever been:
a. a subject of a major complaint or legal proceeding?
or,
b. discharged or requested to resign by an employer because of dishonest or unethical acts alleged to have been committed by you?
51. Have you or any firm, corporation or association of which you have been a principal or officer ever failed in business, made a compromise with creditors or ever filed or been declared bankrupt under any bankruptcy acts?
52. Have you ever been:
a. Arrested or indicted for any felony or misdemeanor involving the purchase, sale, or delivery of any security, or arising out of the conduct of the business of a broker, dealer, fiduciary, investment company, investment adviser, underwriter, bank, trust company, insurance company or other financial institution, or involving any crime in which violence or threats of violence against any person, dishonesty, the wrongful taking of any property, or any manner of fraud was a factor, or involving conspiracy to commit any of the foregoing?
or,
b. Convicted of, or pleaded nolo contendere to, any felony or any misdemeanor, except minor traffic offenses?
53. Have you ever been a principal or employee of any firm, corporation or association which, while you were associated with it, was convicted of, or pleaded nolo contendere to, any felony or misdemeanor?
54. Are you currently the subject of an unsatisfied judgement or lien?

THE FOLLOWING SHOULD BE READ VERY CAREFULLY BY THE APPLICANT

- 1. I hereby certify that I have read and understand the foregoing statements and that my responses are true and complete to the best of my knowledge.
2. To induce the agency, jurisdiction or organization with or to which I am filing or submitting this application to receive and consider it:
A. I agree that any decision of the agency, jurisdiction or organization as to the results of any examination(s) that I may be required to pass will be accepted by me as final;
B. (1) I understand that I am not authorized to sell, or offer for sale, any securities until I have received my license or registration certificate or an official notification of its effective date;
(2) I understand that I am to sell only those securities authorized by my employer.
C. I agree to abide by the Statute(s), Constitution(s), Rules and By-Laws as any of the foregoing are amended from time to time of the agency, jurisdiction or organization with or to which I am filing or submitting this application;
D. If I shall violate or be charged with the violation or possible violation of any Statute, Rule, Constitution or By-Law of any agency, jurisdiction or organization with or to which I am filing or submitting this application, I agree to be subject to and abide by the penalties of the Statute(s), Constitution(s), Rules and By-Laws of such agency, jurisdiction or organization.
3. Further, and in consideration of the securities or commodities self-regulatory organization receiving and considering this application, I submit myself to the jurisdiction of such organization(s).
4. I, _____, the undersigned applicant do solemnly swear that the answers to the above questions and the statements herein made are true, and that I have not herein made any statement, which is at this time and in the light of the circumstances under which it is made, false or misleading in any material respect.
5. I, the undersigned, for the purpose of complying with the laws of the State of _____ relating to either the registration or sale of securities or commodities, hereby irrevocably appoint the administrator, or such other person designated, by law, and the successors in such office, my attorney in said State upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the aforesaid laws of said State; and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State by service of process upon said appointee with the same effect as if I was a resident in said State and had lawfully been served with process in said State. It is requested that a copy of any notice, process or pleading served hereunder be mailed to me at my residence.

Date Signature of Applicant
Date Signature of Witness

(Witness must be either a partner of the firm, officer of the corporation, branch office manager, or authorized employee. Please indicate which).

(NOTARIZATION OF APPLICANT'S SIGNATURE)

STATE OF _____ }
County _____ } ss:
Subscribed and sworn before me this _____ day of _____ A.D., 19____
Notary Public
My commission expires _____ County of _____ State of _____

FORM U-4
AD-G-1

NEW YORK STOCK EXCHANGE, INC.

AGREEMENT

**MUST BE COMPLETED BY ALL REGISTERED REPRESENTATIVES,
BRANCH OFFICE MANAGERS AND OFFICERS**

I hereby certify that I have read and understand the foregoing statements and that each of my responses thereto is true and complete, and that the responses in any and all prior applications filed with the New York Stock Exchange, Inc. were true and complete. In consideration of the New York Stock Exchange, Inc.'s receiving and considering my application:

(a) I authorize and request any and all of my former employers and any other person to furnish to the Exchange, or any agent acting on its behalf, any information they may have concerning my credit worthiness, character, ability, business activities, general reputation, mode of living and personal characteristics, together with, in the case of former employers, a history of my employment by them and the reasons for the termination thereof. Moreover, I hereby release each such employer and each such other person from any and all liability of whatsoever nature by reason of furnishing such information to the Exchange or any agent acting on its behalf.

Further, I recognize that I will be the subject of an investigative consumer report ordered by the Exchange, and that I have the right to request complete and accurate disclosure by the Exchange of the nature and scope of the investigation requested.

(b) I authorize the New York Stock Exchange, Inc. to make available to any prospective employer, or to any Federal, State or Municipal agency, any information it may have concerning me, and I hereby release the New York Stock Exchange, Inc. from any and all liability of whatsoever nature by reason of furnishing such information.

(c) I agree that the decision of the New York Stock Exchange, Inc. as to the results of any examinations it may require me to take will be accepted by me as final, and that I shall be subject to the penalties provided for under Rule 343 (k) of the Board of Directors, as from time to time amended, if, in the opinion of the Exchange, I have

- (1) violated any provision of the Constitution or of any rule adopted by the Board of Directors;
- (2) violated any of my agreements with the Exchange;
- (3) made any misstatements to the Exchange; or
- (4) been guilty of (i) conduct inconsistent with just and equitable principles of trade, (ii) acts detrimental to the interest or welfare of the Exchange, or (iii) conduct contrary to an established practice of the Exchange.

(d) I have read the Constitution and Rules of the Board of Directors of the New York Stock Exchange, Inc. and, if approved, I hereby pledge myself to abide by the Constitution and Rules of the Board of Directors of the New York Stock Exchange, Inc. as the same have been or shall be from time to time amended, and by all rules and regulations adopted pursuant to the Constitution, and by all practices of the Exchange.

Further, and in consideration of the New York Stock Exchange, Inc.'s approving my application, I submit myself to the jurisdiction of such Exchange, and I agree as follows:

(a) That I will not guarantee to my employer or to any other creditor carrying a customer's account, the payment of the debit balance in such account, without the prior written consent of the Exchange.

(b) That I will not guarantee any customer against loss in her/his account or in any way represent to any customer that I or my employer will guarantee the customer against such losses.

(c) That I will not take or receive, directly or indirectly, a share in the profits of any customer's account, or share in any losses sustained in any such account.

(d) That I will not make a cash or margin transaction or maintain a cash or margin account in securities or commodities, or have any direct or indirect financial interest in such a transaction or account, except with a member organization or with a bank. I understand and agree that no such transaction may be effected and no such account may be maintained without the prior consent of my employer, and that except for Monthly Investment Plan transactions such employer must receive promptly, directly from the carrying member organization or bank, duplicate copies of all confirmations and statements relating to such transactions or account. I further understand and agree that I shall receive no compensation for commissions or profits earned on any transaction or account in which I have a direct or indirect financial interest, except with the approval of my employer and in accordance with the rules of the Exchange.

(e) That I will not rebate, directly or indirectly, to any person, firm or corporation any part of the compensation I receive as a registered employee, and I will not pay such compensation, or any part thereof, directly or indirectly, to any person, firm or corporation, as a bonus, commission, fee or other consideration, for business sought or procured for me or for any member or member organization of the Exchange.

(f) That at any time, upon the request of Regulation and Surveillance, or of any Committee or Department of the New York Stock Exchange, Inc., I will appear before such Committee or Department and give evidence upon any subject under investigation by such Committee or Department, and that I will produce, upon request of the Exchange, all of my records or documents relative to any inquiry being made by the Exchange.

(g) I understand that any changes in compensation in any form, or additional compensation in any form, may be subject to disapproval by the New York Stock Exchange, Inc., and that I may not be compensated for business done by or through my employer after the termination of my employment, except as may be permitted by the Exchange.

(h) I agree that I will not take, accept or receive, directly or indirectly, from any person, firm, corporation or association, other than my employer, compensation of any nature, as a bonus, commission, fee, gratuity or other consideration, in connection with any securities or commodities transaction or transactions, except with the prior written consent of the Exchange.

(i) I will notify my member organization and Regulation and Surveillance promptly if, during the tenure of my employment I become the subject of: any investigation or proceeding by any governmental or securities industry self-regulatory body; a refusal of registration, injunction, censure, suspension, expulsion or other disciplinary action by any governmental or securities industry self-regulatory body; a major complaint by a customer of a member organization or by a broker-dealer in securities; a disciplinary action by a member organization; any litigation or arbitration alleging my violation of any agreement with or provision of any securities industry self-regulatory body's, constitution, by-laws, or rules or any securities law or regulation; or any bankruptcy or contempt proceeding, cease and desist order, injunction or civil judgment as party defendant; or any arrest, summons, arraignment, indictment, or conviction for a criminal offense (other than minor traffic violations); or any material allegation that I have conducted myself in a way which may be inconsistent with just and equitable principles of trade, or detrimental to the interest and welfare of the Exchange, or contrary to an established practice of the Exchange; or if I violate any provision of the Exchange Constitution or of any rule adopted by the Board of Directors or of any securities law or regulation or of any agreement with the Exchange.

(j) I agree that any controversy between me and any member or member organization or affiliate or subsidiary thereof arising out of my employment or the termination of my employment shall be settled by arbitration at the instance of any such party in accordance with the arbitration procedure prescribed in the Constitution and Rules then obtaining of the New York Stock Exchange, Inc.

(k) If the Exchange, during the period of 90 days immediately following receipt by the Exchange of written notice of the termination of my employment gives me written notice that the Exchange is making inquiry into any specified matter or matters occurring prior to termination of such employment, I agree that I will thereafter, comply with any request of the Exchange for me to appear and testify, submit records, respond to written requests, attend hearings, and accept disciplinary charges or penalties with respect to the matter or matters specified in such notice in every respect in conformance with the Constitution, Rules and practices of the Exchange in the same manner and to the same extent as required to do if I had remained an employee. If I refuse to accept such written notice or, having been given such notice, refuse or fail to comply with any such request of the Exchange, I agree that such refusal or failure may, in the discretion of the Exchange, act as a bar to future Exchange approval of my employment until such time as the Exchange has completed investigation into the matter or matters specified in such notice; has determined a penalty, if any, to be imposed against me; and until the penalty, if any, has been carried out.

(Date) _____
(Signature of Candidate)

Witness _____
(Witness must be either a partner of the firm, officer of the corporation, branch office manager, or authorized employee. Please indicate which.)

MINNESOTA RULES 2005

FORM U-4
AD-A

**SUPPLEMENTAL
STATE INFORMATION**

Full name of applicant exactly as stated in Item 1 of Form U-4.

Mr.

Ms. _____

LAST

FIRST

MIDDLE

- 1. Have you previously been registered as an agent in this state? Yes____ No____
- 2. Attach the following, where applicable:
 - ____ a) Small photograph taken no more than 3 years prior to date of filing the application.
 - ____ b) Fingerprints on appropriate state forms.
 - ____ c) Letters of reference.
 - ____ d) Bond.
 - ____ e) Proof of successful examination completion.
 - ____ f) Physical description form.

3. Enclosed is the fee in the amount of_____.

(TO BE SIGNED UNLESS THE REQUIREMENT IS WAIVED BY JURISDICTIONS)

4. The acts of this employee in the course of his employment or what might reasonably appear to be in the course of his employment in connection with the offer or sale of any security or commodity shall be considered as our acts; and bind us for any fraudulent misrepresentation or omission in connection with the offer or sale of any security or commodity.

Date Print Name of Appropriate Signatory Signature of Appropriate Signatory

Statutory Authority: MS s 80A.25