

## CHAPTER 80A

### REGULATION OF SECURITIES

80A.02 Prohibited activities.  
 80A.04 Licensing requirement.  
 80A.07 Denial, suspension and revocation of licenses.  
 80A.09 Registration by notification.

80A.14 Definitions.  
 80A.15 Exemptions.  
 80A.24 Hearings and judicial review.

#### 80A.02 PROHIBITED ACTIVITIES.

Subdivision 1. **Advisory activities.** It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale:

- (a) to employ any device, scheme, or artifice to defraud the other person;
- (b) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
- (c) to knowingly sell any security to or purchase any security from a client while acting as principal for his or her own account or knowingly effect any sale or purchase of any security for the account of a client while acting as broker for a person other than the client, unless that person discloses to the client in writing before the execution of the transaction the capacity in which he or she is acting and obtains the consent of the client to the transaction.

Subd. 1a. **Solicitation activities.** In the solicitation of advisory clients, it is unlawful for any person to make any untrue statements of material facts, or, in light of the circumstances under which they are made, to omit to state material facts necessary in order to make the statements made not misleading.

Subd. 2. **Contract activities.** It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract the terms of which are in contravention of rules the commissioner prescribes as necessary or appropriate in the public interest or for the protection of investors.

Subd. 3. **Activities as custodian of certain funds.** It is unlawful for any investment adviser to take or have custody of any securities or funds of any client in contravention of rules the commissioner prescribes as necessary or appropriate in the public interest or for the protection of investors.

**History:** 1983 c 284 s 1

#### 80A.04 LICENSING REQUIREMENT.

*[For text of subd 1, see M.S.1982]*

Subd. 2. It is unlawful for any broker-dealer or issuer to employ an agent to represent him or her in this state unless the agent is licensed. The licensing of an agent is not effective during any period when he or she is not associated with a specified broker-dealer licensed under this chapter or a specified issuer. No agent shall at any time represent more than one broker-dealer or issuer, except that where broker-dealers affiliated by direct common control are licensed under this chapter, an agent may represent the broker-dealer. When an agent begins or terminates his or her employment with a broker-dealer or issuer, or begins or terminates those activities which make that person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner or his or her designated representative.

Subd. 3. It is unlawful for any person to transact business in this state as an investment adviser unless that person is so licensed or licensed as a broker-dealer under this chapter or unless his or her only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans, corporations with a class of equity securities registered under section 12(g) of the Securities Exchange Act of 1934, small business investment companies, and government agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner.

*[For text of subd 4, see M.S.1982]*

**History:** 1983 c 284 s 2,3

### **80A.07 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.**

Subdivision 1. The commissioner may by order deny, suspend, or revoke any license or may censure the licensee, if he or she finds (a) that the order is in the public interest and (b) that the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or failed to comply with any provision of this chapter or a predecessor law or any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule under any of these statutes, or any order thereunder of which he or she has notice and to which he or she is subject;

(3) has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the commissioner denying, suspending, or revoking a license as a broker-dealer, agent or investment adviser;

(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration or license as a broker-dealer, agent, or investment adviser, or is the subject of an order of the securities and exchange commission suspending or expelling that person from a national securities exchange or association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order. The commissioner may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and may not enter an order under this clause on the basis of an order under another state law unless the order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or fraudulent practices in the securities business;

(8) has failed to maintain the minimum net capital or to comply with the limitation on aggregate indebtedness which the commissioner by rule prescribes;

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;

(10) has failed reasonably to supervise agents, investment adviser representatives, or employees to assure their compliance with this chapter;

(11) has failed to pay the proper filing fee, but the commissioner shall vacate the order when the deficiency has been corrected;

(12) has offered or sold securities in this state through any unlicensed agent;

(13) has made any material misrepresentation to the commissioner, or upon request reasonably made by the commissioner, has withheld or concealed information from, or refused to furnish information to, the commissioner; or

(14) has failed to reasonably supervise agents, investment adviser representatives, or employees if he or she has assumed or has been designated to carry out the supervisory procedures of the broker-dealer or investment adviser.

Subd. 1a. **Investment adviser representatives.** The commissioner, by order, shall censure or place limitations on the activities of any investment adviser representative or person seeking to become an investment adviser representative, or suspend or bar any person from being an investment adviser representative, if the commissioner finds, after notice and opportunity for hearing, that the censure, placing of limitations, suspension, or bar is in the public interest and that the person has committed or omitted any act or omission enumerated in subdivision 1. It shall be unlawful for any person as to whom an order suspending or barring him from being an investment adviser representative is in effect willfully to become, or to be, associated with an investment adviser without the consent of the commissioner, and it shall be unlawful for any investment adviser to permit this person to become, or remain, an investment adviser representative without the consent of the commissioner, if the investment adviser knew, or in the exercise of reasonable care, should have known of the order.

*[For text of subd 2, see M.S.1982]*

Subd. 3. The commissioner may issue an order requiring a licensee or an applicant for a license to show cause why the license should not be revoked or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. The commissioner may by order summarily suspend a license, or in the case of an investment adviser representative or person seeking to become an investment adviser representative, summarily suspend or bar that person from acting in that capacity, pending final determination of any order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making a disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing of which he or she has been duly notified, the person shall be deemed in default and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

*[For text of subds 4 and 5, see M.S.1982]*

**History:** 1983 c 284 s 4-6

**80A.09 REGISTRATION BY NOTIFICATION.**

Subdivision 1. The following securities may be registered by notification:

(a) any industrial revenue bond, the interest on which is exempt from tax under chapter 290; and

(b) any securities issued by a person organized exclusively for social, religious, educational, benevolent, fraternal, charitable, reformatory, athletic, chamber of commerce, trade, industrial development, or professional association purposes and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; provided that no securities issued by any person offering and furnishing a burial service or funeral benefit, directly or indirectly for financial consideration, may be registered under this section.

*[For text of subs 2 to 4, see M.S.1982]*

**History:** 1983 c 284 s 7

NOTE: Subdivision 1 was also amended by Laws 1983, chapter 213, section 2, to read as follows:

"Subdivision 1. The following securities may be registered by notification:

(a) any industrial revenue bond issued by the state of Minnesota or any of its political or governmental subdivisions, municipalities, governmental agencies, or instrumentalities; and

(b) any securities issued by a person organized exclusively for social, religious, educational, benevolent, fraternal, charitable, reformatory, athletic, chamber of commerce, trade, industrial development, or professional association purposes and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; provided that no securities issued by any person offering and furnishing a burial service or funeral benefit, directly or indirectly for financial consideration, may be registered under this section."

**80A.14 DEFINITIONS.**

*[For text of subs 1 to 8, see M.S.1982]*

Subd. 9. **Investment adviser.** "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications, writings or electronic means, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(1) a bank, savings institution, or trust company;

(2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(3) a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them;

(4) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; or

(5) other persons not within the intent of this subdivision as the commissioner may by rule or order designate.

Subd. 9a. **Investment adviser representative.** "Investment adviser representative" means any partner, officer, or director of an investment adviser, or any person performing similar functions, or any person, directly or indirectly, controlling or controlled by an investment adviser, including any employee of an investment adviser who provides investment advice to clients.

*[For text of subs 10 and 11, see M.S.1982]*

Subd. 12. **Investment metal contract.** "Investment metal contract" or "investment gem contract" means:

(i) a sale of an investment metal or investment gem in which the seller or an affiliate of the seller retains possession of the investment metal or investment gem; or

(ii) a contract of purchase or sale which provides for the future delivery of an investment metal or investment gem, or any option to purchase or option to sell such a contract; or

(iii) a sale of an investment metal or investment gem pursuant to a contract known to the trade as a margin account, margin contract, leverage account, or leverage contract.

"Investment metal contract" or "investment gem contract" shall not include:

(i) the sale of an investment metal or investment gem where the seller has reasonable grounds to believe that the investment metal or investment gem is being acquired for manufacturing, commercial or industrial purposes; or

(ii) the sale, or contract for the future purchase or sale, of jewelry, art objects or other manufactured or crafted goods other than bullion or bulk sales of coins; or

(iii) the sale of an investment metal or investment gem where full payment is made to the seller, and delivery of the investment metal or investment gem is made to the purchaser, or to a bank, savings institution, trust company, broker-dealer, or safe deposit company designated by the purchaser, within 20 days of the date of purchase, if the bank, savings institution, trust company, broker-dealer, or safe deposit company is located within this state, and is, where required, licensed under the laws of this state, provided that a safe deposit company accepting such delivery may not be an affiliate of the seller; or

(iv) any futures contracts traded on a commodities exchange registered under the Federal Commodity Futures Trading Commission Act of 1974.

*[For text of subds 13 to 19, see M.S.1982]*

**History:** 1983 c 284 s 8-10

### **80A.15 EXEMPTIONS.**

Subdivision 1. The following securities are exempted from sections 80A.08 and 80A.16:

(a) Any security, including a revenue obligation, issued or guaranteed 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; but this exemption shall not include any industrial revenue bond.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption shall not include any revenue obligation payable solely from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized under the laws of any state

and subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority of that state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(e) Any security issued or guaranteed by any federal credit union or any credit union, or similar association organized and supervised under the laws of this state.

(f) 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, the Pacific Stock Exchange, or the Chicago Board Options Exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(g) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal which are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television or direct mailing.

(h) Any interest in any employee's savings, stock purchase, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(i) Any security issued or guaranteed by any railroad, other common carrier or public utility which is subject to regulation in respect to the issuance or guarantee of its securities by a governmental authority of the United States.

(j) Any interest in a common trust fund or similar fund maintained by a state bank or trust company organized and operating under the laws of Minnesota, or a national bank wherever located, for the collective investment and reinvestment of funds contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by the bank or trust company, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed thereto by the bank, trust company or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profitsharing or similar benefit plan, or a self-employed person's retirement plan.

(k) Any security which meets all of the following conditions:

(1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(2) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date;

(3) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or for the period of the issuer's existence if less than seven years, in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more;

(4) The issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1,000,000 in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, net income, before deduction for income taxes and depreciation, of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. For the purposes of this clause "last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering;

(5) If the offering is of stock or shares other than preferred stock or shares, the securities have voting rights and the rights include (i) the right to have at least as many votes per share, and (ii) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(6) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this clause upon written information furnished by the record owners.

(l) Any certificate of indebtedness sold or issued for investment, other than a certificate of indebtedness pledged as a security for a loan made contemporaneously therewith, and any savings account or savings deposit issued, by an industrial loan and thrift company.

*[For text of subds 2 to 4, see M.S.1982]*

**History:** 1983 c 252 s 14

#### **80A.24 HEARINGS AND JUDICIAL REVIEW.**

*[For text of subds 1 and 2, see M.S.1982]*

Subd. 3. [Repealed, 1982 c 501 s 26; 1983 c 247 s 219]