

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 4156

(SENATE AUTHORS: KLEIN)

DATE
02/22/2024

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Introduction and first reading
Referred to Commerce and Consumer Protection

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to financial institutions; modifying registration provisions in the Minnesota
1.3 Securities Act; modifying franchise fee deferral; amending Minnesota Statutes
1.4 2022, sections 80A.61; 80A.66; 80C.05, subdivision 3; Minnesota Statutes 2023
1.5 Supplement, section 80A.50.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2023 Supplement, section 80A.50, is amended to read:

1.8 **80A.50 SECTION 302; FEDERAL COVERED SECURITIES; SMALL**
1.9 **CORPORATE OFFERING REGISTRATION.**

1.10 (a) **Federal covered securities.**

1.11 (1) **Required filing of records.** With respect to a federal covered security, as defined
1.12 in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not
1.13 otherwise exempt under sections 80A.45 through 80A.47, a rule adopted or order issued
1.14 under this chapter may require the filing of any or all of the following records:

1.15 (A) before the initial offer of a federal covered security in this state, all records that are
1.16 part of a federal registration statement filed with the Securities and Exchange Commission
1.17 under the Securities Act of 1933 and a consent to service of process complying with section
1.18 80A.88 signed by the issuer;

1.19 (B) after the initial offer of the federal covered security in this state, all records that are
1.20 part of an amendment to a federal registration statement filed with the Securities and
1.21 Exchange Commission under the Securities Act of 1933; and

2.1 (C) to the extent necessary or appropriate to compute fees, a report of the value of the
2.2 federal covered securities sold or offered to persons present in this state, if the sales data
2.3 are not included in records filed with the Securities and Exchange Commission.

2.4 (2) **Notice filing effectiveness and renewal.** A notice filing under subsection (a) is
2.5 effective for one year commencing on the later of the notice filing or the effectiveness of
2.6 the offering filed with the Securities and Exchange Commission. On or before expiration,
2.7 the issuer may renew a notice filing by filing a copy of those records filed by the issuer with
2.8 the Securities and Exchange Commission that are required by rule or order under this chapter
2.9 to be filed. A previously filed consent to service of process complying with section 80A.88
2.10 may be incorporated by reference in a renewal. A renewed notice filing becomes effective
2.11 upon the expiration of the filing being renewed.

2.12 (3) **Notice filings for federal covered securities under section 18(b)(4)(D).** With
2.13 respect to a security that is a federal covered security under Section 18(b)(4)(D) of the
2.14 Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a rule under this chapter may
2.15 require a notice filing by or on behalf of an issuer to include a copy of Form D, including
2.16 the Appendix, as promulgated by the Securities and Exchange Commission, and a consent
2.17 to service of process complying with section 80A.88 signed by the issuer not later than 15
2.18 days after the first sale of the federal covered security in this state.

2.19 (4) **Stop orders.** Except with respect to a federal security under Section 18(b)(1) of the
2.20 Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the administrator finds that there is
2.21 a failure to comply with a notice or fee requirement of this section, the administrator may
2.22 issue a stop order suspending the offer and sale of a federal covered security in this state.
2.23 If the deficiency is corrected, the stop order is void as of the time of its issuance and no
2.24 penalty may be imposed by the administrator.

2.25 (b) **Small corporation offering registration.**

2.26 (1) **Registration required.** A security meeting the conditions set forth in this section
2.27 may be registered as set forth in this section.

2.28 (2) **Availability.** Registration under this section is available only to the issuer of securities
2.29 and not to an affiliate of the issuer or to any other person for resale of the issuer's securities.
2.30 The issuer must be organized under the laws of one of the states or possessions of the United
2.31 States. The securities offered must be exempt from registration under the Securities Act of
2.32 1933 pursuant to Rule 504 of Regulation D (15 U.S.C. Section 77c).

2.33 (3) **Disqualification.** Registration under this section is not available to any of the
2.34 following issuers:

3.1 (A) an issuer subject to the reporting requirements of Section 13 or 15(d) of the Securities
3.2 Exchange Act of 1934;

3.3 (B) an investment company;

3.4 (C) a development stage company that either has no specific business plan or purpose
3.5 or has indicated that its business plan is to engage in a merger or acquisition with an
3.6 unidentified company or companies or other entity or person;

3.7 (D) an issuer if the issuer or any of its predecessors, officers, directors, governors,
3.8 partners, ten percent stock or equity holders, promoters, or any selling agents of the securities
3.9 to be offered, or any officer, director, governor, or partner of the selling agent:

3.10 (i) has filed a registration statement that is the subject of a currently effective registration
3.11 stop order entered under a federal or state securities law within five years before the filing
3.12 of the small corporate offering registration application;

3.13 (ii) has been convicted within five years before the filing of the small corporate offering
3.14 registration application of a felony or misdemeanor in connection with the offer, purchase,
3.15 or sale of a security or a felony involving fraud or deceit, including, but not limited to,
3.16 forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to
3.17 defraud;

3.18 (iii) is currently subject to a state administrative enforcement order or judgment entered
3.19 by a state securities administrator or the Securities and Exchange Commission within five
3.20 years before the filing of the small corporate offering registration application, or is subject
3.21 to a federal or state administrative enforcement order or judgment in which fraud or deceit,
3.22 including, but not limited to, making untrue statements of material facts or omitting to state
3.23 material facts, was found and the order or judgment was entered within five years before
3.24 the filing of the small corporate offering registration application;

3.25 (iv) is currently subject to an order, judgment, or decree of a court of competent
3.26 jurisdiction temporarily restraining or enjoining, or is subject to an order, judgment, or
3.27 decree of a court of competent jurisdiction permanently restraining or enjoining the party
3.28 from engaging in or continuing any conduct or practice in connection with the purchase or
3.29 sale of any security or involving the making of a false filing with a state or with the Securities
3.30 and Exchange Commission entered within five years before the filing of the small corporate
3.31 offering registration application; or

4.1 (v) is subject to a state's administrative enforcement order, or judgment that prohibits,
4.2 denies, or revokes the use of an exemption for registration in connection with the offer,
4.3 purchase, or sale of securities,

4.4 (I) except that clauses (i) to (iv) do not apply if the person subject to the disqualification
4.5 is duly licensed or registered to conduct securities-related business in the state in which the
4.6 administrative order or judgment was entered against the person or if the dealer employing
4.7 the party is licensed or registered in this state and the form BD filed in this state discloses
4.8 the order, conviction, judgment, or decree relating to the person, and

4.9 (II) except that the disqualification under this subdivision is automatically waived if the
4.10 state securities administrator or federal agency that created the basis for disqualification
4.11 determines upon a showing of good cause that it is not necessary under the circumstances
4.12 to deny the registration.

4.13 **(4) Filing and effectiveness of registration statement.** A small corporate offering
4.14 registration statement must be filed with the administrator. If no stop order is in effect and
4.15 no proceeding is pending under section 80A.54, such registration statement shall become
4.16 effective automatically at the close of business on the 20th day after filing of the registration
4.17 statement or the last amendment of the registration statement or at such earlier time as the
4.18 administrator may designate by rule or order. For the purposes of a nonissuer transaction,
4.19 other than by an affiliate of the issuer, all outstanding securities of the same class identified
4.20 in the small corporate offering registration statement as a security registered under this
4.21 chapter are considered to be registered while the small corporate offering registration
4.22 statement is effective. A small corporate offering registration statement is effective for one
4.23 year after its effective date or for any longer period designated in an order under this chapter.
4.24 A small corporate offering registration statement may be withdrawn only with the approval
4.25 of the administrator.

4.26 **(5) Contents of registration statement.** A small corporate offering registration statement
4.27 under this section shall be on Form U-7, including exhibits required by the instructions
4.28 thereto, as adopted by the North American Securities Administrators Association, or such
4.29 alternative form as may be designated by the administrator by rule or order and must include:

4.30 (A) a consent to service of process complying with section 80A.88;

4.31 (B) a statement of the type and amount of securities to be offered and the amount of
4.32 securities to be offered in this state;

4.33 (C) a specimen or copy of the security being registered, unless the security is
4.34 uncertificated, a copy of the issuer's articles of incorporation and bylaws or their substantial

5.1 equivalents in effect, and a copy of any indenture or other instrument covering the security
5.2 to be registered;

5.3 (D) a signed or conformed copy of an opinion of counsel concerning the legality of the
5.4 securities being registered which states whether the securities, when sold, will be validly
5.5 issued, fully paid, and nonassessable and, if debt securities, binding obligations of the issuer;

5.6 (E) the states (i) in which the securities are proposed to be offered; (ii) in which a
5.7 registration statement or similar filing has been made in connection with the offering
5.8 including information as to effectiveness of each such filing; and (iii) in which a stop order
5.9 or similar proceeding has been entered or in which proceedings or actions seeking such an
5.10 order are pending;

5.11 (F) a copy of the offering document proposed to be delivered to offerees; and

5.12 (G) a copy of any other pamphlet, circular, form letter, advertisement, or other sales
5.13 literature intended as of the effective date to be used in connection with the offering and
5.14 any solicitation of interest used in compliance with section 80A.46(17)(B).

5.15 (6) **Copy to purchaser.** A copy of the offering document as filed with the administrator
5.16 must be delivered to each person purchasing the securities prior to sale of the securities to
5.17 such person.

5.18 (c) **Offering limit.** Offers and sales of securities under a small corporate offering
5.19 registration as set forth in this section are allowed up to the limit prescribed by Code of
5.20 Federal Regulations, title 17, part 230.504 (b)(2), as amended.

5.21 **(d) Regulation A - Tier 2 filing requirements.**

5.22 **(1) Initial filing.** An issuer planning to offer and sell securities in Minnesota in an
5.23 offering exempt under Tier 2 of federal Regulation A must, at least 21 calendar days before
5.24 the date of the initial sale of securities in Minnesota, submit to the administrator:

5.25 (A) a completed Regulation A - Tier 2 offering notice filing form or copies of all the
5.26 documents filed with the Securities Exchange Commission; and

5.27 (B) a consent to service of process on Form U-2, if consent to service of process is not
5.28 provided in the Regulation A - Tier 2 offering notice filing form.

5.29 The initial notice filing made in Minnesota is effective for 12 months after the date the
5.30 filing is made.

5.31 **(2) Renewal.** For each additional 12-month period in which the same offering is
5.32 continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew

6.1 the notice filing by filing (i) the Regulation A - Tier 2 offering notice filing form marked
6.2 "renewal," or (ii) a cover letter or other document requesting renewal. The renewal filing
6.3 must be made on or before the date notice filing expires.

6.4 (3) **Amendment.** An issuer may increase the amount of securities offered in Minnesota
6.5 by submitting a Regulation A - Tier 2 offering notice filing form or other document
6.6 describing the transaction.

6.7 Sec. 2. Minnesota Statutes 2022, section 80A.61, is amended to read:

6.8 **80A.61 SECTION 406; REGISTRATION BY BROKER-DEALER, AGENT,**
6.9 **FUNDING PORTAL, INVESTMENT ADVISER, AND INVESTMENT ADVISER**
6.10 **REPRESENTATIVE.**

6.11 (a) **Application for initial registration by broker-dealer, agent, investment adviser,**
6.12 **or investment adviser representative.** A person shall register as a broker-dealer, agent,
6.13 investment adviser, or investment adviser representative by filing an application and a
6.14 consent to service of process complying with section 80A.88, and paying the fee specified
6.15 in section 80A.65 and any reasonable fees charged by the designee of the administrator for
6.16 processing the filing. The application must contain:

6.17 (1) the information or record required for the filing of a uniform application; and

6.18 (2) upon request by the administrator, any other financial or other information or record
6.19 that the administrator determines is appropriate.

6.20 (b) **Amendment.** If the information or record contained in an application filed under
6.21 subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant
6.22 shall promptly file a correcting amendment.

6.23 (c) **Effectiveness of registration.** If an order is not in effect and a proceeding is not
6.24 pending under section 80A.67, registration becomes effective at noon on the 45th day after
6.25 a completed application is filed, unless the registration is denied. A rule adopted or order
6.26 issued under this chapter may set an earlier effective date or may defer the effective date
6.27 until noon on the 45th day after the filing of any amendment completing the application.

6.28 (d) **Registration renewal.** A registration is effective until midnight on December 31 of
6.29 the year for which the application for registration is filed. Unless an order is in effect under
6.30 section 80A.67, a registration may be automatically renewed each year by filing such records
6.31 as are required by rule adopted or order issued under this chapter, by paying the fee specified
6.32 in section 80A.65, and by paying costs charged by the designee of the administrator for
6.33 processing the filings.

7.1 (e) **Additional conditions or waivers.** A rule adopted or order issued under this chapter
7.2 may impose such other conditions, not inconsistent with the National Securities Markets
7.3 Improvement Act of 1996. An order issued under this chapter may waive, in whole or in
7.4 part, specific requirements in connection with registration as are in the public interest and
7.5 for the protection of investors.

7.6 (f) **Funding portal registration.** A funding portal that has its principal place of business
7.7 in the state of Minnesota shall register with the state of Minnesota by filing with the
7.8 administrator a copy of the information or record required for the filing of an application
7.9 for registration as a funding portal in the manner established by the Securities and Exchange
7.10 Commission and/or the Financial Institutions Regulatory Authority (FINRA), along with
7.11 any rule adopted or order issued, and any amendments thereto.

7.12 (g) **Application for investment adviser representative registration.**

7.13 (1) The application for initial registration as an investment adviser representative pursuant
7.14 to section 80A.58 is made by completing Form U-4 (Uniform Application for Securities
7.15 Industry Registration or Transfer) in accordance with the form instructions and by filing
7.16 the form U-4 with the IARD. The application for initial registration must also include the
7.17 following:

7.18 (i) proof of compliance by the investment adviser representative with the examination
7.19 requirements of:

7.20 (A) the Uniform Investment Adviser Law Examination (Series 65); or

7.21 (B) the General Securities Representative Examination (Series 7) and the Uniform
7.22 Combined State Law Examination (Series 66);

7.23 (ii) any other information the administrator may reasonably require.

7.24 (2) The application for the annual renewal registration as an investment adviser
7.25 representative shall be filed with the IARD.

7.26 (3)(i) The investment adviser representative is under a continuing obligation to update
7.27 information required by Form U-4 as changes occur;

7.28 (ii) An investment adviser representative and the investment adviser must file promptly
7.29 with the IARD any amendments to the representative's Form U-4; and

7.30 (iii) An amendment will be considered to be filed promptly if the amendment is filed
7.31 within 30 days of the event that requires the filing of the amendment.

8.1 (4) An application for initial or renewal of registration is not considered filed for purposes
8.2 of section 80A.58 until the required fee and all required submissions have been received
8.3 by the administrator.

8.4 (5) The application for withdrawal of registration as an investment adviser representative
8.5 pursuant to section 80A.58 shall be completed by following the instructions on Form U-5
8.6 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5
8.7 with the IARD.

8.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.9 Sec. 3. Minnesota Statutes 2022, section 80A.66, is amended to read:

8.10 **80A.66 SECTION 411; POSTREGISTRATION REQUIREMENTS.**

8.11 (a) **Financial requirements.** Subject to Section 15(h) of the Securities Exchange Act
8.12 of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940
8.13 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may establish
8.14 minimum financial requirements for broker-dealers registered or required to be registered
8.15 under this chapter and investment advisers registered or required to be registered under this
8.16 chapter.

8.17 (b) **Financial reports.** Subject to Section 15(h) of the Securities Exchange Act of 1934
8.18 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15
8.19 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this
8.20 chapter and an investment adviser registered or required to be registered under this chapter
8.21 shall file such financial reports as are required by a rule adopted or order issued under this
8.22 chapter. If the information contained in a record filed under this subsection is or becomes
8.23 inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting
8.24 amendment.

8.25 (c) **Record keeping.** Subject to Section 15(h) of the Securities Exchange Act of 1934
8.26 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15
8.27 U.S.C. Section 80b-22):

8.28 (1) a broker-dealer registered or required to be registered under this chapter and an
8.29 investment adviser registered or required to be registered under this chapter shall make and
8.30 maintain the accounts, correspondence, memoranda, papers, books, and other records
8.31 required by rule adopted or order issued under this chapter;

8.32 (2) broker-dealer records required to be maintained under paragraph (1) may be
8.33 maintained in any form of data storage acceptable under Section 17(a) of the Securities

9.1 Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the
9.2 administrator; and

9.3 (3) investment adviser records required to be maintained under paragraph (d)(1) may
9.4 be maintained in any form of data storage required by rule adopted or order issued under
9.5 this chapter.

9.6 **(d) Records and reports of private funds.**

9.7 (1) **In general.** An investment adviser to a private fund shall maintain such records of,
9.8 and file with the administrator such reports and amendments thereto, that an exempt reporting
9.9 adviser is required to file with the Securities and Exchange Commission pursuant to SEC
9.10 Rule 204-4, Code of Federal Regulations, title 17, section 275.204-4.

9.11 (2) **Treatment of records.** The records and reports of any private fund to which an
9.12 investment adviser provides investment advice shall be deemed to be the records and reports
9.13 of the investment adviser.

9.14 (3) **Required information.** The records and reports required to be maintained by an
9.15 investment adviser, which are subject to inspection by a representative of the administrator
9.16 at any time, shall include for each private fund advised by the investment adviser, a
9.17 description of:

9.18 (A) the amount of assets under management;

9.19 (B) the use of leverage, including off-balance-sheet leverage, as to the assets under
9.20 management;

9.21 (C) counterparty credit risk exposure;

9.22 (D) trading and investment positions;

9.23 (E) valuation policies and practices of the fund;

9.24 (F) types of assets held;

9.25 (G) side arrangements or side letters, whereby certain investors in a fund obtain more
9.26 favorable rights or entitlements than other investors;

9.27 (H) trading practices; and

9.28 (I) such other information as the administrator determines is necessary and appropriate
9.29 in the public interest and for the protection of investors, which may include the establishment
9.30 of different reporting requirements for different classes of fund advisers, based on the type
9.31 or size of the private fund being advised.

10.1 **(4) Filing of records.** A rule or order under this chapter may require each investment
10.2 adviser to a private fund to file reports containing such information as the administrator
10.3 deems necessary and appropriate in the public interest and for the protection of investors.

10.4 **(e) Audits or inspections.** The records of a broker-dealer registered or required to be
10.5 registered under this chapter and of an investment adviser registered or required to be
10.6 registered under this chapter, including the records of a private fund described in paragraph
10.7 (d) and the records of investment advisers to private funds, are subject to such reasonable
10.8 periodic, special, or other audits or inspections by a representative of the administrator,
10.9 within or without this state, as the administrator considers necessary or appropriate in the
10.10 public interest and for the protection of investors. An audit or inspection may be made at
10.11 any time and without prior notice. The administrator may copy, and remove for audit or
10.12 inspection copies of, all records the administrator reasonably considers necessary or
10.13 appropriate to conduct the audit or inspection. The administrator may assess a reasonable
10.14 charge for conducting an audit or inspection under this subsection.

10.15 **(f) Custody and discretionary authority bond or insurance.** Subject to Section 15(h)
10.16 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the
10.17 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued
10.18 under this chapter may require a broker-dealer or investment adviser that has custody of or
10.19 discretionary authority over funds or securities of a customer or client to obtain insurance
10.20 or post a bond or other satisfactory form of security in an amount of at least \$25,000, but
10.21 not to exceed \$100,000. The administrator may determine the requirements of the insurance,
10.22 bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form
10.23 of security may not be required of a broker-dealer registered under this chapter whose net
10.24 capital exceeds, or of an investment adviser registered under this chapter whose minimum
10.25 financial requirements exceed, the amounts required by rule or order under this chapter.
10.26 The insurance, bond, or other satisfactory form of security must permit an action by a person
10.27 to enforce any liability on the insurance, bond, or other satisfactory form of security if
10.28 instituted within the time limitations in section 80A.76(j)(2).

10.29 **(g) Requirements for custody.** Subject to Section 15(h) of the Securities Exchange Act
10.30 of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940
10.31 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a
10.32 customer except under the supervision of a broker-dealer and an investment adviser
10.33 representative may not have custody of funds or securities of a client except under the
10.34 supervision of an investment adviser or a federal covered investment adviser. A rule adopted
10.35 or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer

11.1 regarding custody of funds or securities of a customer and on an investment adviser regarding
11.2 custody of securities or funds of a client.

11.3 (h) **Investment adviser brochure rule.** With respect to an investment adviser registered
11.4 or required to be registered under this chapter, a rule adopted or order issued under this
11.5 chapter may require that information or other record be furnished or disseminated to clients
11.6 or prospective clients in this state as necessary or appropriate in the public interest and for
11.7 the protection of investors and advisory clients.

11.8 (i) **Continuing education.** A rule adopted or order issued under this chapter may require
11.9 an individual registered under section 80A.57 or 80A.58 to participate in a continuing
11.10 education program approved by the Securities and Exchange Commission and administered
11.11 by a self-regulatory organization.

11.12 **EFFECTIVE DATE.** This section is effective January 1, 2025.

11.13 Sec. 4. Minnesota Statutes 2022, section 80C.05, subdivision 3, is amended to read:

11.14 Subd. 3. **Escrow or impoundment of fees and other funds by commissioner.** If the
11.15 commissioner finds that the applicant has failed to demonstrate that adequate financial
11.16 arrangements have been made to fulfill obligations to provide real estate, improvements,
11.17 equipment, inventory, training or other items included in the offering, the commissioner
11.18 may by rule or order require the escrow ~~or~~, impoundment, or deferral of franchise fees and
11.19 other funds paid by the franchisee or subfranchisor until no later than the time of opening
11.20 of the franchise business.

11.21 Sec. 5. **RULEMAKING.**

11.22 The commissioner of commerce must adopt rules to conform with the changes made in
11.23 sections 3 and 4 with respect to investment advisor registration continuing education and
11.24 franchise fees deferral, respectively. The commissioner of commerce may use the good
11.25 cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to
11.26 amend the rule under this section, and Minnesota Statutes, section 14.386, does not apply
11.27 except as provided under Minnesota Statutes, section 14.388.