

Office of the Revisor of Statutes

Administrative Rules



TITLE: Adopted Permanent Rules Governing Securities; Regulating MNvest Offerings

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2876

RULE APPROVED
OFFICE OF ADMINISTRATIVE HEARINGS

April 29, 2014
DATE

[Signature]
ADMINISTRATIVE LAW JUDGE.



The attached rules are approved for
filing with the Secretary of State

[Signature]
Paul M. Marinac
Deputy Revisor

163090

Department of Commerce

Adopted Permanent Rules Governing Securities; Regulating MNvest Offerings

2876.1000 DEFINITIONS.

Subpart 1. **General terms and scope.** The terms used in this chapter that are not defined in this part have the meanings given them in Minnesota Statutes, chapter 80A.

Subp. 2. **Control person.** For purposes of this chapter, "control person" means a partner, officer, director, or manager, majority holder of securities, or anyone else having the power to direct the management of the entity, but does not include a person whose primary duties are ministerial or clerical.

2876.3050 MNVEST NOTICE FILING.

Subpart 1. **Form and submission.** A notice filing made pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause (11), must be filed on the MNvest notice form, available on the Department of Commerce Web site or upon request from the administrator, not less than ten days before the beginning of the MNvest offering. The MNvest notice form must be mailed or delivered electronically to the administrator, along with the appropriate fee, at the address listed on the MNvest notice form. Information provided on or with the MNvest notice form must include the following:

A. the name and contact information of the MNvest issuer making the filing;

B. identifying information for the MNvest portal through which the MNvest issuer's securities are to be offered, including an indication as to whether the MNvest issuer has registered, or intends to register, as a portal operator;

C. the minimum offering amount to be raised through the MNvest offering, and a written explanation of how the minimum offering amount will be used to implement the MNvest issuer's business plan;

2.1 D. the name and contact information of the escrow agent holding purchasers'
2.2 payments pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause (8);

2.3 E. a written affirmation that the MNvest issuer has ~~exercised reasonable care~~
2.4 ~~to confirm that it is not disqualified from making the MNvest offering under Minnesota~~
2.5 ~~Statutes, section 80A.461, subdivision 9;~~

2.6 (1) reviewed the disqualification provisions of Minnesota Statutes, section
2.7 80A.461, subdivision 9, paragraph (a); and

2.8 (2) undertaken the inquiries needed to establish, under Minnesota Statutes,
2.9 section 80A.461, subdivision 9, paragraph (b), clause (4), that the issuer has no reason to
2.10 know that a disqualification exists.

2.11 F. a copy of a disclosure document including all information required under
2.12 Minnesota Statutes, section 80A.461, subdivision 4;

2.13 G. a copy of a representative example of advertising used to promote the
2.14 MNvest offering or solicit prospective purchasers;

2.15 H. a copy of the MNvest issuer's balance sheet and income statement made
2.16 available to prospective purchasers pursuant to Minnesota Statutes, section 80A.461,
2.17 subdivision 3, clause (4); and

2.18 I. any other information the administrator may reasonably require to determine
2.19 the MNvest issuer's compliance with Minnesota Statutes, section 80A.461.

2.20 Subp. 2. **Fees.** Notice filing fee payments made pursuant to Minnesota Statutes,
2.21 section 80A.461, subdivision 3, clause (11), item (iii), are nonrefundable. Fee payments
2.22 must be made payable to the Department of Commerce.

2.23 Subp. 3. **Incomplete filings.** A notice filing that does not contain all information
2.24 required by this part and by Minnesota Statutes, section 80A.461, subdivision 3, clause
2.25 (11), or that does not include a correct fee payment, is incomplete and ineffective.

3.1 Subp. 4. **Effective period.** ~~Except while a stop order is in effect under Minnesota~~
3.2 ~~Statutes, section 80A.48, paragraph (a), a complete notice filing made for purposes of~~
3.3 ~~Minnesota Statutes, section 80A.461, subdivision 3, clause (11), automatically becomes~~
3.4 ~~effective ten days after receipt by the administrator and remains effective for one year~~
3.5 ~~following the date of effectiveness. The effective period of the offering begins ten days~~
3.6 ~~after the notice filing is received by the administrator. The effective period ends on the~~
3.7 ~~earlier of the following occurrences:~~

3.8 A. on the expiration date of the offering as stipulated in the MNvest disclosure
3.9 documents; or

3.10 B. at the point when the offering fails to meet any of the MNvest exemption
3.11 requirements.

3.12 Subp. 5. **Post effective amendments.**

3.13 A. After a MNvest notice filing has become effective, ~~and while the MNvest~~
3.14 ~~offering is still in progress, and throughout the effective period of the offering,~~ the MNvest
3.15 issuer must amend or supplement the information required by subpart 1 as necessary so
3.16 that the documents provided by the MNvest issuer does do not make any untrue statement
3.17 of a material fact, or omit to state a material fact necessary in order to make the statement
3.18 made, in light of the circumstances under which it is made, not misleading.

3.19 B. A copy of the amended documents required by item A as changed, revised,
3.20 or supplemented and clearly marked to show changes from the previously filed version
3.21 must be filed with the administrator not more than ten days after the amendment occurs.
3.22 No additional fee is required for amendment filings made under this subpart.

3.23 C. If amendments are made to the disclosure document required under
3.24 Minnesota Statutes, section 80A.461, subdivision 3, clause (11), item (ii), the MNvest
3.25 issuer must direct the portal operator facilitating the MNvest offering to:

4.1 (1) make the amended disclosure document available to all prospective
4.2 purchasers in the MNvest offering; and

4.3 (2) deliver the amended disclosure document to all purchasers who have
4.4 already invested in the MNvest offering.

4.5 **2876.3051 ESCROW AND IMPOUNDMENT.**

4.6 A MNvest issuer must comply with the escrow requirements found in Minnesota
4.7 Statutes, section 80A.461, subdivision 3, clause (8). The escrow and impoundment of
4.8 funds is subject to the following:

4.9 A. All funds from purchasers of a MNvest offering must be deposited in the
4.10 depository impound account controlled by the escrow agent within three business days
4.11 after receipt by the MNvest issuer.

4.12 B. All purchaser funds must remain in escrow until the earliest of the following:

4.13 (1) the total amount deposited with the escrow agent reaches at least the
4.14 minimum offering amount set by the MNvest issuer;

4.15 (2) twelve months have expired from the effective date of the MNvest
4.16 offering without the minimum offering amount having been deposited with the escrow
4.17 agent; or

4.18 (3) the MNvest offering reaches the stipulated expiration date set by the
4.19 MNvest issuer pursuant to Minnesota Statutes, section 80A.461, subdivision 4, clause (2),
4.20 without the minimum offering amount having been deposited with the escrow agent.

4.21 C. If the MNvest issuer does not raise the minimum offering amount by the
4.22 earlier of 12 months from the effective date of the MNvest offering or the stipulated
4.23 expiration date, the MNvest issuer must immediately notify the escrow agent that funds
4.24 received from each purchaser and held in escrow for the MNvest offering must be
4.25 refunded in full to the purchasers.

5.1 D. When the minimum offering amount for a MNvest offering is deposited with
5.2 the escrow agent, the MNvest issuer must issue securities to purchasers of the MNvest
5.3 offering within five days of the MNvest issuer's receipt of funds released from escrow
5.4 for the MNvest offering.

5.5 **2876.3052 RECORDS RETENTION REQUIREMENTS FOR MNVEST ISSUERS.**

5.6 MNvest issuers must retain records related to MNvest offerings made pursuant to
5.7 Minnesota Statutes, section 80A.461, for five years after the close of the MNvest offering.
5.8 Retained records must include a copy of the following:

5.9 A. the MNvest notice form and accompanying documents filed with the
5.10 administrator as part of the MNvest issuer's initial notice filing, and any subsequently
5.11 amended MNvest notice forms and documents filed with the administrator;

5.12 B. records of all purchaser payments deposited into the escrow impound
5.13 account, including information on when the payments were either released to the MNvest
5.14 issuer or refunded to the purchaser;

5.15 C. records of all written communications sent to or received from purchasers in
5.16 a MNvest offering while the offering is ongoing;

5.17 D. records of all agreements and compensation arrangements made between the
5.18 MNvest issuer and the portal operator through which the MNvest issuer's securities are
5.19 offered, including copies of written contracts and all amendments thereto;

5.20 E. records of all escrow agreements between the escrow agent, the MNvest
5.21 issuer, and, if applicable, the portal operator through which the MNvest issuer's securities
5.22 are offered, including copies of written contracts and all amendments thereto; and

5.23 F. all records used to establish compliance with Minnesota Statutes, section
5.24 80A.461, subdivision 9.

6.1 **2876.3053 PORTAL OPERATOR REGISTRATION.**

6.2 Subpart 1. **Form and submission.** A portal operator registration application made
6.3 pursuant to Minnesota Statutes, section 80A.461, must be filed on a MNvest portal
6.4 operator registration form, available on the Department of Commerce Web site or upon
6.5 request from the administrator. The portal operator registration form must be mailed or
6.6 delivered electronically to the administrator, along with the appropriate fee, at the address
6.7 listed on the MNvest portal operator registration form. Information provided on or with
6.8 the MNvest portal operator registration form must include, at minimum, the following:

6.9 A. the names, contact information, and titles of all control persons of the portal
6.10 operator;

6.11 B. the Web addresses of the MNvest portal;

6.12 C. documentation meeting the requirements of Minnesota Statutes, section
6.13 80A.461, subdivision 7, paragraph (a), clause (2);

6.14 D. information as to whether the portal operator is, or intends to be, a MNvest
6.15 issuer;

6.16 E. information as to whether control persons of the MNvest portal are agents,
6.17 representatives, or control persons of another portal operator, a broker-dealer, or an
6.18 investment adviser and, if applicable, the names and Central Registration Depository
6.19 (CRD) or Investment Adviser Registration Depository (IARD) numbers of each portal
6.20 operator, broker-dealer, or investment adviser so associated with each control person of
6.21 the MNvest portal;

6.22 F. a written explanation of the portal operator's use of a third party's software
6.23 program or other services in developing, operating, or maintaining the MNvest portal;

7.1 G. a written explanation of the steps taken by the portal operator to verify the
7.2 Minnesota residency of individuals purchasing securities through the MNvest portal
7.3 pursuant to Minnesota Statutes, section 80A.461, subdivision 6, clause (3), item (i);

7.4 H. a written explanation as to how the portal operator calculates and collects
7.5 fees pursuant to Minnesota Statutes, section 80A.461, subdivision 7, paragraph (c),
7.6 clause (3); and

7.7 I. any other information the administrator may reasonably require to determine
7.8 the portal operator's compliance with Minnesota Statutes, section 80A.461.

7.9 Subp. 2. **Fees.** A person filing a MNvest registration form with the department shall
7.10 include a nonrefundable \$200 fee, made payable to the Department of Commerce. A
7.11 MNvest registration form submitted to the department without the correct fee payment
7.12 will not be reviewed by the department, and will remain ineffective and incomplete until
7.13 the correct fee is submitted.

7.14 Subp. 3. **Effectiveness of registration.** A portal operator registration does not
7.15 become effective until the administrator has declared the registration effective.

7.16 Subp. 4. **Incomplete applications.** A portal operator registration application that
7.17 does not contain all information required by this part and by Minnesota Statutes, section
7.18 80A.461, subdivision 7, paragraph (a), or that does not include a correct fee payment,
7.19 is incomplete. A registration application that remains incomplete 45 days after the
7.20 administrator notifies the applicant of the reason for incompleteness is deemed denied
7.21 effective on the 46th day after the administrator's notification.

7.22 Subp. 5. **Post effective amendments.**

7.23 A. After a portal operator registration has been declared effective, the portal
7.24 operator shall amend or supplement the MNvest registration form to contain further

material information, if any, necessary to make the information in the MNvest registration form not misleading or incorrect.

B. A copy of the MNvest registration form as changed, revised, or supplemented and clearly marked to show changes from the previously filed version must be filed with the administrator.

Subp. 6. Registration renewal. To renew a portal operator registration, the portal operator must submit a MNvest portal operator registration form marked to indicate it is an application for renewal, along with the fee required by Minnesota Statutes, section 80A.461, subdivision 7, paragraph (b), to the administrator at least 15 days prior to the expiration of the portal operator's registration. Unless an order is in effect under Minnesota Statutes, section 80A.67, a complete application for renewal of a portal operator registration automatically becomes effective 16 days after the administrator receives the renewal application, or immediately upon the expiration of the portal operator's existing registration, whichever occurs later.

~~Subp. 7. Sales report. The portal operator must provide to the administrator upon request a final sales report of an offering or offerings completed through the portal. A sales report must contain, at a minimum, the total amount raised through the offerings; the number of investors that purchased securities through the offerings; and whether, if funds were held in escrow, the funds were released to the MNvest issuer.~~

2876.3054 REPORTING REQUIREMENTS.

Subpart 1. Offerings reports. MNvest issuers and portal operators must provide to the administrator upon request a report of a MNvest offering or MNvest offerings occurring or completed in reliance on Minnesota Statutes, section 80A.461. The report must be provided to the administrator within 30 days of the administrator's request, or at a sooner date specified by the administrator.

9.1 Subp. 2. **Contents of issuer reports.** Reports requested from MNvest issuers
9.2 pursuant to this part must contain:

- 9.3 A. the minimum offering amount set by the MNvest issuer for a MNvest offering;
- 9.4 B. the total amount of money raised through the MNvest offering;
- 9.5 C. the name and address of each purchaser involved in the MNvest offering;
- 9.6 D. the amount of money raised from each individual purchaser in the MNvest
9.7 offering; and
- 9.8 E. confirmation as to whether and when purchasers' funds held in escrow for the
9.9 MNvest offering were released to the MNvest issuer or returned to purchasers.

9.10 Subp. 3. **Contents of portal operator reports.** Reports requested from portal
9.11 operators pursuant to this part must contain, for each MNvest offering conducted through
9.12 the MNvest portal in the requested period:

- 9.13 A. all of the information required in subpart 2, items A to D; and
- 9.14 B. the date the portal operator received from each purchaser the certification
9.15 required under Minnesota Statutes, section 80A.461, subdivision 5.

9.16 **2876.3055 PROTECTION OF PURCHASER INFORMATION.**

9.17 Subpart 1. **Cybersecurity policy.**

9.18 A. Portal operators and MNvest issuers must take reasonable steps to ensure
9.19 that purchasers' financial and personal information is properly secured. Reasonable steps
9.20 include, at a minimum, ~~the development and implementation of a written cybersecurity~~
9.21 ~~policy that outlines the MNvest issuer's or portal operator's policies and procedures for~~
9.22 ~~preventing and responding to cybersecurity attacks and data breaches resulting in the~~
9.23 ~~disclosure or potential disclosure of purchasers' confidential or personally identifiable~~
9.24 ~~information.~~

10.1 (1) preventing cybersecurity attacks that result in the disclosure, or
10.2 potential disclosure, of purchasers' confidential or personally identifiable information;

10.3 (2) preventing data breaches that result in the disclosure, or potential
10.4 disclosure, of purchasers' confidential or personally identifiable information;

10.5 (3) responding to a cybersecurity attack or data breach that occurs; and

10.6 (4) demonstrating the issuer's implementation of the written cybersecurity
10.7 policy.

10.8 B. The cybersecurity policy required in item A must specifically include the
10.9 MNvest issuer's or portal operator's procedures to establish compliance with Minnesota
10.10 Statutes, section 325E.61.

10.11 C. MNvest issuers and portal operators must publish the cybersecurity policy
10.12 required by this subpart on the portal operator's or MNvest issuer's Web site, with a
10.13 prominent link to the cybersecurity policy on the Web site's homepage.

10.14 **Subp. 2. Reporting of a cybersecurity attack or data breach.** MNvest issuers and
10.15 portal operators must report to the administrator any action taken by the MNvest issuer or
10.16 portal operator to meet the reporting requirements of Minnesota Statutes, section 325E.61.

10.17 A. The report sent to the administrator must not include any confidential or
10.18 personally identifiable information of those individuals whose data were improperly
10.19 accessed or acquired, unless the information is requested by the administrator. The report
10.20 must include:

10.21 (1) a general description of the type of data that were accessed or acquired;

10.22 (2) the number of individuals whose data were improperly accessed or
10.23 acquired; and

10.24 (3) a description of the steps taken by the MNvest issuer or portal operator
10.25 to notify the individuals whose data were improperly accessed or acquired.

11.1 B. The report must be mailed or sent electronically to the administrator within
11.2 60 days of the MNvest issuer's or portal operator's discovery of the cybersecurity attack
11.3 or data breach.

11.4 **2876.3056 LIMITS ON AVAILABILITY.**

11.5 Minnesota Statutes, section 80A.461, is not available for the following types of
11.6 offerings:

11.7 A. offerings involving petroleum exploration or production, mining, or other
11.8 extractive industries;

11.9 B. offerings relating to investments in virtual, digital, or crypto currencies;

11.10 C. offerings conducted concurrently through multiple MNvest portals;

11.11 D. offerings involving an investment company as defined and classified under
11.12 Section 4 of the Investment Company Act of 1940; and

11.13 E. offerings in which it is proposed to issue stock or other equity interest in an
11.14 entity that has not yet defined its business operations, has no business plan, has no stated
11.15 investment goal for the funds being raised, or plans to engage in a merger or acquisition
11.16 with an unspecified business entity.

11.17 **2876.3057 RESTRICTIONS ON RESALE.**

11.18 Securities offered under Minnesota Statutes, section 80A.461, have not been
11.19 registered under federal or state securities laws and, therefore, cannot be resold unless
11.20 the securities are registered or qualified for an exemption from registration under federal
11.21 and state law. In addition, MNvest issuers shall make the disclosures required by Code of
11.22 Federal Regulations, title 17, section 230.147 (f).

11.23 **2876.3058 INVESTOR RIGHT OF CANCELLATION.**

11.24 In an offering conducted under Minnesota Statutes, section 80A.461, an investor may
11.25 cancel an investment commitment for any reason until such time as the target minimum

12.1 offering amount identified in the MNvest notice form corresponding with the offering and
12.2 filed with the administrator has been raised.

12.3 **2876.3059 ANTIFRAUD PROVISION.**

12.4 ~~Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not~~
12.5 ~~exempt any person, including control persons and employees of MNvest issuers and portal~~
12.6 ~~operators, from the antifraud provisions of Minnesota Statutes, section 80A.68, and do not~~
12.7 ~~provide relief from any other provisions of the Minnesota Securities Act or Minnesota~~
12.8 ~~Statutes, chapter 45, other than as expressly stated. Nothing in this chapter exempts any~~
12.9 ~~person from any antifraud provisions of Minnesota Statutes, chapter 80A.~~

12.10 **2876.3060 RESTRICTIONS ON USE OF THE TERM "MNVEST."**

12.11 Subpart 1. **Web site addresses.** The word "MNvest" must not be used in an Internet
12.12 URL address or domain name:

12.13 A. owned by a portal operator or MNvest issuer; or

12.14 B. that automatically redirects a prospective purchaser to a MNvest portal. In
12.15 addition, no MNvest portal shall hold itself out as being the "official" MNvest portal,
12.16 the "only" MNvest portal, or otherwise describe itself using words of similar import, as
12.17 determined by the administrator.

12.18 Subp. 2. **Misrepresentations regarding recommendations or endorsements.** A
12.19 person shall not make any representation, or use any device, title, descriptive name, or
12.20 identifier that has the tendency or capacity to confuse or mislead a Minnesota resident to
12.21 believe that a MNvest issuer, MNvest offering, or MNvest portal is endorsed, sponsored,
12.22 sanctioned, or recommended by MNvest.