SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 2563

1.1   A bill for an act

1.2   relating to securities; establishing an Intrastate Securities Exchange Act; proposing
1.3   coding for new law in Minnesota Statutes, chapter 80A.

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

1.5   Section 1. **[80A.462] INTRASTATE SECURITIES EXCHANGE ACT.**

1.6   Subdivision 1. **Definitions.** (a) "Intrastate offering exemption" means the exemptions

1.7   described in sections 80A.461, 80A.50, 80A.52, or any other exemption from federal

1.8   securities regulation under United States Code, title 15, section 77c(a)(11), and Code of

1.9   Federal Regulations, title 17, part 230.147A.

1.10   (b) "MNtrade business" means a qualifying entity under this section that has conducted

1.11   an intrastate offering exemption and has engaged a MNtrade exchange to list its securities.

1.12   (c) "MNtrade exchange" means a person that is (1) a broker-dealer, (2) exempt from

1.13   federal registration under section 15(a)(1) of the Securities Exchange Act of 1934, United

1.14   States Code, title 15, section 78O, or (3) a transfer agent that provides a service to facilitate

1.15   a market at which transactions in securities of MNtrade businesses are sold or offered for

1.16   sale in Minnesota under an intrastate offering exemption.

1.17   (d) "Online" means functioning on or over the Internet.

1.18   (e) "Personal identifying information" means any information used to locate or accurately

1.19   categorize an individual, household, or business.

1.20   (f) "Resident of Minnesota" means one of the following, as applicable:

2.1   (1) if a person is an individual, the person's principal residence is located in Minnesota;

2.2   or

2.3   (2) a business meeting the requirements of subdivision 6, paragraph (b), clause (2).

2.4   (g) "Service" means (1) to include securities issued by a person in or on a MNtrade

2.5   exchange for sale, or (2) to assist in facilitating securities transactions in or on a MNtrade

2.6   exchange.

2.7   (h) "Transfer agent" means a person registered under Code of Federal Regulations, title

2.8   12, section 341.

2.9   Subd. 2. **Registration required.** (a) A person is prohibited from transacting business

2.10   in Minnesota as a MNtrade exchange unless the person is registered as a MNtrade exchange

2.11   under this section.

2.12   (b) A person must register as a MNtrade exchange by filing a written application with

2.13   the administrator and paying the fee specified under subdivision 3. If a person complies

2.14   with this section and demonstrates by clear and convincing evidence that the person meets

2.15   the requirements for registration under this section, the administrator must register that

2.16   person as a MNtrade exchange. If a person fails to provide clear and convincing evidence

2.17   that the person meets the requirements for registration, the registration of the person remains

2.18   at the discretion of the administrator.

2.19   (c) An application for registration as a MNtrade exchange must contain:

2.20   (1) the names, mailing addresses, and telephone numbers of all individuals serving as

2.21   executive officers of the MNtrade exchange or who are direct or indirect owners with at

2.22   least a ten percent ownership interest in the MNtrade exchange;

2.23   (2) the uniform resource locator (URL) used by the MNtrade exchange to effect

2.24   transactions online; and

2.25   (3) any other information the administrator requests that is necessary to make a

2.26   determination regarding MNtrade exchange registration under this section.

2.27   (d) If the information contained in an application filed under this subdivision is or

2.28   becomes inaccurate or incomplete in any material respect, the registrant must promptly file

2.29   a corrective amendment.

2.30   (e) A MNtrade exchange registration expires 12 months from the date the administrator

2.31   approves the applicant as a MNtrade exchange. Subsequent registration for the succeeding

2.32   12-month period must be issued upon written application and upon payment of the renewal

3.1 fee, without filing additional statements or furnishing additional information unless

3.2 specifically requested by the administrator.

3.3   Subd. 3. **Filing fees.** (a) A person must pay a fee of $500 when initially filing an

3.4 application to register as a MNtrade exchange. A person must pay a fee of $250 when filing

3.5 to renew registration as a MNtrade exchange.

3.6   (b) If an initial or renewal registration application is denied or withdrawn, the

3.7 administrator must retain all of the filing fee for the denied or withdrawn application.

3.8   Subd. 4. **Records; examination or inspection; report.** (a) A MNtrade exchange that

3.9 is registered or is required to register under this section must (1) make a written or electronic

3.10 record of each transaction conducted between users through the MNtrade exchange, (2)

3.11 maintain the record for at least seven years after the date of the transaction, and (3) provide

3.12 a written or electronic copy of the record for the transaction to each user involved in the

3.13 transaction.

3.14   (b) In addition to the records required under paragraph (a), a MNtrade exchange that is

3.15 registered or is required to register under this section must make and maintain the accounts,

3.16 correspondence, memoranda, papers, books, and other records required by the administrator.

3.17 A MNtrade exchange must maintain the records in a form of data storage the administrator

3.18 deems acceptable.

3.19   (c) The records of a MNtrade exchange that is registered or is required to register under

3.20 this section are subject to reasonable periodic, special, or other examinations or inspections

3.21 by a representative of the administrator, as the administrator deems necessary or appropriate

3.22 in the public interest and to protect investors. An examination or inspection may be made

3.23 with reasonable notice to the MNtrade exchange. The administrator may reasonably request

3.24 paper or electronic copies and remove from the premises, for examination or inspection,

3.25 copies of all records the administrator reasonably considers necessary or appropriate to

3.26 conduct the examination or inspection.

3.27   (d) At the request of the administrator, the MNtrade exchange must file a report with

3.28 the administrator that includes a record of each transaction the MNtrade exchange effected

3.29 in the preceding calendar year.

3.30   Subd. 5. **Registration application; notice of filing; duties of administrator; factors**

3.31 **to be considered; order; sanctions; discipline; proceeding.** (a) When the administrator

3.32 receives an application for registration as a MNtrade exchange, the administrator must

3.33 within 20 days after the date of receipt of the notice:

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4.1   (1) if the administrator finds this section's requirements are satisfied, issue an order

4.2   granting registration; or

4.3   (2) if paragraph (a) is not met, issue an order that (1) denies registration, or (2) grants a

4.4   conditional or limited registration.

4.5   (b) A list of MNtrade exchanges must be made available to the public on the

4.6   administrator's website.

4.7   Subd. 6. **Servicing; requirements.** (a) A MNtrade exchange must not service a MNtrade

4.8   business if the MNtrade business has already used and has not terminated the services of a

4.9   MNtrade exchange. The MNtrade business must not be, or request to be, serviced on two

4.10   or more MNtrade exchanges at any given time.

4.11   (b) A MNtrade exchange must service only a MNtrade business if the MNtrade business,

4.12   at the time of any offer and sale, has its principal place of business in Minnesota and does

4.13   business within Minnesota. The MNtrade business is deemed to have its principal place of

4.14   business in Minnesota if the officers, partners, or managers of the MNtrade business primarily

4.15   direct, control, and coordinate the activities of the MNtrade business from within Minnesota.

4.16   The MNtrade business is deemed to be doing business in Minnesota if the MNtrade business

4.17   is doing business in Minnesota at the time the business conducts any offers, sales, or reselling

4.18   of its intrastate securities. For purposes of this paragraph, a business is considered to be

4.19   doing business in Minnesota if all of the following are met:

4.20   (1) the MNtrade business derived at least 80 percent of its consolidated gross revenues

4.21   from operating a business or real property located in Minnesota or from rendering services

4.22   within Minnesota. Revenues must be calculated based on the MNtrade business's most

4.23   recent fiscal year, if the first offer of securities under this section is made during the first

4.24   six months of the MNtrade business's current fiscal year, and based on the first six months

4.25   of the MNtrade business's current fiscal year or during the 12-month fiscal period ending

4.26   with the six-month period, if the first offer of securities under this section is made during

4.27   the last six months of the MNtrade business's current fiscal year;

4.28   (2) the MNtrade business had, at the end of its most recent semiannual fiscal period prior

4.29   to an initial offer of securities, at least 80 percent of its assets and the assets of its subsidiaries

4.30   on a consolidated basis located within Minnesota;

4.31   (3) if the MNtrade business has conducted an intrastate offering exemption, it intends

4.32   to use and uses at least 80 percent of the net proceeds to the MNtrade business from sales

4.33   made pursuant to Code of Federal Regulations, title 17, part 230.147A, in connection with

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5.1   operating a business or real property in Minnesota, purchasing real property located in

5.2   Minnesota, or rendering services in Minnesota; or

5.3   (4) a majority of the MNtrade business's employees are based in Minnesota.

5.4   (c) A MNtrade business must not be insolvent. For purposes of this paragraph, "insolvent"

5.5   means:

5.6   (1) the business's liabilities exceed its assets;

5.7   (2) the business is unable to pay its debts as the debts mature; or

5.8   (3) the business has filed for bankruptcy or made an assignment for the benefit of

5.9   creditors.

5.10   (d) A MNtrade business must not be subject to a current or pending disciplinary court

5.11   order or injunctions.

5.12   (e) A MNtrade business must not be a defendant in a pending court proceeding.

5.13   (f) A MNtrade business must comply with the laws of Minnesota applicable to the

5.14   conduct of its business.

5.15   Subd. 7. **MNtrade business required information.** The MNtrade business must provide

5.16   and the MNtrade exchange must make available the following information:

5.17   (1) the exact name of the MNtrade business and its predecessor, if any;

5.18   (2) the name of the chief executive officer and members of the board of directors;

5.19   (3) the address of its principal executive offices;

5.20   (4) the state of incorporation, if the MNtrade business is a corporation;

5.21   (5) the nature of the business, including products or services offered;

5.22   (6) the nature and extent of the MNtrade business facilities;

5.23   (7) the exact title and class of the security;

5.24   (8) the par or stated value of the security;

5.25   (9) the number of shares or total amount of the securities outstanding as of the end of

5.26   the MNtrade business's most recent fiscal year;

5.27   (10) the name and address of the transfer agent;

5.28   (11) the issuer's most recent balance sheet, profit and loss statement, and retained earnings

5.29   statement;

6.1   (12) similar financial information for the parts of the two preceding fiscal years the

6.2   issuer or its predecessor have been in existence;

6.3   (13) whether the MNtrade exchange or any associated person is directly or indirectly

6.4   affiliated with the issuer; and

6.5   (14) whether the quote is being submitted or published directly or indirectly on behalf

6.6   of the MNtrade business, or any director, officer, or person that is directly or indirectly the

6.7   beneficial owner of more than ten percent of the outstanding units or shares of any equity

6.8   security of the issuer, and, if so, the name of the person.

6.9   Subd. 8. **Prohibited conduct.** (a) A MNtrade exchange must not charge a fee for a

6.10   securities transaction conducted through the MNtrade exchange that exceeds five percent

6.11   of the transaction's value, as determined by the value passed from seller to purchaser in

6.12   exchange for the security.

6.13   (b) A MNtrade exchange must (1) provide disclaimers and restrictive legends that

6.14   conspicuously state the MNtrade exchange's transactions are limited to residents of Minnesota

6.15   under section 3(a)(11) of the Securities Act of 1933, United States Code, title 15, section

6.16   77c, and (2) limit access to information regarding specific investment opportunities to

6.17   individuals who confirm they are residents of Minnesota.

6.18   (c) At its sole discretion, a MNtrade exchange may elect to not effect any transaction

6.19   that, in the opinion of the MNtrade exchange, is severely adverse or unconscionable as it

6.20   relates to a party involved in the transaction.

6.21   Subd. 9. **Individual shown to be out-of-state resident; prima facie evidence of**

6.22   **residency.** (a) An individual's participation in a MNtrade exchange in Minnesota is

6.23   considered a representation that the individual is a resident of Minnesota. If it is later

6.24   determined that an individual that participated in a MNtrade exchange was not a resident

6.25   of Minnesota at the time the individual participated in a MNtrade exchange, any transaction

6.26   conducted by the individual while the individual was not a resident of Minnesota is void.

6.27   (b) For purposes of this section, each of the following is prima facie evidence that an

6.28   individual is a resident of Minnesota:

6.29   (1) a valid operator's license, chauffeur's license, or official personal identification card

6.30   issued in Minnesota;

6.31   (2) a current Minnesota voter registration; and

6.32   (3) evidence that the individual occupies a primary residence in Minnesota.

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