

Introduced by

Industry, Business and Labor Committee

(At the request of the Securities Commissioner)

1 A BILL for an Act to amend and reenact sections 10-04-02 and 10-04-03, subsections 3, 5,
2 and 12 of section 10-04-05, section 10-04-06, subsection 3 of section 10-04-07, subsections 2
3 and 3 of section 10-04-07.1, sections 10-04-08 and 10-04-10, subsection 4 of
4 section 10-04-10.3, subsection 1 of section 10-04-11, sections 10-04-14 and 10-04-16,
5 subsection 1 of section 10-04-16.1, subsection 3 of section 10-04-17, and subsection 1 of
6 section 10-04-18 of the North Dakota Century Code, relating to definitions under the Securities
7 Act, the authority of the securities commissioner and the securities department, securities
8 exemptions, exempt transactions, registration of securities, registration of dealers, agents,
9 investment advisors and investment advisor representatives, post-registration requirements,
10 consent to service of process, orders and injunctions, investigations by the securities
11 department, rescission, and penalties; to repeal section 10-04-10.2 of the North Dakota
12 Century Code, relating to eligibility to be registered under the Securities Act; to provide a
13 penalty; and to declare an emergency.

14 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

15 **SECTION 1. AMENDMENT.** Section 10-04-02 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **10-04-02. Definitions.** When used in this chapter, unless the context or subject matter
18 otherwise requires:

19 1. "Agent" means any individual, other than a dealer, who represents a dealer or an
20 issuer or is self-employed in effecting or attempting to effect purchases or sales of
21 securities. "Agent" does not include an individual who represents an issuer in
22 effecting transactions in a covered security as described in section 18(b)(3) and
23 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this

state limited to those transactions described in section 15(h)(2) of the Securities Act of 1934.

2. "Commissioner" means the securities commissioner of this state.

3. "Dealer" means a person, other than an agent, engaged in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account. The term does not include a bank or savings institution if its activities as a dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities Act of 1934 or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Act of 1934.

4. "Department" means the state securities department.

5. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

~~5-~~ 6. "Federal covered security" means any security that is a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.

~~6-~~ 7. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, 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" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

- a. An investment adviser representative.
- b. A bank, savings institution, or trust company.
- c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.

- d. A broker or dealer or its agent whose performance of these services is solely incidental to the conduct of business as a broker or dealer and who receives no special compensation for them.
- e. A publisher of any bona fide 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.
- f. A federal covered adviser.
- g. A person who is exempted from the federal definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.
- h. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

~~7.~~ 8. "Investment adviser representative" means:

- a. With respect to an investment adviser, any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual who is either employed by or associated with an investment adviser who is registered or required to be registered under this chapter who:
 - (1) Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;
 - (2) Manages the accounts or portfolios of clients;
 - (3) Determines which recommendations or advice regarding securities should be given;
 - (4) Solicits, offers, or negotiates for the sale of or sells investment advisory services; or
 - (5) Immediately supervises employees in the performance of any of the foregoing.
- b. With respect to a federal covered adviser, any person who is an "investment adviser representative" who has a "place of business" in this state, as those

terms are defined by the securities and exchange commission pursuant to section 203A of the Investment Advisers Act of 1940.

c. "Investment adviser representative" does not include clerical or ministerial personnel.

~~8.~~ 9. "Issuer" means every person who issues or proposes to issue any security, except that:

a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.

c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.

d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

~~9.~~ 10. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, must be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:

- 1 a. The offer or grant is an offer or grant limited to directors, officers, or
2 employees of the issuer or a parent or subsidiary of the issuer;
3 b. No money or other tangible property is given for the option; and
4 c. The option, by its terms or by the terms of a supplemental agreement, is
5 nontransferable except by will or the laws of descent and distribution.

6 ~~40.~~ 11. "Person" means an individual, a corporation, a limited liability company, a
7 partnership, an association, a joint-stock company, a trust, or any other
8 unincorporated organization.

9 ~~44.~~ 12. "Registered agent" means an agent registered under this chapter.

10 ~~42.~~ 13. "Registered dealer" means a dealer registered under this chapter.

11 ~~43.~~ 14. "Sale" or "sell" means every sale or other disposition of a security or interest in a
12 security for value, and every contract to make any such sale or disposition. Any
13 security given or delivered with, or as a bonus on account of any purchase of
14 securities or any other thing, must be conclusively presumed to constitute a part of
15 the subject of such purchase and to have been sold for value.

16 ~~14.~~ ~~"Securities Act of 1933" means the Act of Congress known as the Securities Act of~~
17 ~~1933, as now or hereafter amended.~~

18 15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of
19 indebtedness; certificate of interest or participation in any profit-sharing agreement;
20 certificate of interest or participation in an oil, gas, or mining title or lease or in
21 payments out of production under such a title or lease; collateral trust certificate;
22 preorganization certificate or subscription; transferable share; investment contract;
23 viatical settlement contract or a fractionalized or pooled interest therein; program,
24 contract, or other arrangement in which persons invest in a common enterprise the
25 returns of which depend to any extent upon inducing other persons to participate
26 or invest in the enterprise; investment of money or money's worth including goods
27 furnished or services performed in the risk capital of a venture with the expectation
28 of profit or some other form of benefit to the investor when the investor has no
29 direct control over the investment or policy decisions of the venture; voting-trust
30 certificate; certificate of deposit for a security; foreign currency commodity contract,
31 as used in chapter 51-23; or beneficial interest in title to property, profits, or

earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

16. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement contract" does not include:

- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter 26.1-33.2;
- b. The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
- c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

SECTION 2. AMENDMENT. Section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

10-04-03. Administration of chapter.

1. The state securities department is under the supervision of a chief officer designated as the securities commissioner. The securities commissioner must be appointed by the governor and confirmed by the senate and shall hold office for a term of four years, beginning on the first day of July following a national presidential election and continuing until a successor has been appointed, confirmed by the senate, and has qualified, unless removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner must be skilled in securities and may not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter and may not be

an officer, director, or employee of any dealer, salesman, investment adviser, or investment adviser representative required to be registered under this chapter.

The governor may remove from office any commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

It is the prime duty of the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used in the administration of this chapter. The commissioner may employ such employees as are necessary for the administration of this chapter. In the absence or disability of the commissioner, the deputy or designee of the commissioner shall administer the provisions of this chapter as acting commissioner.

2. The commissioner shall have authority to administer oaths in, and to prescribe forms for, all matters arising under this chapter. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary under this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, if the definitions are consistent with this chapter. The commissioner shall cooperate with the administrators of the securities laws of other states and of the United States with a view toward achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such law.

3. In addition to their regular compensation, the commissioner and the commissioner's employees shall be paid travel expenses necessary and actually incurred in the performance of their duties.

4. A special fund is established in the state treasury and designated as the investor education and technology fund. The commissioner may deposit the following moneys into the investor education and technology fund:

- 1 a. Payments for tuition or other costs associated with educational services or
2 materials provided by the department.
- 3 b. Grants or donations for the purpose of investor education received by the
4 commissioner from any public or private source.
- 5 c. Civil penalties assessed by the commissioner under the Securities Act of
6 1951, if the commissioner finds that:
- 7 (1) The violations or alleged violations underlying the assessment of civil
8 penalties involve repeat violations, involve numerous investors, or
9 appear to have been perpetrated on a systematic basis; and
- 10 (2) The violations or alleged violations underlying the assessment of civil
11 penalties could have been prevented or significantly curtailed had the
12 individual investors involved in the matter been more knowledgeable
13 about financial concepts in general, or about any specific laws,
14 practices, or procedures relating to the securities industry.

15 The commissioner shall maintain and administer the investor education and
16 technology fund. The moneys in the fund are appropriated to provide education
17 services to the public relating to any of the financial services industries, including
18 the securities industry, and to provide for the technology needs of the department,
19 including the purchase or rental of equipment or software, servicing of the
20 equipment or software, and training the commissioner's staff in the use of the
21 equipment or software.

- 22 5. All fees, civil penalties, or other moneys collected under this chapter must be
23 deposited in the general fund of the state treasury, except funds permitted to be
24 deposited into the investor education and technology fund under subsection 4 or
25 civil penalties collected from enforcement actions for the purpose of distribution to
26 aggrieved investors, which may be deposited in an the investor restitution fund;
27 ~~and all other civil penalties and moneys collected pursuant to an administrative~~
28 ~~action, court order or judgment, including investigation costs and attorney's fees in~~
29 ~~a securities action brought by the commissioner, must be deposited in the general~~
30 ~~fund.~~ Funds in the investor restitution fund are appropriated to the securities
31 commissioner on a continuing basis for distribution to aggrieved investors.

- 1 5- 6. The commissioner may honor requests from interested persons for the issuance of
2 a statement or opinion concerning the applicability of this chapter or the rules
3 adopted under this chapter to any transaction or proposed transaction which may
4 be subject to this chapter. Any such request must be accompanied by a
5 nonrefundable fee of one hundred fifty dollars.

6 **SECTION 3. AMENDMENT.** Subsections 3, 5, and 12 of section 10-04-05 of the North
7 Dakota Century Code are amended and reenacted as follows:

- 8 3. Securities issued by a building and loan association subject to supervision by an
9 agency of the state of North Dakota, or policy contracts, including variable ~~or fixed~~
10 annuity contracts, of an insurance company subject to supervision by an agency of
11 the state of North Dakota.
- 12 5. Any security issued by any person organized and operated not for private profit but
13 exclusively for religious, educational, benevolent, fraternal, charitable, social, or
14 reformatory purposes; provided that prior to any offer of such security each person
15 must meet the following conditions:
- 16 a. Apply for and obtain the written approval of the commissioner.
- 17 b. File an application, offering disclosure document, and pay a nonrefundable
18 filing fee of one hundred fifty dollars, which document and fee must
19 accompany the application.
- 20 c. File a notice identifying the basis of its qualification under this exemption with
21 such additional information as the commissioner may require.
- 22 d. ~~Must not pay a commission or other remuneration, directly or indirectly,~~
23 ~~except to a dealer and agent registered in this state in connection with the~~
24 ~~offer or sale of the security to a resident of this state.~~
- 25 e. Provide a copy of the offering disclosure document to each person to whom
26 an offer to sell or sale is made.

27 The approval is effective for a period of one year from the date of approval. At
28 least thirty days prior to the expiration date, there must be filed an application,
29 offering disclosure document, and a nonrefundable fee of one hundred dollars for
30 the renewal of the filing for additional periods of one year.

12. ~~Securities~~ Any security issued by a venture capital corporation or limited liability company organized under and operating in compliance with chapter 10-30.1; provided that prior to any offer of such security, the issuer must meet the following conditions:
- a. Apply for and obtain written approval by the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars. The document and fee must accompany the application.
 - c. File such additional information as the commissioner requires by rule or order or may subsequently request.
 - d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.
 - e. Not use public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, in connection with any offer or sale.
 - f. File a report of all offers and sales made in this state within thirty days after the completion of the offering.

The approval is effective for a period of one year from the date of approval. There must be filed, at least thirty days prior to the expiration date, an application, disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

SECTION 4. AMENDMENT. Section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

10-04-06. Exempt transactions. Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following transactions:

- 1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy.
- 2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt.

- 1 3. Any isolated sale of any security made by or on behalf of a bona fide owner for the
2 owner's account, such owner not being an issuer, underwriter, dealer, or agent and
3 such sale not being made in the course of repeated and successive transactions of
4 a like character. This subsection shall not exempt any dealer or agent participating
5 in an isolated sale from registering in accordance with section 10-04-10, nor shall
6 this exemption be available in connection with any sale not made in good faith but
7 rather for the purpose of evading the registration requirements imposed under
8 chapter 10-04.
- 9 4. Securities dividends or other distributions by a corporation, limited partnership,
10 limited liability limited partnership, or a limited liability company out of its earnings
11 or surplus, or the sale or distribution of additional capital stock of a corporation,
12 interest of a partnership, or membership interest of a limited liability company to or
13 among its own stockholders, partners, or members, including persons who at the
14 time of the transaction are holders of nontransferable warrants, or transferable
15 warrants exercisable within not more than ninety days of their issuance, when no
16 commission or other remuneration is paid or given directly or indirectly for soliciting
17 or effecting such sale or distribution to stockholders or members in this state.
- 18 5. Any offer or sale of securities to a bank, savings institution, trust company,
19 insurance company, investment company as defined in the Investment Company
20 Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial
21 institution, or qualified institutional buyer, or to a dealer, or any government or
22 political subdivision or instrumentality thereof, whether the purchaser is acting for
23 itself or in a fiduciary capacity.
- 24 6. Any transaction incident to a vote by stockholders, partners, or members pursuant
25 to the articles of incorporation, bylaws, partnership agreement, articles of
26 organization, member-control agreement, or the applicable corporation,
27 partnership, or limited liability company statute on a merger, consolidation,
28 reclassification of securities, or sale of corporate, partnership, or limited liability
29 company assets in consideration of the issuance of securities of another
30 corporation, partnership, or limited liability company, or any transaction incident to
31 a judicially approved reorganization in which a security is issued in exchange for

one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.

8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:

a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.

b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.

c. A balance sheet of the issuer as of a date within eighteen months prior to the date of such sale and an income statement for either the fiscal year preceding that date or the most recent year of operations are contained in a securities manual.

d. Such securities are listed in Standard and Poor's, Mergent's industrial manual, Mergent's bank and finance manual, Mergent's transportation manual, Mergent's public utility manual, or Fitch's individual stock bulletin.

e. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.

f. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.

9. a. Any transaction pursuant to an offer directed by the offeror to not more than thirty-five persons, other than those designated in subsection 5, in this state

1 during any period of twelve consecutive months, whether or not the offeror or
2 any of the offerees is then present in this state, if all of the following
3 conditions are met:

- 4 (1) The seller reasonably believes that all the buyers in this state, other
5 than those designated in subsection 5, are purchasing for investment.
6 (2) No commission or other remuneration is paid or given directly or
7 indirectly for soliciting any prospective buyer in this state, other than
8 those designated in subsection 5, except to a dealer and agent
9 registered in this state in connection with the offer or sale of the
10 security to a resident of this state.
11 (3) The offeror applies for and obtains the written approval of the
12 commissioner prior to making any offers in this state and pays a
13 nonrefundable filing fee of one hundred fifty dollars, which fee must
14 accompany the application for approval.

15 The commissioner may, as to any security or transaction or any type of
16 security or transaction, withdraw or further condition this exemption, or
17 increase or decrease the number of offerees permitted, or waive the condition
18 in paragraph 1.

- 19 b. Any offer or sale in this state of common stock, preferred stock, limited liability
20 company membership interests, or limited partnership interests of an issuer
21 during any period of twelve consecutive months if all of the following
22 conditions are met:

- 23 (1) The issuer reasonably believes that all the buyers in this state, other
24 than those designated in subsection 5, are purchasing for investment.
25 (2) No commission or other remuneration is paid or given directly or
26 indirectly for soliciting any prospective buyer in this state, other than
27 those designated in subsection 5, except reasonable and customary
28 commissions paid by the issuer to a dealer and agent registered in this
29 state in connection with the offer or sale of the security to a resident of
30 this state.

- 1 (3) The issuer is both organized under the laws of this state and has its
2 principal place of business in this state.
- 3 (4) No public advertising matter or general solicitation, except tombstone
4 advertisements approved by the commissioner, is used in connection
5 with any offers or sales.
- 6 (5) An offering disclosure document in the form approved by the
7 commissioner must be delivered to each offeree ~~no less than~~
8 ~~seventy-two hours~~ prior to the sale of the security.
- 9 (6) The gross proceeds of the offering may not exceed five million dollars.
- 10 (7) The issuer must apply for and obtain the written approval of the
11 commissioner prior to making any offer or sale in this state by filing an
12 application prescribed by the commissioner, a copy of the offering
13 disclosure document, and any other information or documents the
14 commissioner may require, together with a nonrefundable filing fee of
15 one hundred fifty dollars.
- 16 (8) All funds raised in the offering are placed in an escrow account until the
17 total offering amount has been sold.

18 The commissioner may withdraw or further condition this exemption or waive
19 the conditions in paragraphs 5 and 6.

- 20 c. The issuer must file a report of all offers and sales made in this state pursuant
21 to subdivision a or b on a form prescribed by the commissioner within thirty
22 days after the completion of the offering or expiration of the twelve-month
23 approval period, whichever occurs first.
- 24 d. The exemptions provided under subdivisions a and b may not be combined.
- 25 e. An exemption under this subsection is not available for the securities of any
26 issuer if the issuer or any promoter, officer, director, manager, partner, or
27 underwriter of the issuer:
- 28 (1) Has filed a registration statement that is the subject of a currently
29 effective registration stop order entered pursuant to any federal or state
30 securities law within five years prior to the filing of the application
31 required under this exemption.

- 1 (2) Has been convicted within five years prior to the filing of the application
2 required under this exemption of any felony or misdemeanor in
3 connection with the offer, purchase, or sale of any security or any
4 felony involving fraud or deceit, including forgery, embezzlement,
5 obtaining money under false pretenses, larceny, or conspiracy to
6 defraud.
- 7 (3) Is currently subject to any state administrative enforcement order or
8 judgment entered by any state securities administrator or the securities
9 and exchange commission within five years prior to the filing of the
10 application required under this exemption or is subject to any federal or
11 state administrative enforcement order or judgment in which fraud or
12 deceit, including making untrue statements of material facts, was found
13 and the order of judgment was entered within five years prior to the
14 filing of the application required under this exemption.
- 15 (4) Is subject to any federal or state administrative enforcement order or
16 judgment which prohibits, denies, or revokes the use of any exemption
17 from registration in connection with the offer, purchase, or sale of
18 securities.
- 19 (5) Is currently subject to any order, judgment, or decree of any court of
20 competent jurisdiction temporarily or preliminarily restraining or
21 enjoining, or is subject to any order, judgment, or decree of any court of
22 competent jurisdiction, permanently restraining or enjoining, such part
23 from engaging in or continuing any conduct or practice in connection
24 with the purchase or sale of a security or involving the making of any
25 false filing with any state or with the securities and exchange
26 commission entered within five years prior to the filing of the application
27 required under this exemption.
- 28 (6) Has been or is the subject of any order issued by the United States
29 postal service that was entered within five years prior to reliance on this
30 exemption and alleged any fraudulent or unlawful conduct.

f. Subdivision e does not apply if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption should not be denied.

10. The sale of capital stock of a corporation or membership interests of a limited liability company if the corporation or limited liability company is organized under the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated in North Dakota if the corporation or limited liability company is organized and operated for the primary purpose of promoting community development.

11. Any security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, a self-employed person's retirement plan, or similar benefit plan.

12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty one hundred dollars in connection with the transaction.

~~13. The sale of capital stock or membership interests of a venture capital corporation or limited liability company organized under chapter 10-30-1.~~

~~44.~~ Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.

~~45.~~ 14. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

~~46.~~ 15. a. An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus or

similar disclosure document for the security if all of the following conditions are satisfied:

- (1) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada; is engaged in or proposes to engage in a business other than petroleum exploration or production, mining, or other extractive industries; and is not a blind pool offering or other offering for which the specific business or properties cannot now be described.
- (2) The issuer may solicit indications of interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state unless the person who receives the commission or fee is registered as a dealer or agent in this state.
- (3) The issuer intends to register securities in this state, rely upon subsection 8 of section 10-04-05 for the issuance of a security, or receive approval for an exemption under subsection 5 of section 10-04-05 or subsection 9 of this section.
- (4) The issuer files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.
- (5) The issuer obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials, or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.

- (6) The issuer does not use any solicitation of interest form, script, advertisement, or other material which the issuer has been notified by the commissioner not to distribute, to solicit indications of interest.
- (7) Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days from the communication.
- (8) The issuer stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.
- (9) The issuer does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration or approval to offer and sell securities in this state.
- (10) The issuer does not make a sale until three days after delivery to the purchaser of a prospectus or similar disclosure document.
- (11) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer or any officer, director, manager, ten percent shareholder, promoter, partner, or agent of the issuer:
 - (a) Has been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration or use of any exemption from registration in connection with the offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery,

1 embezzlement, obtaining money under false pretenses, larceny,
2 conspiracy to defraud, or similar deceptive acts within five years
3 prior to the filing of the solicitation of interest form; or

4 (b) Has been convicted of any felony or misdemeanor involving the
5 offer, purchase, or sale of a security, franchise, commodity, or
6 financial transaction, or any felony or misdemeanor involving
7 fraud, deceit, forgery, embezzlement, conspiracy to defraud, or a
8 similar financial crime.

9 The prohibitions listed above shall not apply if the person subject to the
10 disqualification is duly licensed or registered to conduct
11 securities-related business in the state in which the administrative order
12 or judgment was entered against such person or if the dealer
13 employing such party is licensed or registered in this state and the form
14 B-D filed with this state discloses the order, conviction, judgment, or
15 decree relating to such person. A person disqualified under this
16 subsection may not act in a capacity other than that for which the
17 person is licensed or registered. Any disqualification caused by this
18 section is automatically waived if the agency, which created the basis
19 for disqualification, determines upon a showing of good cause that it is
20 not necessary under the circumstances that the exemption be denied.

21 b. The issuer shall comply with the requirements set forth below. Failure to
22 comply will not result in the loss of the exemption from the requirements of
23 section 10-04-04, but is a violation of this chapter, is actionable by the
24 commissioner under section 10-04-16, and constitutes grounds for denying or
25 revoking the exemption as to a specific security or transaction.

26 (1) Any published notice must contain at least the identity of the chief
27 executive officer of the issuer, a brief and general description of its
28 business and products, and the following legends:

29 (a) NO MONEY OR OTHER CONSIDERATION IS BEING
30 SOLICITED AND NONE WILL BE ACCEPTED;

- 1 (b) NO SALES OF THE SECURITIES WILL BE MADE OR
2 COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY
3 OF A PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT
4 THAT INCLUDES COMPLETE INFORMATION ABOUT THE
5 ISSUER AND THE OFFERING;
- 6 (c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE
7 INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT
8 OF ANY KIND; and
- 9 (d) THIS OFFER IS BEING MADE PURSUANT TO AN
10 EXEMPTION FROM REGISTRATION UNDER THE FEDERAL
11 AND STATE SECURITIES LAWS. NO SALE MAY BE MADE
12 UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE
13 SECURITIES AND EXCHANGE COMMISSION AND IS
14 REGISTERED OR APPROVED IN THIS STATE.
- 15 (2) Any script for broadcast must contain at least the identity of the chief
16 executive of the issuer, a brief description of its business and products,
17 its address and telephone number, and the following legends:
- 18 (a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND
19 INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND
20 UPON A PROSPECTIVE INVESTOR;
- 21 (b) NO MONEY OR OTHER CONSIDERATION IS BEING
22 SOLICITED; and
- 23 (c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM
24 REGISTRATION UNDER FEDERAL AND STATE SECURITIES
25 LAWS.
- 26 c. Offers made on reliance of this exemption will not result in a violation of
27 section 10-04-04 by virtue of being integrated with subsequent offers or sales
28 of securities unless such subsequent offers and sales would be integrated
29 under federal securities laws.
- 30 ~~47.~~ 16. An offer or sale of common stock, limited liability company membership interests,
31 or limited partnership interests by a person to a person or other subscribers, not

exceeding ten in number, for the sole purpose of organization in this state, if the securities are not acquired for the purpose of resale to others for a period of twelve months, advertising has not been published or circulated in connection with the offer or sale, and all sales are consummated within ten days after the date of organization.

~~48.~~ 17. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:

- a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
- b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
- c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.
- d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:
 - (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered

- 1 by any state securities administrator or the securities and
2 exchange commission;
- 3 (b) Within the last five years, has been convicted of any criminal
4 offense in connection with the offer, purchase, or sale of any
5 security, or involving fraud or deceit;
- 6 (c) Is currently subject to any state or federal administrative
7 enforcement order or judgment, entered within the last five years,
8 finding fraud or deceit in connection with the purchase or sale of
9 any security; or
- 10 (d) Is currently subject to any order, judgment, or decree of any court
11 of competent jurisdiction, entered within the last five years,
12 temporarily, preliminarily, or permanently restraining or enjoining
13 such party from engaging in or continuing to engage in any
14 conduct or practice involving fraud or deceit in connection with
15 the purchase or sale of any security.
- 16 (2) Paragraph 1 does not apply if:
- 17 (a) The party subject to the disqualification is licensed or registered
18 to conduct securities-related business in the state in which the
19 order, judgment, or decree creating the disqualification was
20 entered against such party;
- 21 (b) Before the first offer under this exemption, the state securities
22 administrator, or the court or regulatory authority that entered the
23 order, judgment, or decree, waives the disqualification; or
- 24 (c) The issuer establishes that it did not know and in the exercise of
25 reasonable care, based on a factual inquiry, could not have
26 known that a disqualification existed under this subdivision.
- 27 e. (1) A general announcement of the proposed offering may be made by any
28 means.
- 29 (2) The general announcement must include only the following information,
30 unless additional information is specifically permitted by the
31 commissioner:

- 1 (a) The name, address, and telephone number of the issuer of the
2 securities;
- 3 (b) The name, a brief description, and price, if known, of any security
4 to be issued;
- 5 (c) A brief description of the business of the issuer in twenty-five
6 words or less;
- 7 (d) The type, number, and aggregate amount of securities being
8 offered;
- 9 (e) The name, address, and telephone number of the person to
10 contact for additional information; and
- 11 (f) A statement that:
 - 12 [1] Sales will only be made to accredited investors;
 - 13 [2] No money or other consideration is being solicited or will
14 be accepted by way of this general announcement; and
 - 15 [3] The securities have not been registered with or approved
16 by any state securities agency or the securities and
17 exchange commission and are being offered and sold
18 pursuant to an exemption from registration.
- 19 f. The issuer, in connection with an offer, may provide information in addition to
20 the general announcement under subdivision e, if such information:
 - 21 (1) Is delivered through an electronic data base that is restricted to persons
22 who have been prequalified as accredited investors; or
 - 23 (2) Is delivered after the issuer reasonably believes that the prospective
24 purchaser is an accredited investor.
- 25 g. Telephone solicitation is not permitted unless prior to placing the call, the
26 issuer reasonably believes that the prospective purchaser to be solicited is an
27 accredited investor.
- 28 h. Dissemination of the general announcement of the proposed offering to
29 persons who are not accredited investors does not disqualify the issuer from
30 claiming the exemption.

i. The issuer shall file with the ~~commissioner~~ department a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.

~~19.~~ 18. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.

~~20.~~ 19. Any offer or sale of an agricultural-related cooperative security by or on behalf of an agricultural producer, as defined by section 32-44-01, to a person for the purpose of producing and selling agricultural products, as defined by section 32-44-01, to the cooperative. Commissions or other remuneration may not be paid or given directly or indirectly for soliciting any prospective buyer in this state, except to a dealer or agent registered in this state, to an agent of a bank or a commercial trust department, to a licensed real estate agent, or to a licensed auctioneer if the sale is made at a bona fide public auction.

SECTION 5. AMENDMENT. Subsection 3 of section 10-04-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Securities entitled to registration by description shall be registered by filing with the ~~commissioner~~ department by the issuer or by a registered dealer of:

a. A registration statement in a form prescribed by the commissioner, signed by the person filing such statement and containing the following information:

- (1) Name and address of person filing statement.
- (2) Name and business address of issuer, and address of issuer's principal office in this state, if any.
- (3) Title of securities being registered and total amount of securities to be offered.
- (4) Amount of securities to be offered in this state, price at which securities are to be offered for sale to the public, and amount of registration fee, computed as hereinafter provided in subsection 5.
- (5) A brief statement of the facts which show that the securities are entitled to be registered by description.

b. Payment of the required registration fee.

1 c. If the person who is registering the securities is not domiciled in this state and
2 is not a corporation or limited liability company organized or authorized to
3 transact business under the laws of this state, a consent to service of process
4 conforming to the requirements of section 10-04-14. Such filing with the
5 ~~commissioner, which may be made either by delivery in the office of the~~
6 ~~commissioner or by posting by registered or certified mail properly addressed~~
7 ~~to the commissioner,~~ department shall constitute the registration of securities
8 by description and such registration shall become effective as of the time of
9 such filing. Upon such registration by description, securities may be sold in
10 this state by the registered dealer.

11 **SECTION 6. AMENDMENT.** Subsections 2 and 3 of section 10-04-07.1 of the North
12 Dakota Century Code are amended and reenacted as follows:

- 13 2. Securities entitled to registration by announcement may be registered only by a
14 dealer registered ~~in~~ with the ~~office of the commissioner~~ department as provided for
15 in section 10-04-10 by filing ~~in~~ with the ~~office of the commissioner~~ department a
16 written announcement of intention to trade in the securities containing the
17 following:
- 18 a. Name of issuer and location of the headquarters or principal office.
 - 19 b. A brief description of the security, including price and current earnings.
 - 20 c. A statement that the securities have been outstanding and in the hands of the
21 public not less than one year as aforesaid.
 - 22 d. A balance sheet not more than twelve months old.
 - 23 e. A statement that the security has been registered in North Dakota or by the
24 securities and exchange commission.
- 25 3. The filing of such announcement ~~in the office of~~ with the ~~commissioner~~ department
26 constitutes the registration of the security, unless advised to the contrary within
27 forty-eight hours or advised to furnish additional information, and such dealer shall
28 pay to the commissioner a filing fee of twenty-five dollars. Upon registration, such
29 securities may be sold in this state for a period of one year from date of registration
30 by registered dealers at a price or prices reasonably related to the current market
31 price of such security at the time of sale, subject, however, to any and all rights

1 and authority granted the commissioner and to any person or purchaser under
2 chapter 10-04, in respect of securities registered ~~in the office of~~ by the
3 commissioner by description or qualification. No security registered under this
4 section shall be sold directly or indirectly for the benefit of the issuer, or an
5 underwriter of such securities, or for the promotion of any scheme or enterprise
6 with the intent of violating or evading any provision of this chapter; provided, that
7 no security, the registration of which has been revoked by the commissioner, or
8 application for registration of which has been denied by the commissioner, or
9 withdrawn by the applicant, shall be registered under this section.

10 **SECTION 7. AMENDMENT.** Section 10-04-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **10-04-08. Registration by qualification.** Securities required to be registered by
13 qualification under this chapter before they may be sold in this state must be registered as
14 provided in this section. Application for registration of securities by qualification must be made
15 by the issuer of the securities or by a registered dealer by filing in with the ~~office of the~~
16 ~~commissioner~~ department:

- 17 1. An application for registration, which must be made in writing or on forms
18 prescribed by the commissioner ~~and which~~, must contain the following information
19 and be accompanied by the following documents:
 - 20 a. With respect to the applicant or issuer and any significant subsidiary: its
21 name, address, and form of organization; the state of foreign jurisdiction and
22 date of its organization; the general character and location of its business; a
23 general description of its physical properties and equipment; and a statement
24 of the general competitive conditions in the industry or business in which it is
25 or will be engaged.
 - 26 b. With respect to every director and officer of the issuer, or person occupying a
27 similar status or performing similar functions: the person's name, address,
28 and principal occupation for the past five years; the amount of securities of
29 the issuer held by the person as of a specified date within thirty days of the
30 filing of the application for registration; the amount of the securities covered
31 by the application for registration to which the person has indicated an

1 intention to subscribe; and a description of any material interest in any
2 transaction with the issuer or any subsidiary effected within the past three
3 years or proposed to be effected.

4 c. With respect to persons covered by subdivision b: the remuneration paid
5 during the past twelve months and estimated to be paid during the next
6 twelve months, directly or indirectly, by the issuer to all those persons in the
7 aggregate.

8 d. With respect to any person owning of record, or beneficially if known, ten
9 percent or more of the outstanding shares of any class of equity security of
10 the issuer: the information specified in subdivision b other than the person's
11 occupation.

12 e. With respect to every promoter if the issuer was organized within the past
13 three years: the information specified in subdivision b, any amount paid to
14 the promoter within that period or intended to be paid to the promoter, and the
15 consideration for any such payment.

16 f. With respect to any person on whose behalf any part of the offering is to be
17 made in a nonissuer distribution: the person's name and address; the amount
18 of securities of the issuer held by the person as of the date of the filing of the
19 application for registration; a description of any material interest in any
20 transaction with the issuer or any subsidiary effected within the past three
21 years or proposed to be effected; and a statement of the person's reasons for
22 making the offering.

23 g. The title, kind, classes, and amount of securities to be offered in this state; the
24 proposed offering price to the public or the method by which it is to be
25 computed; any variation therefrom at which any proportion of the offering is to
26 be made to any person or class of persons other than the underwriters, with a
27 specification of any such person or class; the basis upon which the offering is
28 to be made if otherwise than for cash; the maximum amount of commission or
29 other form of remuneration to be paid in cash or otherwise, directly or
30 indirectly, for or in connection with the sale or offering for sale of such
31 securities; the estimated aggregate underwriting and selling discounts or

1 commissions and finders' fees, including separately cash, securities,
2 contracts, or anything else of value to accrue to the underwriters or finders in
3 connection with the offering, or, if the selling discounts or commissions are
4 variable, the basis of determining them and their maximum and minimum
5 amounts; the estimated amounts of other selling expenses, including legal,
6 engineering, and accounting charges and a statement as to what person,
7 corporation, or limited liability company shall be responsible for payment of
8 the same; the name and address of every underwriter and every recipient of a
9 finder's fee; a copy of any underwriting or selling-group agreement pursuant
10 to which the distribution is to be made, or the proposed form of any such
11 agreement whose terms have not yet been determined; and a description of
12 the plan of distribution of any securities which are to be offered otherwise
13 than through an underwriter.

14 h. The estimated cash proceeds to be received by the issuer from the offering;
15 the purposes for which the proceeds are to be used by the issuer; the amount
16 to be used for each purpose; the amounts of any funds to be raised from
17 other sources to achieve the purposes stated; the sources of any such funds;
18 and, if any part of the proceeds is to be used to acquire any property,
19 including goodwill, otherwise than in the ordinary course of business, the
20 names and addresses of the vendors, the purchase price, the names of any
21 persons who have received commissions in connection with the acquisition,
22 and the amounts of any such commissions and any other expense in
23 connection with the acquisition.

24 i. A description of each and every stock option or other security option
25 outstanding, or to be created in connection with the offering, including the
26 price at which such options may be exercised together with the amount of any
27 such options held or to be held by every person.

28 j. The capitalization and long-term debt of the issuer and any subsidiary,
29 including a description of each security outstanding or being registered or
30 otherwise offered, and a statement of the amount and kind of consideration

for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

- k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.
- l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment.
- m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.
- n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.
- o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant.
- p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn;

and, if application has been made to register the securities under the federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.

q. Such additional information as the commissioner requires by rule or order or may subsequently request.

2. Payment of a filing fee for each security or class of security to be registered as follows:

a. One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.

b. One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.

c. In no event may such filing fee be less than one hundred dollars for each security or class of security to be registered. ~~If the application for filing is denied, such filing fee less the actual cost to the state of processing and investigating as determined by the commissioner must be returned to the applicant.~~

d. Provided, further, that any applicant may increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be computed as provided in subdivisions a and b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year.

e. For the renewal of the registration of securities for additional periods of one year, there must be paid a renewal fee of one hundred dollars.

3. If the applicant is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.

4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 be submitted to the commissioner and the same prospectus must be sent or given to each person to whom a sale or an offer to sell is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any application for registration. In all cases in which an application is filed to register securities and a registration statement covering the same securities has been filed with the federal securities and exchange commission, a copy of the registration statement so filed must be accepted by the commissioner in lieu of the information specified in subdivisions a through q of subsection 1, except that it must be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits, or documents of every kind required under this section must be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event may the fee be returned.

Registration under this section is effective for a period of one year.

SECTION 8. AMENDMENT. Section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10. Registration of dealers, agents, investment advisers, and investment adviser representatives - Notice filings by federal covered advisers. A dealer or agent may not offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless registered as a dealer or agent pursuant to the provisions of this section.

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed ~~in~~ with ~~the office of the~~

1 ~~commissioner~~ department, and must contain information the commissioner
2 determines to be necessary concerning the applicant.

3 The commissioner may also require such additional information relating to the
4 applicant and as to the previous history, record, or association of the applicant, its
5 officers, directors, employees, members, partners, managers, or trustees as the
6 commissioner deems necessary to establish whether or not the applicant should
7 be registered as a dealer under the provisions of this law.

8 There must be filed with such application a written consent to the service of
9 process upon the commissioner in actions against such dealer, conforming to the
10 requirements of section 10-04-14.

11 When an applicant has fully complied with the provisions of this subsection,
12 the commissioner may register such applicant as a dealer unless the
13 commissioner finds that the applicant is not of good business reputation, or is not
14 solvent, or the applicant's ~~designees~~ principals and compliance or sales supervisor
15 do not appear qualified by training, examination, or experience to act on behalf of a
16 dealer in securities.

17 Except as prohibited by the Securities Exchange Act of 1934, the
18 commissioner may require an indemnity bond running to the state of North Dakota
19 conditioned for the faithful compliance by the dealer and the dealer's agents with
20 all the provisions of this law and for the faithful performance and payment of all
21 obligations of the dealer and the dealer's agents.

22 The bond must be of such type as may be approved by the commissioner and
23 must be in such amount as the commissioner deems necessary to protect
24 purchasers. Any such bond must have as surety thereon a surety company
25 authorized to do business in this state. When the commissioner has registered an
26 applicant as a dealer, the commissioner shall notify the applicant of such
27 registration.

- 28 2. Agent. Application for registration as an agent may be made by any individual
29 eighteen years of age or older. Such application for registration must be made in
30 writing or electronically in a form prescribed by the commissioner, must be signed
31 by the applicant and by the registered dealer or issuer employing or proposing to

1 employ such applicant, duly verified by oath, must be filed ~~in~~ with the ~~office of the~~
2 ~~commissioner~~ department, and must contain information the commissioner
3 determines to be necessary concerning the applicant.

4 The commissioner shall require as a condition of registration that the
5 applicant pass a written examination as evidence of knowledge of the securities
6 business; provided, that not more than two officers or managers of an issuer may
7 be registered as an agent for a particular original offering of the issuer's securities
8 without being required to pass such written examination; and provided, further, that
9 no such officer or manager may again register within three years as such agent for
10 this or any other issuer without passing the written examination.

11 The commissioner may also require such additional information as to the
12 applicant's previous business experience as the commissioner deems necessary
13 to determine whether or not the applicant should be registered as an agent under
14 the provisions of this law. If an agent proposes to be self-employed, the agent
15 shall specifically state the particular security or securities the agent proposes to
16 sell in this state in the application, and if said security or securities are exempt
17 under section 10-04-05 or 10-04-06, or have been registered by description under
18 section 10-04-07, or have been registered by announcement under section
19 10-04-07.1, or have been registered by qualification under section 10-04-08, then
20 the commissioner may require that said self-employed agent file an indemnity
21 bond running to the state of North Dakota conditioned for the faithful compliance
22 by said self-employed agent with all the applicable provisions of this chapter and
23 for the faithful performance and payment of all obligations hereunder. The bond
24 must be in a form approved and in the amount required by the commissioner.

25 When an applicant has fully complied with the provisions of this subsection,
26 the commissioner may register such applicant as an agent unless the
27 commissioner finds that such applicant is not of good business reputation, or that
28 the dealer named on the application is not a registered dealer. When the
29 commissioner has registered an applicant as an agent, the commissioner shall
30 immediately notify the dealer of such registration.

Every registered dealer or issuer shall promptly notify the ~~commissioner~~
department of the termination of the employment by the dealer or issuer of a
registered agent.

3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an
investment adviser unless:

- (1) The person is registered under this chapter;
- (2) The person's only clients in this state are investment companies as
defined in the Investment Company Act of 1940, other investment
advisers, federal covered advisers, dealers, banks, trust companies,
savings and loan associations, insurance companies, employee benefit
plans with assets of not less than one million dollars, and governmental
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; or
- (3) Such person is registered either under the laws of the state where its
principal place of business is located or with the securities and
exchange commission, if the investment adviser has no place of
business in this state and during the preceding twelve-month period
has had not more than six clients, other than those specified in
paragraph 2, who are residents of this state.

b. Application for registration as an investment adviser may be made by any
person eighteen years of age or older. Such application for registration must
be made in writing or electronically in a form prescribed by the commissioner,
must be signed by the applicant, duly verified by oath, must be filed ~~in~~ with
the ~~office of the commissioner~~ department, and must contain information the
commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating
to the applicant and as to the previous history, record, or association of the
applicant, its officers, directors, employees, members, partners, managers, or
trustees, as the commissioner deems necessary to establish whether or not

1 the applicant should be registered as an investment adviser under the
2 provisions of this chapter.

3 Except as prohibited by the Investment Advisers Act of 1940, the
4 commissioner may require an indemnity bond running to the state of North
5 Dakota conditioned for the faithful compliance by the investment adviser and
6 the investment adviser's representatives with all the provisions of this law and
7 for the faithful performance and payment of all obligations of the investment
8 adviser and the investment adviser's representatives. The bond must be of
9 such type as may be approved by the commissioner and must be in such
10 amount as the commissioner deems necessary to protect persons in this
11 state. Any such bond must have as surety thereon a surety company
12 authorized to do business in this state.

13 The commissioner may by rule or order provide for an examination to
14 be taken by any class of or all applicants, as well as persons who represent
15 or will represent an investment adviser in doing any of the acts which make
16 the person an investment adviser.

17 When an applicant has fully complied with the provisions of this
18 subsection, the commissioner may register such applicant as an investment
19 adviser unless the commissioner finds that the applicant is not of good
20 business reputation or is not solvent.

21 A registrant as investment adviser shall notify the ~~commissioner~~
22 department of any change of address.

- 23 4. Federal covered adviser. Except with respect to a federal covered adviser whose
24 clients are those described in paragraph 2 of subdivision a of subsection 3 or who
25 meets the criteria of paragraph 3 of subdivision a of subsection 3, it shall be
26 unlawful for a person to transact business in this state as a federal covered adviser
27 unless such person has made a notice filing with the ~~commissioner~~ department, in
28 writing or electronically, consisting of a copy of those documents that have been
29 filed with the securities and exchange commission as the commissioner may
30 require by rule or otherwise and the prescribed notice filing fee.

1 A notice filing is effective from receipt until the following December thirty-first.
2 It may be renewed by filing with the ~~commissioner~~ department, prior to expiration,
3 those documents filed with the securities and exchange commission as the
4 commissioner may require by rule or otherwise, with the notice filing renewal fee.

5 If the information contained in any document filed with the ~~commissioner~~
6 department is or becomes inaccurate or incomplete in any material respect, the
7 federal covered adviser shall file an amendment with the ~~commissioner~~
8 department whenever such amendment is filed with the securities and exchange
9 commission.

10 A notice filing may be terminated by a federal covered adviser by filing a
11 notice of termination with the ~~commissioner~~ department.

- 12 5. Investment adviser representatives. Application for registration as an investment
13 adviser representative may be made by any person eighteen years of age or older.
14 The application for registration must be submitted in writing or electronically in a
15 form prescribed by the commissioner, be signed by the applicant and if applicable,
16 by the investment adviser employing or proposing to employ the applicant, be duly
17 verified by oath, be filed ~~in~~ with the ~~office of the commissioner~~ department, and
18 contain information the commissioner determines to be necessary concerning the
19 applicant.

20 When an applicant has fully complied with the provisions of this subsection,
21 the commissioner may register the applicant as an investment adviser
22 representative unless the commissioner finds that the applicant is not of good
23 business reputation; that the investment adviser named in the application is not a
24 registered investment adviser; or the federal covered adviser named in the
25 application has not made a notice filing with the commissioner. When the
26 commissioner has registered an applicant as an investment adviser representative,
27 the commissioner shall immediately notify the investment adviser or the federal
28 covered adviser, as applicable, of such registration.

29 Every registered investment adviser shall promptly notify the ~~commissioner~~
30 department of the termination of the employment by the adviser of a registered
31 investment adviser representative. Every registered investment adviser

1 representative employed by a federal covered adviser or the federal covered
2 adviser shall promptly notify the ~~commissioner~~ department of the termination of
3 such employment. The registration of the investment adviser representative is
4 automatically suspended from the time of termination of employment until such
5 time as the representative is registered by the commissioner as a representative of
6 another investment adviser or federal covered adviser.

7 The commissioner ~~may by rule or order provide for an examination to be~~
8 ~~taken by the applicant~~ shall require as a condition of registration that the applicant
9 pass a written examination as evidence of knowledge of the securities business.
10 At the discretion of the commissioner, certain professional designations may be
11 accepted in lieu of an examination.

- 12 6. Refusal of registration. If the commissioner has reason to believe there are
13 grounds to refuse the approval of any application under this section, the
14 commissioner may, by order, summarily postpone the approval of any application
15 made under this section. If, after affording an applicant a hearing or an opportunity
16 for a hearing as provided in section 10-04-12, the commissioner finds that there is
17 sufficient ground to refuse to register such applicant as provided in this section, the
18 commissioner shall enter an order refusing to register such applicant. Such order
19 shall state specifically the grounds for its issuance. A copy of such order must be
20 mailed to the applicant at the applicant's business address, and if the application is
21 for registration as an agent, to the registered dealer or issuer or if the application is
22 for registration as an investment adviser representative to the investment adviser
23 or federal covered adviser who proposed to employ such applicant. If the
24 commissioner finds that an applicant has been guilty of any act or omission which
25 would constitute a sufficient ground for revocation of a dealer's, agent's,
26 investment adviser's, or investment adviser representative's registration under
27 section 10-04-11, such act or omission may constitute a sufficient ground for a
28 finding by the commissioner that such applicant is not of good business reputation.
- 29 7. Record and renewal of registrations. The names and addresses of all persons
30 who have been registered as dealers, agents, investment advisers, or investment
31 adviser representatives, and all orders with respect thereto, and the names and

addresses of all federal covered advisers who have made a notice filing must be recorded in a register of dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires on ~~May first of each year, except for the registration of an investment adviser and investment adviser representative which will expire on~~ December thirty-first of each year, unless renewed. The commissioner may by order provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange.

8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:

- | | |
|---|----------|
| a. For each dealer | \$200.00 |
| b. For each agent | \$60.00 |
| c. For each investment adviser or federal covered adviser | \$100.00 |
| d. For each investment adviser representative | \$50.00 |

An application to register as a dealer, agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event may any registration fees be returned.

SECTION 9. AMENDMENT. Subsection 4 of section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

4. All the records ~~referred to in subsection 4~~ of any registered person are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the

securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.

SECTION 10. AMENDMENT. Subsection 1 of section 10-04-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner may censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or revoke the registration of any dealer, agent, investment adviser, or investment adviser representative or any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that such registered dealer, agent, investment adviser, or investment adviser representative:
 - a. Has violated or failed to comply with any provisions of this chapter or any order or rule of the commissioner under this chapter;
 - b. Is, in the case of a dealer or investment adviser, insolvent;
 - c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business;
 - d. Conducts business in purchasing or selling securities at such variations from current market prices as, in light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner;
 - e. Has failed to file with the ~~commissioner~~ department any financial record required pursuant to section 10-04-10.3, or has refused to permit or has otherwise impeded an examination into the person's affairs as provided by section 10-04-10.3 and subsection 3;

- 1 f. Has filed an application for registration which, as of its effective date or as of
2 any date after filing in the case of an order denying effectiveness, was
3 incomplete in any material respect or contained any statement which was, in
4 light of the circumstances under which it was made, false or misleading with
5 respect to any material fact;
- 6 g. Has been convicted of an offense determined by the commissioner to have a
7 direct bearing upon a person's ability to serve the public as a dealer, agent,
8 investment adviser, or investment adviser representative, or the
9 commissioner finds that a person, following conviction of any offense, is not
10 sufficiently rehabilitated under section 12.1-33-02.1;
- 11 h. Is permanently or temporarily enjoined by any court of competent jurisdiction
12 from engaging in or continuing any conduct or practice involving any aspect of
13 the securities business;
- 14 i. Is the subject of an order of the commissioner denying, suspending, or
15 revoking registration as a dealer, agent, investment adviser, or investment
16 adviser representative;
- 17 j. Is the subject of an order entered by the securities administrator of any other
18 state or by the securities and exchange commission denying or revoking
19 registration as a dealer, agent, investment adviser, or investment adviser
20 representative, or the substantial equivalent of those terms as defined in this
21 chapter, or is the subject of an order suspending or expelling membership in
22 or association with a member of a self-regulatory organization registered
23 under the Securities Exchange Act of 1934, the Commodity Exchange Act, or
24 the Investment Advisers Act of 1940; or is the subject of a United States
25 post-office fraud order;
- 26 k. Has, in connection with the offer, sale, or purchase of any security, directly or
27 indirectly, effected a series of transactions creating actual or apparent active
28 trading in any security, or to raise or depress the price of a security, for the
29 purpose of inducing the purchase or sale of the security;
- 30 l. Is not qualified on the basis of such factors as training, experience, and
31 knowledge of the securities business;

- 1 m. Has failed reasonably to supervise the person's agents if the person is a
2 dealer or the person's employees or investment adviser representatives if the
3 person is an investment adviser; or
4 n. Is the subject of an order entered by the insurance administrator of any state
5 denying or revoking registration as an insurance producer, consultant, or the
6 substantial equivalent of those terms as defined in section 26.1-26-02.

7 **SECTION 11. AMENDMENT.** Section 10-04-14 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-04-14. Service of process.**

- 10 1. Every applicant for registration under this chapter, every issuer which proposes to
11 offer a security in this state through any person acting on an agency basis in the
12 common-law sense, and every person making a notice filing under subsection 2 of
13 section 10-04-08.4 shall file with the ~~commissioner~~ department, in such form as
14 the commissioner prescribes, an irrevocable consent appointing the commissioner
15 or the commissioner's successor in office to be the applicant's attorney to receive
16 service of any lawful process in any noncriminal suit, action, or proceeding against
17 the applicant or the applicant's successor, executor, or administrator which arises
18 under this chapter or any rule or order hereunder after the consent has been filed,
19 with the same force and validity as if served personally on the person filing the
20 consent. A person who has filed such a consent in connection with a previous
21 registration or notice filing need not file another. Service may be made by leaving
22 a copy of the process ~~in with the office of the commissioner~~ department, but it is
23 not effective unless the plaintiff, who may be the commissioner in a suit, action, or
24 proceeding instituted by the commissioner, forthwith sends notice of the service
25 and a copy of the process by registered or certified mail to the defendant or
26 respondent at the defendant's or respondent's last-known address on file with the
27 ~~commissioner~~ department, and the plaintiff's affidavit of compliance with this
28 subsection is filed in the case on or before the return day of the process, if any, or
29 within such further time as the court allows.
30 2. When any person, including any nonresident of this state, engages in conduct
31 prohibited or made actionable by this chapter or any rule or order hereunder, and

1 the person has not filed a consent to service of process under subsection 1 and
2 personal jurisdiction over the person cannot otherwise be obtained in this state,
3 that conduct shall be considered equivalent to the person's appointment of the
4 commissioner or the commissioner's successor in office to be the person's
5 attorney to receive service of any lawful process in any noncriminal suit, action, or
6 proceeding against the person or the person's successor, executor, or
7 administrator which grows out of that conduct and which is brought under this
8 chapter or any rule or order hereunder, with the same force and validity as if
9 served on the person personally. Service may be made by leaving a copy of the
10 process ~~in with the office of the commissioner~~ department, and it is not effective
11 unless the plaintiff, who may be the commissioner in a suit, action, or proceeding
12 instituted by the commissioner, forthwith sends notice of the service and a copy of
13 the process by registered or certified mail to the defendant or respondent at the
14 defendant's or respondent's last-known address or takes other steps which are
15 reasonably calculated to give actual notice, and the plaintiff's affidavit of
16 compliance with this subsection is filed in the case on or before the return day of
17 the process, if any, or within such further time as the court allows.

- 18 3. When process is served under this section, the court, or the commissioner in a
19 proceeding before the commissioner, shall order such continuance as may be
20 necessary to afford the defendant or respondent reasonable opportunity to defend.

21 **SECTION 12. AMENDMENT.** Section 10-04-16 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **10-04-16. Orders, injunctions, and prosecutions for violations - Civil penalty.** If it
24 appears to the commissioner, either upon complaint or otherwise, that any person has engaged
25 in, or is engaging in, or is about to engage in any act or practice or transaction that is prohibited
26 by this chapter or by any order of the commissioner issued under this chapter or which is
27 declared to be illegal in this chapter, the commissioner may:

- 28 1. Issue any order including cease and desist, rescission, stop, and suspension
29 orders, which the commissioner deems necessary or appropriate in the public
30 interest or for the protection of investors. The commissioner may, in addition to
31 any other remedy authorized by this chapter, impose by order and collect a civil

penalty against any person found in an administrative action to have violated any provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The commissioner may bring actions to recover penalties pursuant to this section in district court. A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if a written request is made within ~~ten~~ fifteen days after receipt of the order. If a request for hearing is made under this subsection, the commissioner shall schedule a hearing within a reasonable time. Subsections 2, 3, and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:

- a. The order of the commissioner from which the appeal is taken.
- b. The grounds upon which a reversal or modification of the order is sought.
- c. A demand for a certified transcript of the record of the order.

2. Apply to the district court of any county in this state for an injunction restraining the person and the person's agents, employees, partners, officers, and directors from continuing the act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors, and the production of the documents, books, and records necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant the injunction as the facts warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court ~~may~~ shall not require the commissioner to post a bond.

- 1 3. Refer any evidence available concerning the act, practice, or transaction to the
2 appropriate criminal prosecutor who may, with or without the reference, institute
3 the necessary criminal proceedings. The prosecutor may apply for and on due
4 showing be issued the court's subpoena requiring the appearance forthwith of any
5 defendant and the defendant's agents, employees, partners, officers, and
6 directors, and the production of any documents, books, and records necessary for
7 the prosecution of the criminal proceedings.

8 **SECTION 13. AMENDMENT.** Subsection 1 of section 10-04-16.1 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 1. The ~~commissioner~~ department may:
- 11 a. Make such public or private investigations within or outside of this state as ~~the~~
12 ~~commissioner deems~~ deemed necessary to determine whether any person
13 has violated, is violating, or is about to violate any provision of this chapter or
14 any rule or order hereunder, or to aid in the enforcement of this chapter or in
15 the prescribing of rules and forms hereunder. For the purposes of this
16 section, an investigation may include an examination of the books and
17 records of any person registered under the provisions of this chapter. In the
18 discretion of the commissioner, the expense reasonably attributed to an
19 investigation under this section must be paid by the dealer, agent, investment
20 adviser, or investment adviser representative whose affairs are investigated.
- 21 b. Require or permit any person to file a statement in writing, under oath or
22 otherwise ~~as the commissioner determines~~, as to all the facts and
23 circumstances concerning the matter to be investigated.
- 24 c. Publish information concerning any violation of this chapter or any rule or
25 order hereunder and may keep confidential the information or documents
26 obtained or prepared in the course of any investigation conducted under this
27 section but only during an active and ongoing investigation. If an
28 investigation under this section extends beyond six months, the commissioner
29 shall, upon a request by any party, state in writing that the need for
30 confidentiality still exists, the general reason why the need exists, and the

1 date, as can best be determined at the time, when the need for confidentiality
2 will cease.

3 **SECTION 14. AMENDMENT.** Subsection 3 of section 10-04-17 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 3. The provisions of this section do not apply to a violation of subsection 1 or 3 of
6 section 10-04-08.4.

7 **SECTION 15. AMENDMENT.** Subsection 1 of section 10-04-18 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. Any person who willfully violates any provision of this chapter, except subsection 1
10 or 3 of section 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order
11 of the commissioner made pursuant to the provisions of this chapter, or who
12 engages in any act, practice, or transaction declared by any provision of this
13 chapter to be unlawful shall be guilty of a class B felony.

14 **SECTION 16. REPEAL.** Section 10-04-10.2 of the North Dakota Century Code is
15 repealed.

16 **SECTION 17. EMERGENCY.** Section 8 of this Act is declared to be an emergency
17 measure.