

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Securities Commission)

1 A BILL for an Act to amend and reenact subdivision m of subsection 9 of section 10-04-02,
2 subsections 4, 5, 11, and 13 of section 10-04-06, subsection 2 of section 10-04-08, and
3 subsection 2 of section 10-04-08.4 of the North Dakota Century Code, relating to the definition
4 of institutional investor, securities transactions exempt from registration, securities registration
5 filing fees, and electronic filing.

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

7 **SECTION 1. AMENDMENT.** Subdivision m of subsection 9 of section 10-04-02 of the
8 North Dakota Century Code is amended and reenacted as follows:
9 m. A qualified ~~investment~~ institutional buyer as defined in rule 144A(a)(1), other
10 than rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933;

11 **SECTION 2. AMENDMENT.** Subsection 4 of section 10-04-06 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 4. A transaction by an issuer for:
14 a. Securities dividends or other distributions by a corporation, cooperative,
15 limited partnership, limited liability limited partnership, or a limited liability
16 company out of its earnings or surplus; or
17 b. ~~the~~ The sale or distribution of additional capital stock of a corporation or
18 cooperative, interest of a partnership, or membership interest of a limited
19 liability company to or among its own stockholders, partners, or members,
20 ~~including persons who at the time of the transaction are holders of~~
21 ~~nontransferable warrants, or transferable warrants exercisable within not more~~
22 ~~than ninety days of their issuance, when no commission or other~~
23 ~~remuneration is paid or given directly or indirectly for soliciting or effecting~~
24 ~~such sale or distribution to stockholders or members in this state.~~

1 **SECTION 3. AMENDMENT.** Subsection 5 of section 10-04-06 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 5. ~~Any offer or~~ A sale of securities or offer to sell to: ~~a bank, savings institution, trust~~
4 ~~company, insurance company, investment company as defined in the Investment~~
5 ~~Company Act of 1940, pension or profit sharing trust, or similar benefit plan, or~~
6 ~~other financial institution, or qualified institutional buyer, or to a broker-dealer, or~~
7 ~~any government or political subdivision or instrumentality thereof, whether the~~
8 ~~purchaser is acting for itself or in a fiduciary capacity.~~

9 a. An institutional investor;

10 b. A federal covered investment advisor; or

11 c. Any other person exempted by rule adopted or order issued by the
12 commissioner.

13 **SECTION 4. AMENDMENT.** Subsection 11 of section 10-04-06 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 11. Any security issued in connection with an ~~employee's~~ employees' stock purchase,
16 savings, option, profit-sharing, pension, or similar employees' benefit plan,
17 including any securities, plan interests, and guarantees issued under a
18 compensatory benefit plan or compensation contract, contained in a record,
19 established by the issuer, its parents, its majority-owned subsidiaries, or the
20 majority-owned subsidiaries of the issuer's parent for the participation of their
21 employees- including offers or sales of such securities to:

22 a. Directors; general partners; trustees, if the issuer is a business that; officers;
23 consultants; and advisors;

24 b. Family members who acquire such securities from those persons through gifts
25 or domestic relations orders;

26 c. Former employees, directors, general partners, trustees, officers, consultants,
27 and advisors if those individuals were employed by or providing services to
28 the issuer when the securities were offered; and

29 d. Insurance agents who are exclusive insurance agents of the issuer, or the
30 issuer's subsidiaries or parents, or who derive more than fifty percent of their
31 annual income from those organizations.

1 **SECTION 5. AMENDMENT.** Subsection 13 of section 10-04-06 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 13. Any offer or sale of shares of capital stock issued by a professional corporation or
4 professional limited liability company, or professional limited liability partnership
5 which is organized and operated pursuant to chapter 10-31.

6 **SECTION 6. AMENDMENT.** Subsection 2 of section 10-04-08 of the North Dakota
7 Century Code is amended and reenacted as follows:

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

- 10 a. ~~For an initial filing One-tenth one-tenth~~ of one percent of the ~~first seven~~
11 ~~hundred fifty thousand dollars of the aggregate offering price~~ amount of each
12 security or class of security to be registered but not more than two thousand
13 five hundred dollars.
- 14 b. ~~One-twentieth of one percent of any amount in excess of seven hundred fifty~~
15 ~~thousand dollars of the aggregate offering price of~~ In no event may an initial
16 filing fee be less than one hundred fifty dollars each security or class of
17 security to be registered.
- 18 c. ~~In no event may such filing fee be less than one hundred dollars for~~ An
19 applicant may increase the aggregate amount each security or class of
20 security to be registered by filing a notice of the additional aggregate dollar
21 amount to be registered and payment of a filing fee of one-tenth of one
22 percent of the additional aggregate dollar amount by not more that five
23 hundred dollars.
- 24 d. ~~Provided, further, that any applicant may increase the aggregate amount of~~
25 ~~securities under this subdivision before the expiration of one year from the~~
26 ~~date of the certificate of effectiveness at the same reduced fee, which must be~~
27 ~~computed as provided in subdivisions a and b as a separate fee for each~~
28 ~~additional amount registered, as if the additional securities had been included~~
29 ~~in the other registration of that year, registration year and not calendar year~~
30 No application shall be deemed to be filed or pending and no securities
31 covered by such application shall be deemed to be registered unless a filing

1 fee has been paid. The filing fee shall be retained even if the filing is
2 withdrawn, denied, suspended, revoked, or abandoned.

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

5 **SECTION 7. AMENDMENT.** Subsection 2 of section 10-04-08.4 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 2. Any federal covered security that is subject to section 18(b)(4)(D) of the Securities
8 Act of 1933, as amended, may be offered and sold under the following conditions:
- 9 a. A notice of intent is filed in writing or electronically on SEC form D or other
10 prescribed form with a consent to service of process and a nonrefundable
11 filing fee of one hundred dollars within fifteen calendar days after the first sale
12 in this state.
- 13 b. A copy of any document filed with the securities and exchange commission is
14 provided, as the commissioner may require.
- 15 c. The notice filing is effective for a period of one year from the date the filing is
16 received by the commissioner.
- 17 d. The filing fee shall be two hundred fifty dollars in the event the filing is not
18 made within the time period specified in subdivision a.
- 19 No security may be offered or sold under this subsection, except through or by a
20 broker-dealer and agent registered in accordance with section 10-04-10, unless it
21 is offered and sold through an officer, director, governor, or partner of the issuer
22 and no commission or other remuneration is paid, either directly or indirectly.