

Introduced by

Judiciary Committee

(At the request of the Securities Commissioner)

1 A BILL for an Act to amend and reenact subsections 5 and 6 of section 10-04-10.1 of the North
2 Dakota Century Code, relating to investment advisory contracts and custody of securities or
3 funds.

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

5 **SECTION 1. AMENDMENT.** Subsections 5 and 6 of section 10-04-10.1 of the North Dakota
6 Century Code are amended and reenacted as follows:

- 7 5. Except as permitted by rule, it is unlawful for any investment adviser to enter into,
8 extend, or renew any investment advisory contract unless it provides in writing that:
- 9 a. The investment adviser shall not be compensated on the basis of a share of
10 capital gains, earnings, or capital appreciation of the funds or any portion of the
11 funds of the client. This does not prohibit an investment advisory contract that
12 provides for compensation based on the total value of a fund determined as of a
13 definite date or averaged as of definite dates or over a definite period.
 - 14 b. An assignment of the investment advisory contract may not be made by the
15 investment adviser unless the investment adviser notifies the client of the
16 intended assignment and obtains the prior written consent of the client.
 - 17 c. The investment adviser shall provide written notice to the client within fifteen days
18 of any change of ownership in excess of five percent.
 - 19 d. The investment adviser shall provide written notice to the client within fifteen days
20 of a change of controlling interest of the investment adviser. The client may
21 terminate the investment advisory contract without penalty by providing a written
22 notice to the investment adviser within thirty days after the client's receipt of the
23 notice of change of controlling interest. The commissioner may by rule waive any
24 of the provisions of this subsection and may specify the contents of an

- 1 investment advisory contract entered into, extended, or renewed by an
2 investment adviser.
- 3 6. ~~Except as permitted by rule, it~~ is unlawful for any investment adviser to take or have
4 custody of any securities or funds of any client unless the investment adviser acts as a
5 fiduciary pursuant to duties as an executor, guardian, conservator, receiver, or trustee.