

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1100

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1100

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 7019

Committee Clerk Signature *Ellen Letang*

Chairman Keiser: Opened the hearing on HB 1100 relating to the definition of institutional investor, securities transactions exempt from registration, securities registration filing fees, & electronic filing.

Karen Tyler~State Securities Commissioner. Gave testimony see attachment.

Vice Chairman Kasper: Can you explain line 25, on page 2, section D.

Tyler: When you have an agent who is not technically an employee. This is language from the Uniform Act, it's not new just more clearly identified.

Vice Chairman Kasper: If they are not an employee, then how can they share in the employee stock ownership plan?

Tyler: Apparently there are agencies out there are willing to provide that benefit to an agent who is not technically an employee of the company.

Vice Chairman Kasper: Were independent contractor representing most of the time one entity?

Tyler: Continues with testimony.

Chairman Keiser: I'm obligated to ask, you have had your original fiscal note which showed a \$200,000 loss. The bill didn't change and now is zero impact, what happened?

Tyler: We went through the numbers again and we were looking at the impact of the minimum that we must collect. That is actually going more significant than we originally estimated. We get many more filings that would be subject to that minimum. Then we get very large filings that are going to be capped out at \$2500. So it's the volume.

Chairman Keiser: As we lower the larger projects and increase the lower, does that bring it comparable to other states in terms of higher and lower?

Tyler: Yes it does. Continues with testimony.

Chairman Keiser: Recognizes Karen Tyler as the President of the National Securities Commission.

Anyone here to testify in opposition, neutral?

Closes the hearing on HB 1100. What are the wishes of the committee?

Representative N Johnson: Moves a Do Pass

Representative Vigesaa: Second

Committee Roll Call was taken for a Do Pass with 13 yea's, 0 no's, & 0 absent and

Representative Schneider is the carrier.

2009 HOUSE STANDING COMMITTEE MINUTES

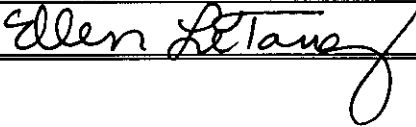
Bill/Resolution No. 1100

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7300

Committee Clerk Signature 

Chairman Keiser: Opened the committee work on HB 1100.

Chairman Keiser: Explains the amendment that to than.

Representative N Johnson: Move to amendment

Representative Ruby: Second

All ayes.

What are the wished of the committee.

Vice Chairman Kasper: Moves a Do Pass as Amended

Representative Gruchalla: Second

Roll Call was taken on HB 1100 with 11 yea's, 0 nay's, 2 absent and Representative Schneider will be the carrier.

FISCAL NOTE
Requested by Legislative Council
01/13/2009

REVISION

Bill/Resolution No.: HB 1100

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$0		\$0	
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

To amend and revise the filing fee schedule within Section 10-04-08 that will increase the minimum and renewal fees required to register and renew securities as well as to provide for a maximum fee that is easier to calculate.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

We expect that the duality of the minimum filing fee increase and an anticipated increase in filings will offset the decrease in revenue caused by the setting of a maximum fee.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Diane Lillis	Agency:	ND Securities Department
Phone Number:	328-4712	Date Prepared:	01/12/2009

FISCAL NOTE
Requested by Legislative Council
01/12/2009

Bill/Resolution No.: HB 1100

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	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$200,000)		(\$200,000)	
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

We expect that the duality of the minimum filing fee increase and an anticipated increase in filings will offset the decrease in revenue caused by the setting of a maximum fee.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The total fiscal impact will be to agency collection of securities registration fees.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Diane Lillis	Agency:	ND Securities Department
Phone Number:	328-4712	Date Prepared:	01/12/2009

Date: Jan 14, 2009
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1100

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Johnson Seconded By Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 14, 2009 5:00 p.m.

Module No: HR-07-0349
Carrier: Schneider
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1100: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1100 was placed on the Eleventh order on the calendar.

98105.0101
Title.0200

Adopted by the Industry, Business and Labor
Committee

January 20, 2009

VR
1/20/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1100

Page 3, line 17, replace "that" with "than"

Renumber accordingly

Date: Jan 20, 2009
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1100

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Amerman	x	
Vice Chairman	x		Representative Boe	x	
Representative Clark	x		Representative Gruchalla	x	
Representative N Johnson	x		Representative Schneider		
Representative Nottestad	x		Representative Thorpe		
Representative Ruby	x				
Representative Sukut	x				
Representative Vigasaa	x				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1100: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1100 was placed
on the Sixth order on the calendar.

Page 3, line 17, replace "that" with "than"

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1100

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1100

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9686

Committee Clerk Signature

Eva Lubell

Minutes:

Michael Daley, Deputy Securities Commissioner and Enforcement Attorney for the securities department: I am here to testify in favor of the bill and to request one additional amendment to the bill. Relating to securities transactions exempt from registration. Written testimony.

Chairman Klein: The amendment was an oversight in the House; it's something you want to take care of that happened a long time ago?

Mike: It hasn't been widely used since it's been adopted. It's actually this Bruce Hager matter that we found in January. He was found guilty and we found he was trying to sell for commission private placements. And in reviewing that they tried to get around it.

Chairman Klein: So this will close the loop hole?

Mike: It requires the investor meet certain requirements of income or net worth. The companies use the federal investments across the country. Must be done through a licensed broker.

Senator Nodland: Can you break that down? A transaction that does not have to be registered unless a commission shows a business has stock and they let employees by stock so someone in that business can do the transaction. Am I reading that right?

Mike: Under 10-04-06 there are currently seventeen subsections dealing exempt transactions.

Senator Wanzek: On your amendment for clarification you're saying if you are an officer of director or governor of the entity that is offering the securities than they do not have to be?

Mike: They have to meet the other requirements set forth in that particular exemption but if the seller is involved in the company an actual owner of the issuer than they would not have to be registered provided they are not paid a commission. Discussed instances where agents have found loop holes.

Senator Horne: We here of abuses of the system. Do you get involved in that sort of thing or is that a federal issue?

Mike: we do get involved in those kinds of investigations. There is some transaction that the federal legislation has taken state enforcement powers away. We are looking at trying to get congress to repel some of those. We do have fraud authority under 10-04-15. So if there is an outright fraud we can still take action. Discussed more cases of fraud in North Dakota.

Chairman Klein: Closed the hearing.

Senator Potter: Motion for a pass on the amendment.

Senator Andrist: Seconded.

Roll Call Vote: Yes: 7 No: 0

Senator Andrist: Motion a do pass on the bill.

Senator Wanzek: Seconded.

Row Call Vote: Yes: 7 No: 0

Floor Assignment: Senator Potter

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Date: Feb 25, 2009
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1100

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken **Pass** **Do Not Pass** **Amended**

Motion Made By Senator Potter Seconded By Senator Andrist

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Date: Feb 25, 2009
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1100

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Andrist Seconded By Senator Wanzek

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Potter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1100, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1100 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subdivision to subsection 17 of section 10-04-06 of the North Dakota Century Code, relating to the sale of securities; and to"

Page 2, after line 30, insert:

"SECTION 3. A new subdivision to subsection 17 of section 10-04-06 of the North Dakota Century Code is created and enacted as follows:

The security offered or sold under this subsection is offered or sold by a broker-dealer and agent registered in accordance with section 10-04-10, or offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid."

Renumber accordingly

2009 TESTIMONY

HB 1100

HB 1100

Testimony of Securities Commissioner Karen Tyler

Before the House Industry, Business and Labor Committee

January 14, 2009

Mr. Chairman and members of the Committee, good afternoon to you all. I am Karen Tyler, the state Securities Commissioner. I am here this morning to testify in favor of House Bill 1100, introduced by this committee at the request of the Securities Department.

House Bill 1100 amends and re-enacts various sections and sub-sections of chapter 10-04 of the North Dakota Century Code relating to the definition of institutional investor, securities transactions exempt from registration, securities registration filing fees, and electronic filing.

The majority of the amendments set forth in HB 1100 pertain to the Capital Formation aspect of the Department's functionality. The amendments will correct an error, improve ease of interpretations, enhance uniformity with other states, adjust the fee structure for a particular type of security registration, and allow for the acceptance of certain electronic filings.

Under Section 1 of the bill, an error in the definition of "institutional investor" is corrected.

All changes under Section 2 of the bill pertain to "exempt transactions" under Section 10-04-06 of the Securities Act. As you may know, with most securities transactions, the security, the entity selling and the individual selling must be registered with the SEC and/or State Securities

Regulators. However, in an **exempt transaction** under our Act, the security involved does not have to be registered in ND, and the entity and individual selling the security and executing the transaction do not have to be registered, unless a commission is charged.

Subsection 4 is amended to improve ease of interpretation for ND businesses in an effort to serve them better. Often, businesses will issue dividends in the form of stock, or issue additional capital stock to existing shareholders. Both of these types of transactions are exempt, they are separate and unique transactions, however they are currently listed under one paragraph in our chapter and this has led to confusion for businesses. Here we change nothing in substance, but simply change the format in an attempt to eliminate what has proven to be a consistent misreading or misunderstanding of the exemption simply due to the way it is laid out on the page.

Subsection 5 under exempt transactions (10-04-06) addresses the sale of securities to certain institutional investors and other entities. "Institutional Investors" is exhaustively defined in the definitions section of the Act so there is no need to repeat it in this section as is currently the case. Additionally, this will bring the exemption into conformity with the Uniform Securities Act of 2002.

Subsection 11 under exempt transactions deals with stock purchase plans that are offered to employees of a company. The amendment brings the exemption into conformity with the Uniform Act, and identifies the eligible participants in this type of exempt transaction.

Subsection 13 under exempt transactions pertains to entities formed and operated under Chapter 10-31 of the North Dakota Century Code, The Professional Organizations Act. The amendment adds “professional limited liability partnership” to the exemption in order to conform to the entities identified in chapter 10-31.

Moving on to Section 3 of the bill. This amendment changes a filing fee required for certain securities registrations. It has been brought to our attention by businesses and other interested parties that our filing fee for a registration by qualification is substantially higher than other states. After surveying other jurisdictions, we recommend the changes you find set forth under section 3, which set maximums for both initial filings and subsequent filing amendments, and also raises the minimum fee that must be collected for both original and subsequent filings.

There is a fiscal note attached to HB 1100 bill due to the change in filing fee structure. We estimate that this filing fee change will be revenue neutral.

And finally, Section 4 of the bill, which amends section 10-04-08.4 of the Securities Act to allow us to accept an electronic version of certain forms that need to be filed with the agency.

I would be happy at this time to answer any questions you may have and to cover any amendment in greater detail.

Mr. Chairman and members of the committee, thank you for your time and attention this morning. I respectfully recommend a “do-pass” on HB 1100.

Engrossed House Bill No. 1100

Testimony of Deputy Securities Commissioner Michael Daley

Before the Senate Industry, Business and Labor Committee

February 25, 2009

Mr. Chairman and members of the Committee, good morning. I am Michael Daley, Deputy Securities Commissioner and Enforcement Attorney for the Securities Department. I am here today to testify in favor of Engrossed House Bill 1100 on behalf of Securities Commissioner Karen Tyler and to request one additional amendment to section 10-04-06, relating to securities transactions exempt from registration.

House Bill 1100 amends and re-enacts various sections and sub-sections of chapter 10-04 of the North Dakota Century Code relating to the definition of institutional investor, securities transactions exempt from registration, securities registration filing fees, and electronic filing.

The majority of the amendments set forth in HB 1100 pertain to the Capital Formation aspect of the Department's functionality. The amendments will correct an error, improve ease of interpretations, enhance uniformity with other states, adjust the fee structure for a particular type of security registration, and allow for the acceptance of certain electronic filings.

Under Section 1 of the bill, an error in the definition of "institutional investor" is corrected.

All changes under Section 2 of the bill pertain to "exempt transactions" under Section 10-04-06 of the Securities Act. As you may know, with most securities transactions, the security, the entity selling and the individual selling must be registered with the SEC and/or State Securities Regulators. However, in an **exempt transaction**

under our Act, the security involved does not have to be registered in ND, and the entity and individual selling the security and executing the transaction do not have to be registered, unless a commission is charged.

Subsection 4 is amended to improve ease of interpretation for ND businesses in an effort to serve them better. Often, businesses will issue dividends in the form of stock, or issue additional capital stock to existing shareholders. Both of these types of transactions are exempt, they are separate and unique types of transactions, however they are currently listed under one paragraph in our chapter and this has led to confusion for businesses. Here we change nothing in substance, but simply change the format in an attempt to eliminate what has proven to be a consistent misreading or misunderstanding of the exemption simply due to the way it is laid out on the page.

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Subsection 11 under exempt transactions deals with stock purchase plans that are offered to employees of a company. The amendment brings the exemption into conformity with the Uniform Act, and identifies the eligible participants in this type of exempt transaction.

Subsection 13 under exempt transactions pertains to entities formed and operated under Chapter 10-31 of the North Dakota Century Code, The Professional Organizations

Act. The amendment adds “professional limited liability partnership” to the exemption set forth in our chapter, in order to conform to the entities identified in chapter 10-31.

Moving on to Section 3 of the bill. This amendment changes a filing fee required for certain securities registrations. It has been brought to our attention by businesses and other interested parties that our filing fee for a registration by qualification is substantially higher than other states. After surveying other jurisdictions, we recommend the changes you find set forth under section 3, which set maximums for both initial filings and subsequent filing amendments, and also raises the minimum fee that must be collected for both original and subsequent filings. There is a fiscal note attached to HB 1100 bill due to the change in filing fee structure. We estimate that this filing fee change will be revenue neutral.

And finally, Section 4 of the bill, which amends section 10-04-08.4 of the Securities Act to allow us to accept an electronic version of certain forms that need to be filed with the agency.

The additional amendment which I mentioned in my opening remarks is attached to my written testimony and relates to an existing exemption found in § 10-04-06 (17). This exemption is known as the “accredited investor exemption” and was recommended and adopted by the North American Securities Administrators Association (NASAA) as a model in April 1997. It’s introductory paragraph in the model provided:

“Any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule is exempt from [Sections requiring registration and filing of advertising materials].”

It was adopted in North Dakota in the 1999 session and has been little utilized in the nine years since. The model exemption, as incorporated here, contemplated an

exemption from registration of the security (§10-04-04 in this state) and advertising (§10-04-08.2). It was not intended that the securities could be promoted and sold by an unregistered sales force for a commission.

In recent times, we have had instances of former securities agents who have had their registrations to do business in this state revoked and have even been barred from the industry, yet they seek to continue to be involved in securities sales here. We want to close this potential loophole in the act and clarify that an issuer who wants to take advantage of this exemption must use a registered broker-dealer and agent or no compensation can be paid. This amendment would make the accredited investor exemption consistent with the similar Reg D, Rule 506 “federal covered” exemption set forth in § 10-04-08.4(2) which you can review in Section 4 of HB 1100.

Mr. Chairman and members of the Committee, thank you for your time and consideration. I would be happy at this time to answer any questions you may have and to cover any amendment in greater detail. I respectfully recommend adoption of this additional amendment and a “do-pass” on Engrossed HB 1100, as amended by this Committee.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1100

Page 1, line 2, replace "and 13" with "13, and 17"

Page 1, line 11, replace "and 13" with "13, and 17"

Page 2, after line 30, insert:

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 by any state securities administrator or the securities and exchange commission;
 - (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

- (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
- (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Paragraph 1 does not apply if:

- (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
- (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
- (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.

e. (1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:

- (a) The name, address, and telephone number of the issuer of the securities;
- (b) The name, a brief description, and price, if known, of any security to be issued;
- (c) A brief description of the business of the issuer in twenty-five words or less;
- (d) The type, number, and aggregate amount of securities being offered;
- (e) The name, address, and telephone number of the person to contact for additional information; and
- (f) A statement that:

[1] Sales will only be made to accredited investors;

[2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and

[3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

- f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
 - (1) Is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or
 - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
- g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
- h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
- i. The issuer shall file with the 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.
- j. No security may be offered or sold under this subsection, except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.