

HOUSE BILL NO. 1144

Introduced by

Industry, Business and Labor Committee

(At the request of the Securities Commissioner)

1 A BILL for an Act to create and enact section 10-04-08.4 of the North Dakota Century Code,
2 relating to filing requirements for federal covered securities; and to amend and reenact sections
3 10-04-02, subsections 4 and 5 of section 10-04-03, sections 10-04-04, 10-04-05, 10-04-06,
4 10-04-07.1, 10-04-08, 10-04-08.1, 10-04-08.2, 10-04-08.3, 10-04-09, 10-04-10, 10-04-10.1,
5 10-04-10.2, 10-04-10.3, 10-04-11, 10-04-12, 10-04-14, 10-04-16.1, 10-04-17, and 10-04-18 of
6 the North Dakota Century Code, relating to definitions, administration, and registration of
7 securities under the Securities Act of 1951, advertising of and statements about securities,
8 federal covered securities, suspensions and revocation of securities registrations, registration of
9 dealers, agents, investment advisers, and investment adviser representatives, suspension and
10 revocation of registrations of dealers, agents, investment advisers and investment adviser
11 representatives, hearing provisions, securities investigations, consent to service of process,
12 remedies available to investors, and penalties.

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

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

16 **10-04-02. Definitions.** When used in this chapter, unless the context or subject matter
17 otherwise requires:

18 1. "Agent" means any individual, other than a dealer, who represents a dealer or an
19 issuer or is self-employed in effecting or attempting to effect purchases or sales of
20 securities. "Agent" does not include an individual who represents an issuer in
21 effecting transactions in a covered security as described in section 18(b)(3) and
22 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this
23 state limited to those transactions described in section 15(h)(2) of the Securities
24 Act of 1934.

- 1 2. "Commissioner" means the securities commissioner of this state.
- 2 ~~2.~~ 3. "Dealer" means ~~every a~~ person, other than ~~a salesman an agent, who engages in~~
3 ~~this state, either for all or part of the person's time:~~ engaged in the business of
4 effecting transactions in securities issued by another person or by such person for
5 the account of others or for the person's own account.
- 6 a. ~~Directly or indirectly, as agent, broker, or principal in the business of offering,~~
7 ~~buying, selling, or otherwise dealing or trading in securities issued by another~~
8 ~~person; or~~
- 9 b. ~~Directly or through an officer, director, employee, or agent, which officer,~~
10 ~~director, employee, or agent is not registered as a dealer under this chapter,~~
11 ~~in selling securities issued by such person.~~
- 12 4. "Federal covered adviser" means a person who is registered under section 203 of
13 the Investment Advisers Act of 1940.
- 14 5. "Federal covered security" means any security that is a covered security pursuant
15 to section 18(b) of the Securities Act of 1933 or rules or regulations adopted under
16 that Act.
- 17 ~~3.~~ 6. "Investment adviser" means any person who, for compensation, engages in the
18 business of advising others, either directly or through publications or writings, as to
19 the value of securities or as to the advisability of investing in, purchasing, or selling
20 securities, or who, for compensation and as a part of a regular business, issues or
21 promulgates analyses or reports concerning securities. "Investment adviser" also
22 includes financial planners and other persons who, as an integral component of
23 other financially related services, provide the foregoing investment advisory
24 services to others for compensation and as part of a business or who hold
25 themselves out as providing the foregoing investment advisory services to others
26 for compensation. "Investment adviser" does not include:
- 27 a. An investment adviser representative.
- 28 b. A bank, savings institution, or trust company.
- 29 c. A lawyer, accountant, engineer, or teacher whose performance of these
30 services is solely incidental to the practice of the person's profession.

- 1 d. A broker or dealer or its ~~salesman~~ agent whose performance of these
2 services is solely incidental to the conduct of business as a broker or dealer
3 and who receives no special compensation for them.
- 4 e. A publisher of any bona fide newspaper, news column, newsletter, news
5 magazine, or business or financial publication of general, regular, and paid
6 circulation or service, whether communicated in hard copy form, or by
7 electronic means, or otherwise, that does not consist of the rendering of
8 advice on the basis of the specific investment situation of each client.
- 9 f. A federal covered adviser.
- 10 g. A person who is exempted from the federal definition of "investment adviser"
11 under section 202(a)(11) of the Investment Advisers Act of 1940.
- 12 h. Such other persons not within the intent of this subsection as the
13 commissioner may by rule or order designate.
- 14 4. 7. "Investment adviser representative" means:
- 15 a. With respect to an investment adviser, any partner, officer, director of an
16 investment adviser, or a person occupying a similar status or performing
17 similar functions, or other individual who is either employed by or associated
18 with an investment adviser, except clerical or ministerial personnel, who is
19 registered or required to be registered under this chapter who:
- 20 a. (1) Makes any recommendations or otherwise renders advice regarding
21 securities directly to advisory clients;
- 22 b. (2) Manages the accounts or portfolios of clients;
- 23 e. (3) Determines which recommendations or advice regarding securities
24 should be given if that person is a member of the investment adviser's
25 investment committee that determines general investment advice to be
26 given to clients or, if the investment adviser has no investment
27 committee, the person determines general client advice (if there are
28 more than five such persons, only the supervisors of such persons are
29 deemed to be investment adviser representatives);
- 30 d. (4) Solicits, offers, or negotiates for the sale of or sells investment advisory
31 services unless that person is a dealer licensed in this state or a

1 ~~licensed salesman of a dealer and the person would not be an~~
2 ~~investment adviser representative except for the performance of the~~
3 ~~activities described in this subdivision; or~~

4 e. (5) Immediately supervises employees in the performance of any of the
5 foregoing.

6 b. With respect to a federal covered adviser, any person who is an "investment
7 adviser representative" who has a "place of business" in this state, as those
8 terms are defined by the securities and exchange commission pursuant to
9 section 203A of the Investment Advisers Act of 1940.

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

12 ~~5-~~ 8. "Issuer" means every person who issues or proposes to issue any security, except
13 that:

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

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

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

25 ~~6-~~ 9. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or
26 solicitation of an order or offer to buy, a security or interest in a security for value.
27 Every sale or offer for sale of a warrant or right to subscribe to another security of
28 the same issuer or of another issuer, and every sale or offer for sale of a security
29 which gives the holder thereof a present or future right or privilege to convert such
30 security into another security of the same issuer or of another issuer, must be
31 deemed an offer to sell the security to be acquired by subscription or conversion.

- 1 The offer or grant of an option to purchase securities may not be deemed an offer
2 to sell the securities to be purchased if:
- 3 a. The offer or grant is an offer or grant limited to directors, officers, or
4 employees of the issuer or a parent or subsidiary of the issuer;
- 5 b. No money or other tangible property is given for the option; and
- 6 c. The option, by its terms or by the terms of a supplemental agreement, is
7 nontransferable except by will or the laws of descent and distribution.
- 8 ~~7.~~ 10. "Person" means an individual, a corporation, a limited liability company, a
9 partnership, an association, a joint-stock company, a trust, or any other
10 unincorporated organization.
- 11 11. "Registered agent" means an agent registered under this chapter.
- 12 ~~8.~~ 12. "Registered dealer" means a dealer registered under this chapter.
- 13 ~~9.~~ "~~Registered salesman~~" means a ~~salesman registered under this chapter.~~
- 14 ~~10.~~ 13. "Sale" or "sell" means every sale or other disposition of a security or interest in a
15 security for value, and every contract to make any such sale or disposition. Any
16 security given or delivered with, or as a bonus on account of any purchase of
17 securities or any other thing, must be conclusively presumed to constitute a part of
18 the subject of such purchase and to have been sold for value.
- 19 ~~11.~~ "~~Salesman~~" means ~~any individual, other than a dealer, who represents a dealer or~~
20 ~~an issuer or is self-employed in effecting or attempting to effect purchases or sales~~
21 ~~of securities. A partner, officer, or director of a dealer or an issuer or a person~~
22 ~~occupying a similar status or performing similar functions is a "salesman" only if the~~
23 ~~person otherwise comes within the definition.~~
- 24 ~~12.~~ 14. "Securities Act of 1933" means the Act of Congress known as the Securities Act of
25 1933, as now or hereafter amended.
- 26 ~~13.~~ 15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of
27 indebtedness; certificate of interest or participation in any profit-sharing agreement;
28 certificate of interest or participation in an oil, gas, or mining title or lease or in
29 payments out of production under such a title or lease; collateral trust certificate;
30 preorganization certificate or subscription; transferable share; investment contract;
31 program, contract, or other arrangement in which persons invest in a common

1 enterprise the returns of which depend to any extent upon inducing other persons
2 to participate or invest in the enterprise; investment of money or money's worth
3 including goods furnished or services performed in the risk capital of a venture with
4 the expectation of profit or some other form of benefit to the investor where the
5 investor has no direct control over the investment or policy decisions of the
6 venture; voting-trust certificate; certificate of deposit for a security; or beneficial
7 interest in title to property, profits, or earnings; or, in general, any interest or
8 instrument commonly known as a "security"; or any certificate of interest or
9 participation in, temporary or interim certificate for, receipt for, guarantee of, or
10 warrant or right to subscribe to or purchase, any of the foregoing.

11 **SECTION 2. AMENDMENT.** Subsections 4 and 5 of section 10-04-03 of the 1997
12 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 13 4. All fees collected under this chapter must be deposited in the general fund of the
14 state treasury, except civil penalties collected from enforcement actions for the
15 purpose of distribution to aggrieved investors may be deposited in ~~a special~~
16 ~~securities protection fund.~~ All an investor restitution fund, and all other civil
17 penalties and moneys collected, including those collected for the reasonable
18 expenses for the administration of a particular case, pursuant to an administrative
19 action, court order or judgment, including investigation costs and attorney's fees in
20 a securities action brought by the commissioner, must be deposited in the general
21 fund.
22 5. The commissioner may honor requests from interested persons for the issuance of
23 a statement or opinion concerning the applicability of this chapter or the rules
24 adopted under this chapter to any transaction or proposed transaction which may
25 be subject to this chapter. Any such request must be accompanied by a
26 nonrefundable fee to be set by the commissioner by rule, which may not exceed
27 two of one hundred fifty dollars.

28 **SECTION 3. AMENDMENT.** Section 10-04-04 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **10-04-04. Registration of securities.** It is unlawful for any person to sell, or offer for
31 sale, any ~~securities~~ security in this state, ~~except those~~ unless it is registered under this chapter

1 ~~or the security or transaction is exempt under section 10-04-05, those sold in transactions~~
2 ~~exempt under section 10-04-06, or those registered by description under section 10-04-07 or by~~
3 ~~announcement under section 10-04-07.1, unless such securities have been registered by~~
4 ~~qualification as provided in section 10-04-08 or it is a federal covered security.~~

5 **SECTION 4. AMENDMENT.** Section 10-04-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **10-04-05. Exempt securities.** Sections 10-04-04, 10-04-07, 10-04-07.1, and
8 10-04-08, and 10-04-08.4 do not apply to any of the following securities:

- 9 1. Securities issued or guaranteed by the United States of America, or by any state,
10 territory, or insular possession thereof, or by any political subdivision of any such
11 state, territory, or insular possession, or by the District of Columbia, or by any
12 public agency or instrumentality of one or more of any of the foregoing, or payable
13 from assessments for improvements or revenues of publicly owned utilities therein;
14 or a certificate of deposit for any of the foregoing, but this exemption does not
15 include any security payable solely from revenues to be received from a
16 nongovernmental industrial or commercial enterprise unless the security is insured
17 or unconditionally guaranteed by, or the revenues are derived from, a person
18 whose securities are exempt from registration under this section.
- 19 2. Securities issued by and representing an interest in or a debt of, or guaranteed by,
20 a national bank or a national bank and trust company or bank or credit or loan or
21 savings association or savings and loan association or credit union organized
22 pursuant to an act of Congress and supervised by the United States, or any
23 agency thereof, or issued or guaranteed as to both principal and interest by an
24 international bank of which the United States is a member, or issued by and
25 representing an interest in or a debt of, or guaranteed by, a state bank, trust
26 company, savings bank, savings institution, or credit union organized and
27 supervised under the laws of any state, and securities of any person subject to
28 examination by the commissioner of banking and financial institutions of North
29 Dakota.
- 30 3. Securities issued by a building and loan association subject to supervision by an
31 agency of the state of North Dakota, or policy contracts, including variable or fixed

1 annuity contracts, of an insurance company subject to supervision by an agency of
2 the state of North Dakota.

3 4. Securities issued or guaranteed as to principal, interest, or dividends by a
4 corporation or limited liability company owning or operating a railroad or other
5 public service utility, if the corporation or limited liability company is subject to
6 regulation or supervision either as to its rates and charges or as to the issue of its
7 securities by a public service commission, or by a board, body, or official having
8 like powers, of the United States or of any state, territory, or insular possession
9 thereof, or of any municipality located therein, or of the District of Columbia, or of
10 the Dominion of Canada, or any province thereof, ~~provided, however, that a~~
11 ~~corporation or limited liability company issuing securities exempted under this~~
12 ~~subsection and which has not filed an application for approval of such securities~~
13 ~~with the public service commission of the state of North Dakota, shall file with the~~
14 ~~commissioner a copy of the registration statement with all amendments thereto~~
15 ~~filed with the securities and exchange commission of the United States, if such a~~
16 ~~registration statement is made or filed, or a copy of the informative statement made~~
17 ~~to or filed with any commission, board, or body of the United States or of any state,~~
18 ~~territory, or insular possession thereof, or of any municipality located therein, or of~~
19 ~~the District of Columbia, or of the Dominion of Canada, or any province thereof, by~~
20 ~~which said corporation or limited liability company is subject to regulation or~~
21 ~~supervision either as to its rates and charges or as to the issue of its securities,~~
22 ~~and shall pay a filing fee of twenty five dollars.~~

23 5. ~~Securities~~ Any security issued by a any person organized and operated not for
24 private profit but exclusively for religious, educational, benevolent, fraternal,
25 charitable, social, or reformatory purposes ~~and not for pecuniary profit~~; provided
26 that prior to any offer of such security each person must meet the following
27 conditions:

- 28 a. Apply for and obtain the written approval of the commissioner.
29 b. File an application, offering disclosure document, and pay a nonrefundable
30 filing fee of one hundred fifty dollars, which document and fee must
31 accompany the application.

- 1 c. File a notice identifying the basis of its qualification under this exemption with
2 such additional information as the commissioner may require.
3 d. Must not pay a commission or other remuneration, directly or indirectly,
4 except to a dealer and agent registered in this state in connection with the
5 offer or sale of the security to a resident of this state.
6 e. Provide a copy of the offering disclosure document to each person to whom
7 an offer to sell or sale is made.

8 The approval is effective for a period of one year from the date of approval.

- 9 6. ~~Securities issued by an issuer which meets all of the following conditions:~~
10 a. ~~If the issuer is not organized under the laws of the United States or a state, it~~
11 ~~has appointed a duly authorized agent in the United States for service of~~
12 ~~process and has set forth the name and address of such agent in its~~
13 ~~prospectus.~~
14 b. ~~A class of the issuer's securities is required to be and is registered under~~
15 ~~section 12 of the Securities Exchange Act of 1934 [Pub. L. 73-290; 48 Stat.~~
16 ~~881; 15 U.S.C. 78a et seq.] and has been so registered for the three years~~
17 ~~immediately preceding the offering date.~~
18 c. ~~Neither the issuer nor a significant subsidiary has had a material default~~
19 ~~during the lesser of the last seven years or the issuer's existence in the~~
20 ~~payment of (1) principal, interest, dividend, or sinking fund installment on~~
21 ~~preferred stock or indebtedness for borrowed money, or (2) rentals under~~
22 ~~leases with terms of three years or more. A "material default" is a failure to~~
23 ~~pay, the effect of which is to cause indebtedness to become due prior to its~~
24 ~~stated maturity or to cause termination or reentry under a lease prior to its~~
25 ~~stated expiration, if the indebtedness or the rental obligation for the unexpired~~
26 ~~term exceeds five percent of the issuer's and its consolidated subsidiaries'~~
27 ~~total assets, or if the arrearage in required dividend payments on preferred~~
28 ~~stock is not cured within thirty days.~~
29 d. ~~The issuer has had annual consolidated net income before extraordinary~~
30 ~~items and the cumulative effect of accounting changes as follows: (1) at least~~
31 ~~one million dollars in four of its last five fiscal years including its last fiscal~~

- 1 year, and (2) if the offering is of interest bearing or of fixed or floating rate
2 dividend securities, at least one and a half times its annual interest and
3 dividend expense, calculating net income before deduction for income taxes
4 and depreciation and giving effect to the proposed offering and the intended
5 use of the proceeds for its last fiscal year. Floating rate dividend shall be
6 calculated with reference to interest rates in the marketplace at the time of the
7 offering. "Last fiscal year" means the most recent year for which audited
8 financial statements are available, provided that such statements cover a
9 fiscal period ended not more than fifteen months from the commencement of
10 the offering.
- 11 e. If the offering is of stock or shares other than preferred stock or shares, and
12 except as otherwise required by law, the securities have voting rights at least
13 equal to the securities of each of the issuer's outstanding classes of stock or
14 shares other than preferred stock or shares, with respect to (1) the number of
15 votes per share, and (2) the right to vote on the same general corporate
16 decisions.
- 17 f. If the offering is of stock or shares other than preferred stock or shares, the
18 securities are owned beneficially or of record, on any date within six months
19 prior to the commencement of the offering, by at least one thousand two
20 hundred persons, and on that date there are at least seven hundred fifty
21 thousand of the shares outstanding with an aggregate market value, based on
22 the average bid price, of at least three million seven hundred fifty thousand
23 dollars. In determining the number of persons who are beneficial owners of
24 the stock or shares, the issuer or a broker dealer may rely in good faith upon
25 written information furnished by record owners.
- 26 g. Provided that, if the securities to be issued are listed, or approved for listing
27 upon notice of issuance, on the New York stock exchange, inc., or the
28 American stock exchange, inc., and the current original listing standards of
29 that exchange are satisfied as of the end of the issuer's most recent fiscal
30 year, the conditions of subdivision c need be met for only five years and the

1 ~~annual net earnings requirement of paragraph 1 of subdivision d shall be two~~
2 ~~hundred fifty thousand dollars.~~

3 ~~h. And provided further that, if the issuer of the securities is a finance company~~
4 ~~with liquid assets of at least one hundred five percent of its liabilities other~~
5 ~~than deferred income taxes, deferred investment tax credits, capital stock,~~
6 ~~and surplus at the end of each of its last five fiscal years, the net income~~
7 ~~requirement of paragraph 2 of subdivision d, but before deduction for interest~~
8 ~~expense, shall be one and a quarter times its annual interest expense.~~

9 ~~"Finance company" means a company engaged directly or through~~
10 ~~consolidated subsidiaries primarily in the business of wholesale, retail,~~
11 ~~installment, mortgage, commercial, industrial, or consumer financing, banking,~~
12 ~~or factoring. "Liquid assets" means cash, receivables payable on demand or~~
13 ~~not more than twelve years following the close of the company's last fiscal~~
14 ~~year, and readily marketable securities, in each case less applicable reserves~~
15 ~~and unearned income.~~

16 ~~i. If the issuer is a successor to another issuer, it shall be deemed to have met~~
17 ~~the conditions in subdivisions b, c, and d if: (1) its predecessor and it, taken~~
18 ~~together, do so, provided that the succession was primarily for the purpose of~~
19 ~~changing the state of incorporation of the predecessor or forming a holding~~
20 ~~company and that the assets and liabilities of the successor at the time of~~
21 ~~succession were substantially the same as those of the predecessor; or (2) if~~
22 ~~all predecessors met the conditions at the time of succession and the issuer~~
23 ~~has continued to do so since the succession.~~

24 ~~7. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a~~
25 ~~current transaction or the proceeds of which have been or are to be used for~~
26 ~~current transactions, is not the subject of a public offering, is prime quality~~
27 ~~negotiable commercial paper which is eligible for discounting by federal reserve~~
28 ~~banks, has at the time of issuance a definite maturity (after all days of grace, if any)~~
29 ~~of not exceeding nine months, is payable in cash only, and is not convertible into~~
30 ~~and does not carry an option or right to receive payment or any bonus in any other~~
31 ~~security.~~

- 1 ~~8.~~ 7. Securities, other than common stock, providing for a fixed return, which have been
2 outstanding and in the hands of the public for not less than five years and upon
3 which no default has occurred during the five years next preceding the date of sale.
4 ~~The exemptions herein specified must be proved by any person who may legally~~
5 ~~offer such securities for sale in the state of North Dakota by filing with the~~
6 ~~commissioner evidence in such form as the commissioner may require for each~~
7 ~~issue of securities for which exemption is provided herein and paying a filing fee of~~
8 ~~ten dollars.~~
- 9 ~~9.~~ 8. Securities, including patronage dividends or refunds, issued by any cooperative
10 ~~formed~~ organized under the statutes of ~~the state of North Dakota~~ this state.
- 11 ~~40.~~ 9. Any equipment security based on a chattel mortgage, lease, or agreement for the
12 conditional sale of cars, motive power, or other rolling stock mortgaged, leased,
13 sold to, or furnished for the use of a railroad or other public service utility
14 corporation or limited liability company, and any equipment security where the
15 ownership of or title to such equipment is pledged or retained in accordance with
16 the provisions of the laws of the United States or of any state thereof, or of the
17 Dominion of Canada, to secure the payments of such equipment security whether
18 it be an equipment trust certificate, bond, or note.
- 19 ~~44.~~ 10. Any bond, note, or other evidence of debt issued by a holding corporation or limited
20 liability company and secured by collateral consisting of any of the securities
21 described in subsections 4 and 10, if the collateral securities equal in fair value at
22 least one hundred twenty-five percent of the par value of the bonds, notes, or other
23 evidences of debts secured thereby. ~~Before any security described in this~~
24 ~~subsection is offered for sale, the person intending to offer it shall file with the~~
25 ~~commissioner descriptive circulars of the collateral securities and pay a filing fee to~~
26 ~~the commissioner of twenty five dollars. Unless the commissioner makes an order~~
27 ~~within three days after the receipt of such circulars requiring the securities to be~~
28 ~~qualified by application under this chapter, the securities shall be exempt.~~
- 29 ~~42.~~ 11. The execution of orders for purchase of securities by a registered dealer provided
30 such dealer acts as agent for the purchaser, has made no solicitation of the order
31 to purchase such securities, has no direct material interest in the sale or

1 distribution of the securities ordered, receives no commission, profit, or other
2 compensation other than the commissions involved in the purchase and sale of the
3 securities and delivery to the purchaser of written confirmation of the order which
4 clearly itemizes the commissions paid to the registered dealer. Clear and complete
5 records of all transactions exempted under this subsection shall be maintained by
6 the registered dealer or broker.

7 ~~43.~~ 12. Securities issued by a venture capital corporation or limited liability company
8 organized under chapter 10-30.1.

9 ~~44.~~ 13. Any security issued or guaranteed by Canada, any Canadian province, any political
10 subdivision of any such province, or any agency or corporate or other
11 instrumentality of one or more of the foregoing, or any other foreign government
12 with which the United States currently maintains diplomatic relations, if the security
13 is recognized as a valid obligation by the issuer or guarantor. This exemption does
14 not include any security payable solely from revenues to be received from a
15 nongovernmental industrial or commercial enterprise.

16 ~~45.~~ 14. a. Any security, other than a security that is a federal covered security pursuant
17 to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to
18 any filing or registration requirements under this chapter, listed or designated,
19 or approved for listing or designation upon notice of issuance on:

20 (1) The New York stock exchange;
21 (2) The American stock exchange;
22 (3) The national association of securities dealers automated quotation
23 national market system; ~~or~~

24 (4) Tier I of the Philadelphia stock exchange;

25 (5) Tier I of the Pacific stock exchange;

26 (6) Chicago board options exchange; or

27 (7) Any other stock exchange or automated quotation system which the
28 commissioner approves by rule;

29 b. Any other security of the same issuer which is of senior or substantially equal
30 rank;

- 1 c. Any security called for by subscription rights or warrants so listed or approved;
2 or
3 d. Any warrant or right to purchase or subscribe to any of the foregoing.
4 The commissioner may withdraw this exemption by order as to any exchange or
5 system, or any particular security, if the commissioner determines that the
6 exchange, system, or particular security does not comply with paragraphs 4
7 through 4 of the memorandum of understanding regarding a model uniform
8 marketplace exemption from state securities registration requirements [53 Federal
9 Register 52550, December 28, 1988], as they may be amended by agreement of
10 the parties to that memorandum. The commissioner shall make this determination
11 in accordance with the provisions of section 10-04-06.1, except that no summary
12 suspension may be entered pending a final determination for an exchange or
13 system it would be in the public interest.

- 14 ~~46.~~ 15. Securities issued by the North Dakota education association dues credit trust to
15 members of the North Dakota education association.

16 **SECTION 5. AMENDMENT.** Section 10-04-06 of the 1997 Supplement to the North
17 Dakota Century Code is amended and reenacted as follows:

18 **10-04-06. Exempt transactions.** Except as hereinafter in this section expressly
19 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
20 apply to any of the following transactions:

- 21 1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any
22 sale by a receiver or trustee in insolvency or bankruptcy.
23 2. The sale in good faith and not for the purpose of avoiding the provisions of this
24 chapter by a pledgee of securities pledged for a bona fide debt, ~~provided that the~~
25 ~~amount of such securities does not exceed two percent of the entire issue of each~~
26 ~~issue of such securities outstanding, and provided further that before proceeding to~~
27 ~~sell such pledged securities the pledgee shall notify the commissioner and obtain~~
28 ~~the commissioner's permission to such sale, unless such securities are exempted~~
29 ~~under section 10-04-05.~~
30 3. Any isolated sale of any security made by or on behalf of a bona fide owner for the
31 owner's account, such owner not being an issuer, underwriter, dealer, or salesman

- 1 agent and such sale not being made in the course of repeated and successive
2 transactions of a like character. This subsection shall not exempt any dealer or
3 ~~salesman~~ agent participating in an isolated sale from registering in accordance
4 with section 10-04-10, nor shall this exemption be available in connection with any
5 sale not made in good faith but rather for the purpose of evading the registration
6 requirements imposed under chapter 10-04.
- 7 4. ~~Stock~~ Securities dividends or other distributions by a corporation or a limited
8 liability company out of its earnings or surplus, or the sale or distribution of
9 additional capital stock of a corporation or membership interest of a limited liability
10 company to or among its own stockholders or members, including persons who at
11 the time of the transaction are holders of nontransferable warrants, or transferable
12 warrants exercisable within not more than ninety days of their issuance, where no
13 commission or other remuneration is paid or given directly or indirectly for soliciting
14 or effecting such sale or distribution to stockholders or members in this state.
- 15 5. Any offer or sale of securities to a bank, savings institution, trust company,
16 insurance company, investment company as defined in the Investment Company
17 Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial
18 institution ~~or institutional buyer,~~ or to a dealer, whether the purchaser is acting for
19 itself or in a fiduciary capacity.
- 20 6. Any transaction incident to a vote by stockholders pursuant to the articles of
21 incorporation or the applicable corporation or limited liability company statute on a
22 merger, consolidation, reclassification of securities, or sale of corporate or limited
23 liability company assets in consideration of the issuance of securities of another
24 corporation or limited liability company, or any transaction incident to a judicially
25 approved reorganization in which a security is issued in exchange for one or more
26 outstanding securities, claims, or property interests, or partly in such exchange and
27 partly for cash.
- 28 7. The issuance and delivery of any securities in exchange for any other securities of
29 the same issuer pursuant to a right of conversion entitling the holder of the
30 securities surrendered to make such conversion; provided, that the securities
31 surrendered were not offered for sale or sold in violation of section 10-04-04.

- 1 8. The sale by a registered dealer, acting either as principal or agent, of securities
2 thereof sold and distributed to the public, provided that:
- 3 a. Such securities are sold at prices reasonably related to the current market
4 price thereof at the time of sale and, if such registered dealer is acting as
5 agent, the commission collected by such registered dealer on account of the
6 sale thereof is not in excess of usual and customary commissions collected
7 with respect to securities and transactions having comparable characteristics.
- 8 b. Such securities do not constitute an unsold allotment to or subscription by
9 such dealer as a participant in the distribution of such securities by the issuer,
10 its officers, or directors or by or through an underwriter.
- 11 c. ~~A nationally recognized~~ Such securities are listed in the standards and poor's
12 standard corporation descriptions, Moody's industrial manual approved by the
13 commissioner contains, and has contained for a period of not less than ninety
14 days prior to the sale, the names of the issuer's officers and directors, a
15 balance sheet of the issuer as of a date not more than eighteen months prior
16 to the date of such sale, and a profit and loss statement of the issuer for either
17 the fiscal year preceding that date or the most recent year of operations,
18 Moody's bank and finance manual, Moody's transportation manual, Moody's
19 public utility manual, or Fitch's individual stock bulletin.
- 20 d. Such securities are limited to issuers organized under the laws of any state,
21 territory, or insular possession of the United States.
- 22 e. Provided, however, that even though the foregoing conditions might all be
23 met, the exemption would not apply to the securities of open-end
24 management companies, mutual funds, unit investment trusts, contractual
25 plans, and face amount certificate companies.
- 26 9. a. Any transaction pursuant to an offer directed by the offeror to not more than
27 ~~twenty five~~ thirty-five persons, other than those designated in subsection 5, in
28 this state during any period of twelve consecutive months, whether or not the
29 offeror or any of the offerees is then present in this state, if all of the following
30 conditions are met:

- 1 (1) The seller reasonably believes that all the buyers in this state, other
2 than those designated in subsection 5, are purchasing for investment.
- 3 (2) No commission or other remuneration is paid or given directly or
4 indirectly for soliciting any prospective buyer in this state, other than
5 those designated in subsection 5, except to a dealer and agent
6 registered in this state in connection with the offer or sale of the security
7 to a resident of this state.
- 8 (3) The offeror applies for and obtains the written approval of the
9 commissioner prior to making any offers in this state and pays a
10 nonrefundable filing fee of one hundred fifty dollars, which fee must
11 accompany the application for approval.
- 12 ~~Provided, however, that the~~ The commissioner may ~~by rule or order,~~ as to any
13 security or transaction or any type of security or transaction, withdraw or
14 further condition this exemption, or increase or decrease the number of
15 offerees permitted, or waive the ~~conditions~~ condition in ~~paragraphs~~
16 paragraph 1, 2, and 3 with or without the substitution of a limitation on
17 remuneration.
- 18 b. Any offer or sale in this state of common stock, preferred stock, limited liability
19 company membership interests, or limited partnership interests of an issuer
20 during any period of twelve consecutive months if all of the following
21 conditions are met:
- 22 (1) The issuer reasonably believes that all the buyers in this state, other
23 than those designated in subsection 5, are purchasing for investment.
- 24 (2) No commission or other remuneration is paid or given directly or
25 indirectly for soliciting any prospective buyer in this state, other than
26 those designated in subsection 5, except reasonable and customary
27 commissions paid by the issuer to a dealer ~~or salesman~~ and agent
28 registered under this chapter or others who the commissioner may
29 designate by rule in this state in connection with the offer or sale of the
30 security to a resident of 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, ~~other than~~ except
4 tombstone advertisements ~~that~~ approved by the commissioner ~~shall~~
5 ~~prescribe by rule~~, is used in connection with any offers or sales.
- 6 (5) ~~At least eighty percent of the net proceeds from the sale of the~~
7 ~~securities must be used in connection with the operations of the issuer~~
8 ~~in this state. "Net proceeds" means gross proceeds less commissions~~
9 ~~and sales expenses.~~
- 10 (6) An offering disclosure document in the form approved by the
11 commissioner must be delivered to each offeree no less than
12 seventy-two hours prior to the sale of the security.
- 13 (7) (6) The gross proceeds of the offering may not exceed ~~five hundred~~
14 ~~thousand~~ one million dollars.
- 15 (8) (7) The issuer must apply for and obtain the written approval of the
16 commissioner prior to making any offer or sale in this state by filing an
17 application prescribed by the commissioner, a copy of the offering
18 disclosure document, and any other information or documents the
19 commissioner may require, together with a nonrefundable filing fee of
20 one hundred fifty dollars.
- 21 (9) (8) All funds raised in the offering are placed in an escrow account until the
22 total offering amount has been sold.
- 23 ~~Provided, however, that the~~ The commissioner may ~~by rule or order, as to any~~
24 ~~security or transaction or any type of security or transaction,~~ withdraw or
25 further condition this exemption or waive the conditions in paragraphs 5 and 6
26 ~~and 7.~~
- 27 c. ~~The offer or sale of a security offered or sold in compliance with a limited~~
28 ~~offering transactional exemption that the commissioner, by rule, may adopt to~~
29 ~~further the objectives of compatibility with the exemptions from securities~~
30 ~~registration authorized by the Securities Act of 1933 and uniformity among the~~
31 ~~states.~~ The issuer must file a report of all offers and sales made in this state

- 1 pursuant to subdivision a or b on a form prescribed by the commissioner
2 within thirty days after the completion of the offering or expiration of the
3 twelve-month approval period, whichever occurs first.
- 4 d. The exemptions provided under subdivisions a; and b, ~~and e~~ may not be
5 combined.
- 6 e. An exemption under this subsection is not available for the securities of any
7 issuer if the issuer or any promoter, officer, director, manager, partner, or
8 underwriter of the issuer:
- 9 (1) Has filed a registration statement that is the subject of a currently
10 effective registration stop order entered pursuant to any federal or state
11 securities law within five years prior to the filing of the application
12 required under this exemption.
- 13 (2) Has been convicted within five years prior to the filing of the application
14 required under this exemption of any felony or misdemeanor in
15 connection with the offer, purchase, or sale of any security or any felony
16 involving fraud or deceit, including forgery, embezzlement, obtaining
17 money under false pretenses, larceny, or conspiracy to defraud.
- 18 (3) Is currently subject to any state administrative enforcement order or
19 judgment entered by any state securities administrator or the securities
20 and exchange commission within five years prior to the filing of the
21 application required under this exemption or is subject to any federal or
22 state administrative enforcement order or judgment in which fraud or
23 deceit, including making untrue statements of material facts, was found
24 and the order of judgment was entered within five years prior to the
25 filing of the application required under this exemption.
- 26 (4) Is subject to any federal or state administrative enforcement order or
27 judgment which prohibits, denies, or revokes the use of any exemption
28 from registration in connection with the offer, purchase, or sale of
29 securities.
- 30 (5) Is currently subject to any order, judgment, or decree of any court of
31 competent jurisdiction temporarily or preliminarily restraining or

1 enjoining, or is subject to any order, judgment, or decree of any court of
2 competent jurisdiction, permanently restraining or enjoining, such part
3 from engaging in or continuing any conduct or practice in connection
4 with the purchase or sale of a security or involving the making of any
5 false filing with any state or with the securities and exchange
6 commission entered within five years prior to the filing of the application
7 required under this exemption.

8 (6) Has been or is the subject of any order issued by the United States
9 postal service that was entered within five years prior to reliance on this
10 exemption and alleged any fraudulent or unlawful conduct.

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

14 10. The sale of capital stock of a corporation or membership interests of a limited
15 liability company ~~may be exempted by the securities commissioner if the~~
16 corporation or limited liability company is organized under ~~chapter 10-30 or~~
17 ~~approved by the small business administration as qualifying for loans under section~~
18 ~~502 of the Small Business Investment Act of 1958, as amended;~~ the statutes of
19 this state or the sale of memberships, including dues, in a nonprofit corporation
20 incorporated under chapter 10-24 ~~may be exempted by the securities~~
21 ~~commissioner~~ if the corporation or limited liability company is organized and
22 operated for the primary purpose of promoting community development.

23 11. Any security issued in connection with an employees' stock purchase, savings,
24 pension, profit-sharing, a self-employed person's retirement plan, or similar benefit
25 plan; ~~provided, that the securities which fund the plan or are the subject of the plan~~
26 ~~are otherwise exempt pursuant to section 10-04-05.~~

27 12. The sale of a security issued by the United States, or the state of North Dakota, or
28 any political subdivision or instrumentality of the state of North Dakota; provided,
29 that the offer for sale and sale are made by an official or employee of the issuer or
30 of the Bank of North Dakota acting in an official capacity and not for personal
31 pecuniary profit, or by a bank or similar financial association or institution or an

- 1 official or employee thereof solely as an accommodation to customers of such
2 association or institution and without asking or receiving a commission or
3 remuneration other than an accommodation fee not to exceed fifty dollars in
4 connection with the transaction.
- 5 13. The sale of capital stock or membership interests of a venture capital corporation
6 or limited liability company organized under chapter 10-30.1.
- 7 14. Any offer or sale of shares of capital stock issued by a professional corporation or
8 professional limited liability company which is organized and operated pursuant to
9 chapter 10-31.
- 10 15. The offer or sale of a security issued by the North Dakota education association
11 dues credit trust to members of the North Dakota education association.
- 12 16. The distribution of a prospectus or similar disclosure document by an issuer to "test
13 the waters" with an offer of a security for the sole purpose of discussing possible
14 business strategies or economic development or soliciting potential indications of
15 interest from prospective purchasers if the issuer:
- 16 a. Is organized under the laws of this state and operates its principal place of
17 business in this state or is a person who is a member of the North Dakota
18 private capital investment network or multistate angel capital electronic
19 network who has registered with the commissioner and who offers, sells,
20 purchases, or exchanges only securities that are registered with the
21 commissioner or the securities and exchange commission.
- 22 b. Does not engage in or propose activities for petroleum exploration, oil
23 production, extractive mining, or any blind pool offering without a specific
24 business purpose.
- 25 c. Discusses potential business strategies and economic development or solicits
26 indications of potential interest in a project or business only within a period of
27 twelve months after receiving approval from the commissioner and does not
28 pay a commission or fee to any person for soliciting a potential investor or
29 prospective purchaser in this state or involving a resident of this state unless
30 the person who receives the commission or fee is registered as a dealer or
31 sales agent in this state.

- 1 d. Intends to file an application to register securities in this state or to receive
2 approval for an exemption under subsection 9 and the issuer intends to offer
3 and sell securities described in section 3(a)11 of the federal Securities Act of
4 1933, in regulation A or rule 504 of regulation D of the securities and
5 exchange commission, in a small corporate offering registration, or in a state
6 or federal securities registration for a private placement involving only
7 accredited investors as defined by the securities and exchange commission.
- 8 e. Files a solicitation of interest form and copies of any advertising or marketing
9 materials, including scripts for use in telephone, television, electronic, or
10 computer publications, for approval by the commissioner at least ten business
11 days before the issuer begins soliciting indications of interest from potential
12 purchasers and at least ten business days before publishing or distributing
13 any materials or information to any person.
- 14 f. Obtains approval of the commissioner for any amendments or changes in filed
15 forms, marketing materials, or advertisements at least ten business days
16 before distributing the amended marketing materials or amended advertising
17 information to any person.
- 18 g. Stops all communications with prospective investors made in reliance on this
19 exemption immediately after filing an application to register or qualify the
20 securities with the commissioner or with the securities and exchange
21 commission.
- 22 h. Does not accept money or sign completed contracts for sales of securities
23 with any person while soliciting indications of interest and does not complete
24 any sales of securities until at least ten business days after completing a
25 securities registration in this state.
- 26 i. Includes the name, address, and telephone number of the chief executive
27 officer of the issuer, a general description of the business and products, and
28 the following statements in any published notice, marketing materials, or
29 broadcast scripts:
- 30 NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED
31 AND NONE WILL BE ACCEPTED UNTIL AFTER THESE

1 SECURITIES ARE REGISTERED OR QUALIFIED WITH THE
2 SECURITIES COMMISSIONER OF THIS STATE AND WITH THE
3 SECURITIES AND EXCHANGE COMMISSION.

4 NO SALES OF THESE SECURITIES WILL BE MADE OR
5 COMMITMENT TO PURCHASE ACCEPTED UNTIL AFTER
6 DELIVERY OF A PROSPECTUS THAT INCLUDES ADDITIONAL
7 INFORMATION ABOUT THE OFFERING.

8 A PROSPECTIVE INVESTOR WHO EXPRESSES AN INTEREST IN
9 THIS INVESTMENT OR PROJECT IS NOT OBLIGATED OR
10 COMMITTED TO INVEST MONEY OR PURCHASE SECURITIES.

11 j. Does not know and, in the exercise of reasonable care, could not have known
12 that the issuer or any officer, director, ten percent shareholder, promoter,
13 partner, manager or agent of the issuer has:

14 (1) Been the subject of or filed a registration statement that is the subject of
15 a stop order, administrative enforcement order, judgment, injunction, or
16 restraining order issued by any federal or state securities agency, any
17 court of competent jurisdiction, or the United States postal service and
18 which prohibits, denies, or revokes the registration, offer, sale, or
19 purchase of a security, franchise, commodity, or other financial
20 transaction or which involves fraud, deceit, misstatements of material
21 facts, forgery, embezzlement, obtaining money under false pretenses,
22 larceny, conspiracy to defraud, or similar deceptive acts; or

23 (2) Been convicted of any felony or misdemeanor involving the offer,
24 purchase, or sale of a security, franchise, commodity, or financial
25 transaction, or any felony or misdemeanor involving fraud, deceit,
26 forgery, embezzlement, obtaining money under false pretenses,
27 larceny, conspiracy to defraud, or a similar financial crime.

28 17. An offer or sale of common stock, limited liability company membership interests,
29 or limited partnership interests by a person to a person or other subscribers, not
30 exceeding ten in number, for the sole purpose of organization in this state, if the
31 securities are not acquired for the purpose of resale to others for a period of twelve

1 months, advertising has not been published or circulated in connection with the
2 offer or sale, and all sales are consummated within ten days after the date of
3 organization.

4 18. Any offer or sale of a security by an issuer in a transaction provided all of the
5 following conditions are met:

6 a. Sales of securities may be made only to persons who are, or the issuer
7 reasonably believes are, accredited investors as defined in 17 CFR
8 230.501(a) promulgated by the securities and exchange commission.

9 b. The exemption is not available to an issuer that is in the development stage
10 that either has no specific business plan or purpose or has indicated that its
11 business plan is to engage in a merger or acquisition with an unidentified
12 company or companies, or other entity or person.

13 c. The issuer reasonably believes that all purchasers are purchasing for
14 investment and not with the view to, or for, sale in connection with a
15 distribution of the security. Any resale of a security sold in reliance of this
16 exemption within twelve months of sale must be presumed to be with a view
17 to distribution and not for investment, except a resale pursuant to a
18 registration statement effective under section 10-04-04 or to an accredited
19 investor pursuant to an exemption available under subsection 5.

20 d. (1) The exemption is not available to an issuer if the issuer, any of the
21 issuer's predecessors, any affiliated issuer, any of the issuer's directors,
22 officers, general partners, beneficial owners of ten percent or more of
23 any class of its equity securities, any of the issuer's promoters presently
24 connected with the issuer in any capacity, any underwriter of the
25 securities to be offered, or any partner, director, or officer of such
26 underwriter:

27 (a) Within the last five years, has filed a registration statement that is
28 the subject of a currently effective registration stop order entered
29 by any state securities administrator or the securities and
30 exchange commission;

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

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

1 nonrefundable filing fee of one hundred dollars within fifteen days after the
2 first sale in this state.

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

5 **SECTION 6. AMENDMENT.** Section 10-04-07.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **10-04-07.1. Registration by announcement - Secondary.**

8 1. Securities that have been outstanding and in the hands of the public for not less
9 than one year as the result of prior original registration in North Dakota or through
10 securities and exchange commission registration, by the issuer, or by the
11 underwriter on behalf of an issuer, are entitled to registration by announcement in
12 the manner and subject to the conditions provided by this section.

13 In addition to the foregoing, stock, having equal voting rights with other
14 classes, of life insurance companies may also qualify for registration under this
15 section provided the company has been in continuous operation for twenty years
16 immediately preceding the date of filing for registration and provided further that in
17 addition to supplying the information required by subdivisions a through c of
18 subsection 2 the applicant can supply all of the following:

- 19 a. A balance sheet and an earnings statement showing statutory net earnings
20 after all dividends (returned premiums) to policyholders and after all expenses
21 including state and federal income taxes for the fiscal period ended not more
22 than twelve months prior to the filing date upon which either an unqualified or
23 a qualified opinion has been expressed by a certified public accountant;
24 provided, however, that any qualification of opinion relates only to generally
25 accepted principles of accounting which may have been modified to meet the
26 reporting requirements of the various state insurance departments.
- 27 b. Such balance sheet separates the surplus account into its component parts
28 and shows a positive balance in the accumulated unrestricted retained
29 earnings account, on statutory basis.
- 30 c. Earnings statements for the four fiscal years immediately preceding the
31 beginning date of the earnings statement required in subdivision a prepared

- 1 by the same certified public accountant showing statutory net earnings after
2 the deductions enumerated in subdivision a for each fiscal year; provided,
3 however, that these statements need not be accompanied by an unqualified
4 or a qualified opinion of the certified public accountant unless such certified
5 public accountant did actually perform an audit of the company for any year or
6 years covered by the earnings statements in which case the requirements of
7 subdivision a apply for the year or years so audited.
- 8 d. A statement prepared by a certified public accountant or actuary showing a
9 net gain in insurance in force for each of the last five fiscal years.
- 10 2. Securities entitled to registration by announcement may be registered only by a
11 dealer registered in the office of the commissioner as provided for in section
12 10-04-10 by filing in the office of the commissioner a written announcement of
13 intention to trade in the securities, ~~which announcement may be given by telegram~~
14 ~~sent to the commissioner by the dealer~~, containing the following:
- 15 a. Name of issuer and location of the headquarters or principal office.
16 b. A brief description of the security, including price and current earnings.
17 c. A statement that the securities have been outstanding and in the hands of the
18 public not less than one year as aforesaid.
19 d. ~~A statement that a balance sheet not more than twelve months old has been~~
20 ~~or will be mailed to the commissioner.~~
21 e. A statement that the security has been registered in North Dakota or by the
22 securities and exchange commission.
- 23 3. The filing of such announcement in the office of the commissioner constitutes the
24 registration of the security, unless advised to the contrary within forty-eight hours or
25 advised to furnish additional information, and such dealer shall pay to the
26 commissioner a filing fee of twenty-five dollars ~~within thirty-six hours after the time~~
27 ~~of such filing~~. Upon registration, such securities may be sold in this state for a
28 period of one year from date of registration by registered dealers at a price or
29 prices reasonably related to the current market price of such security at the time of
30 sale, subject, however, to any and all rights and authority granted the
31 commissioner and to any person or purchaser under chapter 10-04, in respect of

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

9 4. ~~Nothing in this section shall be held or construed to require registration of~~
10 ~~securities under this section after said securities have been registered by~~
11 ~~description or qualification as provided in section 10-04-07 or 10-04-08 for one~~
12 ~~year after registration.~~ Securities registered pursuant to section 10-04-07 or
13 10-04-08 become eligible for trading in the secondary market at current market
14 prices upon completion of the original offering when said securities are outstanding
15 and in the hands of the public and remain so until the end of the registration year
16 when renewal for secondary is permissible. Notification of completion of initial
17 offering should be sent to the commissioner when the offering is completed
18 requesting change to secondary.

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

21 **10-04-08. Registration by qualification.** Securities required to be registered by
22 qualification under this chapter before they may be sold in this state must be registered as
23 provided in this section. Application for registration of securities by qualification must be made
24 by the issuer of the securities or by a registered dealer by filing in the office of the
25 commissioner:

- 26 1. An application for registration which must be made in writing or on forms
27 prescribed by the commissioner and which must contain the following information
28 and be accompanied by the following documents:
- 29 a. With respect to the applicant or issuer and any significant subsidiary: its
30 name, address, and form of organization; the state of foreign jurisdiction and
31 date of its organization; the general character and location of its business; a

- 1 general description of its physical properties and equipment; and a statement
2 of the general competitive conditions in the industry or business in which it is
3 or will be engaged.
- 4 b. With respect to every director and officer of the issuer, or person occupying a
5 similar status or performing similar functions: the person's name, address,
6 and principal occupation for the past five years; the amount of securities of the
7 issuer held by the person as of a specified date within thirty days of the filing
8 of the application for registration; the amount of the securities covered by the
9 application for registration to which the person has indicated an intention to
10 subscribe; and a description of any material interest in any transaction with
11 the issuer or any subsidiary effected within the past three years or proposed
12 to be effected.
- 13 c. With respect to persons covered by subdivision b: the remuneration paid
14 during the past twelve months and estimated to be paid during the next twelve
15 months, directly or indirectly, by the issuer to all those persons in the
16 aggregate.
- 17 d. With respect to any person owning of record, or beneficially if known, ten
18 percent or more of the outstanding shares of any class of equity security of
19 the issuer: the information specified in subdivision b other than the person's
20 occupation.
- 21 e. With respect to every promoter if the issuer was organized within the past
22 three years: the information specified in subdivision b, any amount paid to the
23 promoter within that period or intended to be paid to the promoter, and the
24 consideration for any such payment.
- 25 f. With respect to any person on whose behalf any part of the offering is to be
26 made in a nonissuer distribution: the person's name and address; the amount
27 of securities of the issuer held by the person as of the date of the filing of the
28 application for registration; a description of any material interest in any
29 transaction with the issuer or any subsidiary effected within the past three
30 years or proposed to be effected; and a statement of the person's reasons for
31 making the offering.

- 1 g. The title, kind, classes, and amount of securities to be offered in this state; the
2 proposed offering price to the public or the method by which it is to be
3 computed; any variation therefrom at which any proportion of the offering is to
4 be made to any person or class of persons other than the underwriters, with a
5 specification of any such person or class; the basis upon which the offering is
6 to be made if otherwise than for cash; the maximum amount of commission or
7 other form of remuneration to be paid in cash or otherwise, directly or
8 indirectly, for or in connection with the sale or offering for sale of such
9 securities; the estimated aggregate underwriting and selling discounts or
10 commissions and finders' fees, including separately cash, securities,
11 contracts, or anything else of value to accrue to the underwriters or finders in
12 connection with the offering, or, if the selling discounts or commissions are
13 variable, the basis of determining them and their maximum and minimum
14 amounts; the estimated amounts of other selling expenses, including legal,
15 engineering, and accounting charges and a statement as to what person,
16 corporation, or limited liability company shall be responsible for payment of
17 the same; the name and address of every underwriter and every recipient of a
18 finder's fee; a copy of any underwriting or selling-group agreement pursuant
19 to which the distribution is to be made, or the proposed form of any such
20 agreement whose terms have not yet been determined; and a description of
21 the plan of distribution of any securities which are to be offered otherwise than
22 through an underwriter.
- 23 h. The estimated cash proceeds to be received by the issuer from the offering;
24 the purposes for which the proceeds are to be used by the issuer; the amount
25 to be used for each purpose; the amounts of any funds to be raised from other
26 sources to achieve the purposes stated; the sources of any such funds; and, if
27 any part of the proceeds is to be used to acquire any property, including
28 goodwill, otherwise than in the ordinary course of business, the names and
29 addresses of the vendors, the purchase price, the names of any persons who
30 have received commissions in connection with the acquisition, and the

- 1 amounts of any such commissions and any other expense in connection with
2 the acquisition.
- 3 i. A description of each and every stock option or other security option
4 outstanding, or to be created in connection with the offering, including the
5 price at which such options may be exercised together with the amount of any
6 such options held or to be held by every person.
- 7 j. The capitalization and long-term debt of the issuer and any subsidiary,
8 including a description of each security outstanding or being registered or
9 otherwise offered, and a statement of the amount and kind of consideration
10 for which the issuer or any subsidiary has issued any of its securities within
11 the past two years or is obligated to issue any of its securities.
- 12 k. The dates of, parties to, and general effect concisely stated of, every
13 management or other material contract made or to be made otherwise than in
14 the ordinary course of business if it is to be performed in whole or in part at or
15 after the filing of the application for registration or was made within the past
16 two years, together with a copy of every such contract; and a description of
17 any pending litigation or proceeding to which the issuer is a party and which
18 affects its business or assets.
- 19 l. A detailed statement showing the items of cash, property, services, patents,
20 goodwill, and any other consideration for which any securities of the issuer
21 have been within two years or are to be issued in payment.
- 22 m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or
23 other sales literature intended as of the effective date to be used in
24 connection with the offering.
- 25 n. A specimen or copy of the security being registered; a copy of the issuer's
26 articles of incorporation and bylaws, as currently in effect; and a copy of any
27 indenture or other instrument covering the security to be registered.
- 28 o. A balance sheet of the issuer as of a date within four months prior to the filing
29 of the application for registration; a profit and loss statement and analysis of
30 surplus for each of the three fiscal years preceding the date of the balance
31 sheet and for any period between the close of the last fiscal year and the date

- 1 of the balance sheet, or for the period of the issuer's and any predecessors'
2 existence if less than three years; and, if any part of the proceeds of the
3 offering is to be applied to the purchase of any business, the same financial
4 statements which would be required if the business were the registrant.
- 5 p. Other states in which it is proposed to offer the securities for sale to the
6 public; other states in which the securities are eligible for sale to the public;
7 states which have refused, by order or otherwise, to render the securities
8 eligible for sale to the public or have revoked or suspended the right to sell the
9 securities, or in which an application for registration has been withdrawn; and,
10 if application has been made to register the securities under the Federal
11 Securities Act of 1933, the date upon which the application to register the
12 securities was first filed, and a statement as to whether registration under that
13 Act is effective, and if so, the effective date.
- 14 q. Such additional information as the commissioner requires by rule or order or
15 may subsequently request.
- 16 2. ~~a.~~ Payment of a ~~registration~~ filing fee for each security or class of security to be
17 registered as follows:
- 18 ~~(1)~~ a. One-tenth of one percent of the first seven hundred fifty thousand
19 dollars of the aggregate offering price of each security or class of
20 security to be registered.
- 21 ~~(2)~~ b. One-twentieth of one percent of any amount in excess of seven
22 hundred fifty thousand dollars of the aggregate offering price of each
23 security or class of security to be registered.
- 24 ~~(3)~~ c. In no event may such ~~registration~~ filing fee be less than one hundred
25 dollars for each security or class of security to be registered. If the
26 application for ~~registration~~ filing is denied, such ~~registration~~ filing fee
27 less the actual cost to the state of processing and investigating as
28 determined by the commissioner must be returned to the applicant.
- 29 ~~(4)~~ d. Provided, further, that any applicant may ~~register additional~~ increase
30 the aggregate amount of securities under this subdivision before the
31 expiration of one year from the date of the ~~registration~~ certificate of

1 effectiveness at the same reduced fee, which must be computed as
2 provided in ~~paragraphs 1~~ subdivisions a and 2 b as a separate fee for
3 each additional amount registered, as if the additional securities had
4 been included in the other registration of that year, registration year and
5 not calendar year.

6 ~~(5)~~ e. For the renewal of the registration of securities for additional periods of
7 one year there must be paid a renewal fee of one hundred dollars.

8 ~~b. (1)~~ Each open end management company, unit investment trust, and face
9 amount certificate company, as defined in the Investment Company Act
10 of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] may
11 register an indefinite number or amount of securities by including on the
12 facing sheet of its registration statement a declaration that an indefinite
13 number or amount of securities is being registered by such registration
14 statement.

15 ~~(2)~~ At the time a declaration is filed there must be paid a registration fee of
16 five hundred dollars.

17 ~~(3)~~ Provided, further, that those issuers of several classes of such
18 securities may not combine the registration of several classes.

19 ~~(4)~~ Each open end management company, unit investment trust, and face
20 amount certificate company, as defined in the Investment Company Act
21 of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] having
22 an effective registration statement relating to an indefinite number or
23 amount of securities shall, within sixty days after the end of any fiscal
24 year and after the registration is terminated, file a report of the
25 aggregate public offering price of securities sold in this state during the
26 fiscal year and shall pay a filing fee of one twentieth of one percent of
27 such amount, but in no case may such filing fee be less than one
28 hundred dollars nor more than two hundred fifty dollars. Failure to file
29 the report and fee is cause for the issuance of a stop order.

30 3. If the applicant is not domiciled in this state and is not a corporation or limited
31 liability company organized or authorized to transact business under the laws of

1 this state, a consent to service of process conforming to the requirements of
2 section 10-04-14.

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

22 Registration under this section is effective for a period of one year, ~~except that the effectiveness~~
23 ~~of a registration for an indefinite number or amount of securities under paragraph 1 of~~
24 ~~subdivision b of subsection 2 shall continue until terminated by either the commissioner or the~~
25 ~~issuer by filing within one hundred twenty days of the end of its fiscal year, an updated~~
26 ~~prospectus, a balance sheet, and a statement of income of the issuer.~~

27 **SECTION 8. AMENDMENT.** Section 10-04-08.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **10-04-08.1. Authority of commissioner as to registration of securities.** The right to
30 sell securities in this state shall not be granted in any case where it appears to the
31 commissioner that the sale of such securities would work a fraud or deception on purchasers or

1 the public, or that the proposed disposal of the securities is on unfair terms, or if the proposed
2 plan of business of the applicant appears to be unfair, unjust, or inequitable. When the
3 commissioner deems it necessary the commissioner has power, in connection with pending
4 applications and at the expense of the applicant, to require the applicant to furnish additional
5 information, to order appraisals, audits, or other examinations and reports, and, where the
6 applicant is the issuer of the securities, or the proposed sale is to be on behalf of the issuer, to
7 make an investigation of the books, records, property, business, and affairs of such issuer.

8 Upon compliance with all the provisions of this chapter relating to applications for
9 approval or registration by qualification and the requirements of the commissioner, the
10 commissioner shall either approve or register such securities or if the commissioner is of the
11 opinion that sale of the securities would be contrary to the provisions of this section, the
12 commissioner shall deny the application. The commissioner has power to place such
13 conditions, limitations, and restrictions on any approval or registration as may be necessary to
14 carry out the purposes of this chapter. Registration or approval must be by entry in the register
15 of securities, which entry must show the securities approved or registered and for whom
16 approved or registered, and the conditions, limitations, and restrictions, if any, or shall make
17 proper reference to a formal order of the commissioner on file showing such conditions,
18 limitations, and restrictions. Included among any other reasonable conditions, limitations, and
19 restrictions which the commissioner may deem necessary are the following:

20 1. The commissioner may by rule, order, or directive require that any security issued
21 or to be issued to a promoter for a consideration different from the public offering
22 price, or to any person for a consideration other than cash, be deposited in escrow
23 with the commissioner or some other depository satisfactory to the commissioner
24 under an escrow agreement that the owners of such securities shall not be entitled
25 to sell or transfer such securities or to withdraw such securities from escrow until
26 all other stockholders who have paid for their stock in cash shall have been paid a
27 dividend or dividends aggregating not less than six percent of the initial offering
28 price shown to the satisfaction of the commissioner to have been held actually
29 earned on the investment in any common stock as held. In case of dissolution or
30 insolvency during the time such securities are held in escrow, the owners of such

- 1 securities shall not participate in the assets until after the owners of all other
2 securities have been paid in full.
- 3 2. The commissioner may by rule, order, or directive require that all the proceeds
4 from the sale of the approved or registered security be impounded until the issuer
5 receives a specified amount of funds, which amount shall be determined by the
6 commissioner.
- 7 3. The commissioner may refuse to allow the granting of any stock options to any
8 person, but if such an option is allowed, the commissioner may prescribe that the
9 price at which the option can be exercised shall be increased each year in which it
10 is not exercised in an amount to be determined by the commissioner and that the
11 option shall lapse altogether after a specified period to be set by the commissioner.
- 12 4. If any stock is given for past services or consideration, the commissioner may
13 require that the issuer submit to the commissioner a strict and comprehensive
14 evaluation of such past services or consideration and may limit the amount of stock
15 so given in order that it is commensurate with the value of the past services and in
16 no case shall the commissioner allow stock to be given for future services.
- 17 5. The commissioner may limit the price at which the securities, either of par or no par
18 value, may be sold, and if such securities are quoted by a recognized quotation list
19 such price shall be limited to an amount not unreasonably in excess of the amount
20 quoted.
- 21 6. The commissioner may by rule, order, or directive limit compensation, and all other
22 expenses paid or incurred, directly or indirectly, in connection with the organization,
23 approval, registration, or sale of securities, to an amount not in excess of
24 compensation paid or expenses incurred in connection with the organization,
25 approval, registration, or sale of similar securities.
- 26 7. If more than one class of stock is issued and one class of stock is issued for the
27 purpose of giving preference as to dividends, the commissioner may require that a
28 greater consideration, commensurate with the value of the dividend preference, be
29 paid per share for such stock.
- 30 8. The commissioner may by rule, order, or directive require that any security
31 approved or registered be sold only on a specified form of subscription or sale

1 contract, and that a signed or conformed copy of each contract be filed with the
2 commissioner or preserved by the corporation, partnership, or limited liability
3 company for any period up to three years specified in the rule ~~or~~, order, or
4 directive.

5 9. So long as the approval or registration is effective, the commissioner may by rule
6 or order require the person who filed for approval or registration to file reports, not
7 more often than quarterly, to provide reasonably current information upon the
8 matters contained in the application or registration statement, and to disclose the
9 progress of the offering.

10 10. The commissioner has the authority to disapprove an application for approval or
11 registration of any security when it is established that one or more of the promoters
12 are not of good business reputation or character.

13 The provisions of this section do not apply to a federal covered security.

14 **SECTION 9. AMENDMENT.** Section 10-04-08.2 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **10-04-08.2. Advertising matter - Regulations.**

17 1. No circular, prospectus, advertisement, form or market letter, report, document,
18 pamphlet, leaflet, script, or other written or printed matter, or any communication by
19 radio, television, or similar communications media, hereinafter referred to as
20 advertising matter, used in connection with the offer, sale, ~~or purchase of~~ or
21 rendering investment advice with respect to any security in this state shall be
22 published, circulated, distributed, broadcast, or caused to be published, circulated,
23 distributed, or broadcast in any manner unless and until such advertising matter
24 shall have been filed with the commissioner at least five business days prior to its
25 first publication, circulation, distribution, or broadcast, unless such advertising
26 matter pertains to a security or transaction exempted in 10-04-05 or 10-04-06,
27 relates to a federal covered security, or is used by a federal covered adviser.

28 2. The commissioner may by rule or order and subject to such terms and conditions
29 as may be prescribed therein exempt any advertising matter from the filing
30 requirement imposed under subsection 1 if the commissioner finds that the

1 imposition of the filing requirement is not necessary or appropriate in the public
2 interest or for the protection of investors.

3 3. The commissioner has the power to disapprove any advertising matter filed
4 pursuant to subsection 1, which the commissioner deems in conflict with the
5 purposes of this chapter.

6 4. Nothing in this section or section 10-04-04 shall be construed to prohibit the
7 publication or distribution to the public of a preliminary prospectus or preliminary
8 summary prospectus under the Securities Act of 1933, as amended prospectus,
9 provided that no solicitation is made or order or conditional order accepted prior to
10 registration in this state, and provided also that, unless the preliminary prospectus
11 relates to a federal covered security, the following legend appears on each such
12 prospectus or preliminary prospectus:

13 A registration statement relating to these securities has been filed ~~with the~~
14 ~~securities and exchange commission~~ but has not yet become effective.

15 Information contained herein is subject to completion or amendment. These
16 securities may not be sold nor may offers to buy be accepted prior to the time
17 the registration statement becomes effective. This prospectus shall not
18 constitute an offer to sell or the solicitation of an offer to buy nor shall there be
19 any sale of these securities in any state in which such offer, solicitation, or
20 sale would be unlawful prior to registration or ~~qualification~~ approval under the
21 securities laws of any such state.

22 **SECTION 10. AMENDMENT.** Section 10-04-08.3 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **10-04-08.3. Unlawful representations concerning registration or exemption.**

25 1. Neither the fact that an application for approval under sections 10-04-05 or
26 10-04-06 or registration under sections 10-04-07, 10-04-07.1, 10-04-08, or
27 10-04-10 or a notice filing under section 10-04-08.4 has been filed nor the fact that
28 a security or person is effectively approved or registered constitutes a finding by
29 the commissioner that any document filed under this chapter is true, complete, and
30 not misleading. Neither any such fact nor the fact that an exemption or exception
31 is available for a security or a transaction means that the commissioner has

1 passed in any way upon the merits or qualifications of, or recommended or given
2 approval to, any security, transaction, or person.

3 2. It is unlawful to make, or cause to be made, to any prospective purchaser,
4 customer, or client any representation inconsistent with subsection 1.

5 **SECTION 11.** Section 10-04-08.4 of the North Dakota Century Code is created and
6 enacted as follows:

7 **10-04-08.4. Federal covered security.** A federal covered security may be offered and
8 sold in this state without registration, subject to the following:

9 1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act
10 of 1933, as amended, may be offered and sold upon the filing of:

11 a. A copy of the issuer's registration statement or a notice of intent in writing or
12 electronically for an indefinite or definite dollar amount for each security or
13 class of security on a form prescribed by the commissioner with a consent to
14 service of process.

15 b. If the notice filing is for a definite dollar amount, at the time of the initial notice
16 filing the issuer shall pay a nonrefundable filing fee of one-tenth of one
17 percent of the first seven hundred fifty thousand dollars and one-twentieth of
18 one percent of any amount in excess of seven hundred fifty thousand dollars
19 of the aggregate offering price of each security or class of security. In no
20 event, however, may such filing fee be less than one hundred dollars for each
21 security or class of security.

22 c. If the notice filing is for an indefinite dollar amount, at the time of the initial
23 notice filing the issuer shall pay a nonrefundable filing fee of five hundred
24 dollars for each security or class of security.

25 d. A notice filing for a definite dollar amount may be increased before the
26 expiration of one year from the date of the certificate of effectiveness at the
27 same reduced fee, which must be calculated as provided in subdivision b as a
28 separate fee for each additional amount.

29 e. A notice filing for a definite dollar amount may be renewed for additional
30 periods of one year by filing, at least fifteen days prior to its expiration, a

- 1 renewal and sales report notice with a fee of one hundred dollars to renew the
2 unsold balance.
- 3 f. A notice filing for an indefinite dollar amount may be renewed by filing, within
4 sixty days following the issuer's fiscal year, a renewal and sales report notice
5 with a fee of one-twentieth of one percent of the amount of securities sold in
6 this state during the period of the notice filing being renewed. In no case may
7 such fee be less than one hundred dollars nor more than two hundred fifty
8 dollars.
- 9 g. A notice filing may be terminated by the issuer upon providing the
10 commissioner a notice of such termination.
- 11 h. The provision for each security or class of security in this subsection is
12 effective when the federal registration statement becomes effective with the
13 securities and exchange commission or the date the notice of intent is
14 received by the commissioner, whichever is later. A filing notice for a definite
15 dollar amount is effective for a period of one year from the date of
16 effectiveness.
- 17 i. A copy of any document filed with the securities and exchange commission as
18 the commissioner may require.
- 19 2. Any federal covered security that is subject to section 18(b)(4)(D) of the Securities
20 Act of 1933, as amended, may be offered and sold upon a filing of:
- 21 a. A notice of intent is filed in writing on SEC form D or other prescribed form
22 with a consent to service of process and a nonrefundable filing fee of one
23 hundred dollars within fifteen calendar days after the first sale in this state.
- 24 b. A copy of any document filed with the securities and exchange commission as
25 the commissioner may require.
- 26 c. The notice filing is effective for a period of one year from the date the filing is
27 received by the commissioner.
- 28 For any security offered or sold under this subsection, no commission or other
29 remuneration may be paid, either directly or indirectly, for soliciting any prospective
30 buyer in this state, except to a dealer and agent registered in accordance with
31 section 10-04-10.

1 3. The commissioner, by rule or otherwise, may require the filing of a notice or any
2 document filed with the securities and exchange commission under the Securities
3 Act of 1933 with respect to a federal covered security under section 18(b)(3) or
4 18(b)(4) of the Securities Act of 1933, together with a filing fee.

5 4. The commissioner may issue a stop order suspending the offer and sale of a
6 federal covered security, except a federal covered security under section 18(b)(1)
7 of the Securities Act of 1933, as amended, if it is found to be in the public interest
8 or there is a failure to comply with any of the provisions stated in this section.

9 **SECTION 12. AMENDMENT.** Section 10-04-09 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **10-04-09. Suspension or revocation of registration of securities.** The
12 commissioner may revoke the registration of any securities registered under this chapter if, after
13 a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds
14 that any provisions of this chapter or any rule, order, or condition lawfully imposed under this
15 chapter has been violated, or if the commissioner finds any of the following:

- 16 1. The sale of such securities would work or tend to work a fraud, or deception upon
17 the purchasers thereof or the public, or that the disposal of the securities is on
18 unfair terms, or if the plan of business of the applicant appears to be unfair, unjust,
19 or inequitable.
- 20 2. The issuer of such securities is insolvent, or has violated any of the provisions of
21 this chapter or any order of the commissioner of which such issuer has notice, or
22 does not conduct its business in accord with law.
- 23 3. The issuer of such securities has made any fraudulent representations in any
24 prospectus or in any circular or other literature that has been distributed concerning
25 the issuer or its securities.
- 26 4. The issuer of such securities has refused to permit an examination into its affairs
27 as provided in this section or has failed to furnish the commissioner any further
28 information required pursuant to this section.
- 29 5. Securities registered by description were not entitled to registration by description.
- 30 6. No action may be brought under this section by the commissioner after ten years
31 from the date of the alleged violation.

1 If the commissioner has reasonable grounds to believe that the registration of any
2 securities registered under this chapter should be revoked upon any ground specified in this
3 section, the commissioner or the commissioner's agent may conduct an examination into the
4 affairs of the issuer of such securities; provided, that the commissioner or the commissioner's
5 agent may conduct such an examination only if the information sought by such examination
6 could not be obtained from other readily available sources. In making any such examination,
7 the commissioner or the commissioner's agent shall have access to and may compel the
8 production of all the books and papers of an issuer and may administer oaths to and examine
9 the officers and any employees of such issuer as to its business and affairs. They may also
10 require a balance sheet exhibiting the assets and liabilities of any such issuer or the issuer's
11 income statement, or both, to be certified to by a certified public accountant. Whenever the
12 commissioner may deem it necessary in connection with any such examination, the
13 commissioner may also require such balance sheet or income statement, or both, to be made
14 more specific in such particulars as the commissioner shall point out or to be brought down to
15 the latest practicable date. Such examination shall be made at the office of the commissioner,
16 unless the issuer or a registered dealer requests that the examination be made at some other
17 place, in which case the person making such request may be required by the commissioner to
18 advance sufficient funds to pay the actual expenses of such investigation.

19 If the commissioner has reasonable grounds to believe that the registration of any
20 securities under this chapter should be revoked on any ground specified in this section, the
21 commissioner may enter an order suspending the registration of such securities pending an
22 examination into the affairs of the issuer of such securities or pending a hearing or opportunity
23 for hearing as provided in section 10-04-12; provided, that no such suspension order shall be
24 effective for more than thirty days and such an order, if not withdrawn by the commissioner
25 within thirty days, shall automatically terminate thirty days after the date of its issuance. Such
26 suspension order shall state specifically the grounds for its issuance. Upon the entry of an
27 order suspending the registration of any securities or of an order withdrawing a suspension
28 order previously issued, the commissioner shall send a copy of such order to the issuer of such
29 securities ~~and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in~~
30 ~~writing.~~

1 If the commissioner finds, after a hearing or opportunity for hearing as provided in
2 section 10-04-12, that there are grounds for revoking the registration of certain securities, the
3 commissioner may enter in the register of securities an order revoking the registration of such
4 securities. Such order shall state specifically the grounds for its issuance. Upon the entry of an
5 order revoking the registration of securities, the commissioner shall send a copy of such order
6 to the issuer of such securities ~~and to all registered dealers by mail, or by telegraph, or by~~
7 ~~telephone, confirmed in writing.~~ No order revoking the registration of securities shall invalidate
8 any sale of such securities made prior to the entry of such order.

9 **SECTION 13. AMENDMENT.** Section 10-04-10 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **10-04-10. Registration of dealers, ~~salesmen~~ agents, and investment advisers, and**
12 **investment adviser representatives; notice filings by federal covered advisers.** A dealer
13 or ~~salesman~~ agent may not offer for sale or sell any securities within or from this state, except
14 in transactions exempt under section 10-04-06, unless registered as a dealer or ~~salesman~~
15 agent pursuant to the provisions of this section.

16 1. Dealers. Application for registration as a dealer may be made by any person
17 eighteen years of age or older. Such application for registration must be made in
18 writing or electronically in a form prescribed by the commissioner, must be signed
19 by the applicant, duly verified by oath, must be filed in the office of the
20 commissioner, and must contain the following information:

- 21 a. The name of the applicant.
- 22 b. The address of the principal place of business of the applicant and the
23 addresses of all branch offices, if any, of the applicant in this state.
- 24 c. The form of business organization and the date of organization of the
25 applicant.
- 26 d. The names and business addresses of all members, partners, officers,
27 directors, trustees, or managers of the applicant; a statement of the
28 limitations, if any, of the liability of any partner, member, manager, or trustee;
29 and a statement setting forth in chronological order the occupational activities
30 of each such partner, member, officer, director, trustee, or manager during the
31 preceding ten years.

- 1 e. A brief description of the general character of the business conducted or
2 proposed to be conducted by the applicant.
- 3 f. A list of any other states in which the applicant is registered as a dealer, and,
4 if registration of the applicant as a dealer has ever been refused, canceled,
5 suspended, or withdrawn in any state, full details with respect thereto.
- 6 g. Whether the applicant is registered as a dealer under the Securities Exchange
7 Act of 1934 or any act in amendment thereof and whether any such
8 registration of the applicant has ever been denied, revoked, or suspended or
9 is then the subject of proceedings for revocation or suspension by the
10 securities and exchange commission.
- 11 h. The names of all organizations of dealers or brokers of which the applicant is
12 a member or before which any application for membership on the part of the
13 applicant is then pending, and whether any such membership of the applicant
14 has ever been denied, revoked, or suspended or is then the subject of
15 proceedings for revocation or suspension.
- 16 i. The names of any securities exchange of which the applicant or any of its
17 partners, officers, directors, trustees, members, managers, or employees is a
18 member, and whether any such membership has ever been denied, revoked,
19 or suspended or is then the subject of proceedings for revocation or
20 suspension.
- 21 j. A financial statement or balance sheet, prepared in accordance with standard
22 accounting practice, showing the financial condition of the applicant as of the
23 most recent practicable date prior to the date of such application, such
24 financial statement or balance sheet to be certified to by an independent
25 certified public accountant, or by a responsible officer or member of said
26 applicant as the commissioner may require. A dealer that is registered under
27 the Securities Exchange Act of 1934 may satisfy this requirement by filing with
28 the commissioner the dealer's most recent financial statements prepared
29 under such Act.
- 30 k. Whether the applicant or any officer, director, partner, member, trustee, or
31 manager of the applicant, has ever been convicted of a felony or any

1 misdemeanor other than minor highway traffic offenses and, if so, all pertinent
2 information with respect to any such conviction.

3 I. Any other information which the commissioner may by rule or order require.

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

9 There must be filed with such application a written consent to the service of
10 process upon the commissioner in actions against such dealer, conforming to the
11 requirements of section 10-04-14, and payment of the prescribed registration fee,
12 which must be returned if registration is refused.

13 When an applicant has fully complied with the provisions of this subsection,
14 the commissioner may register such applicant as a dealer unless the commissioner
15 finds that the applicant is not of good business reputation, or is not solvent, or does
16 not appear qualified by training or experience to act as a dealer in securities.

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

23 The bond ~~or deposit~~ must be of such type as may be approved by the
24 commissioner and must be in such amount as the commissioner deems necessary
25 to protect purchasers ~~when there is taken into consideration the volume of~~
26 business engaged in by the applicant and the number of salesmen employed by
27 the applicant. Any such bond must have as surety thereon a surety company
28 authorized to do business in this state. When the commissioner has registered an
29 applicant as a dealer, the commissioner shall notify the applicant of such
30 registration.

- 1 2. ~~Salesman~~ Agent. Application for registration as ~~a salesman~~ an agent may be
2 made by any individual eighteen years of age or older. Such application for
3 registration must be made in writing or electronically in a form prescribed by the
4 commissioner, must be signed by the applicant and by the registered dealer or
5 issuer employing or proposing to employ such applicant, duly verified by oath, must
6 be filed in the office of the commissioner and must contain the following
7 information:
- 8 a. Name and residence and business address of the applicant.
9 b. Name of the dealer or issuer employing or proposing to employ the applicant,
10 unless the applicant is to be self-employed.
11 c. ~~Names and addresses of three persons of whom the commissioner may~~
12 ~~inquire as to the character and business reputation of the applicant.~~
13 d. Applicant's ~~age and education~~ date of birth.
14 e. ~~The~~ All full and part-time work, self-employment, military service,
15 unemployment and full-time education for the period of ten years immediately
16 preceding the date of application. For all employment, include the nature of
17 the employment and the names and addresses of employers of the applicant
18 for the period of ten years immediately preceding the date of application.
19 f. ~~Other state or federal laws under~~ A list of the states or other jurisdictions with
20 which the applicant ~~has ever been~~ is registered as a dealer or ~~salesman~~
21 agent of securities, and, if any such registration has ever been refused,
22 canceled, limited, suspended, or revoked, full details with respect thereto.
23 g. ~~f.~~ Whether the applicant has ever been convicted of or pled guilty or nolo
24 contendere in a domestic, foreign, or military court to a felony or misdemeanor
25 ~~other than minor highway traffic offenses, and if so,~~ all pertinent information
26 with respect to any such conviction or plea.

27 The commissioner shall require as a condition of registration that the
28 applicant, and, in the case of a corporation, limited liability company, or
29 partnership, all officers, directors, managers, governors, or partners doing
30 securities business in this state, pass a written examination as evidence of
31 knowledge of the securities business; provided, that not more than two officers or

1 managers of an issuer may be registered as ~~a salesman~~ an agent for a particular
2 original offering of the issuer's securities without being required to pass such
3 written examination; and provided, further, that no such officer or manager may
4 again register within ~~five~~ three years as such ~~salesman~~ agent for this or any other
5 issuer without passing the written examination.

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

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

29 Every registered dealer or issuer shall promptly notify the commissioner of the
30 termination of the employment by the dealer or issuer of a registered ~~salesman~~
31 agent. ~~The registration of such salesman shall automatically be suspended from~~

1 ~~the time of termination of such employment until the salesman notifies the~~
2 ~~commissioner of the salesman's employment by another registered dealer or~~
3 ~~issuer.~~

4 3. Investment advisers.

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

7 (1) The person is registered under this chapter.

8 (2) The person's only clients in this state are investment companies as
9 defined in the Investment Company Act of 1940, other investment
10 advisers, federal covered advisers, dealers, banks, trust companies,
11 savings and loan associations, insurance companies, employee benefit
12 plans with assets of not less than one million dollars, and governmental
13 agencies or instrumentalities, whether acting for themselves or as
14 trustees with investment control, or other institutional investors as are
15 designated by rule or order of the commissioner; or

16 (3) Such person is registered either under the laws of the state where its
17 principal place of business is located or with the securities and
18 exchange commission, if the investment adviser has no place of
19 business in this state and, during the preceding twelve-month period
20 has had not more than six clients, other than those specified in
21 paragraph 2, who are residents of this state.

22 b. Application for registration as an investment adviser may be made by any
23 person eighteen years of age or older. Such application for registration must
24 be made in writing or electronically in a form prescribed by the commissioner,
25 must be signed by the applicant, duly verified by oath, must be filed in the
26 office of the commissioner, and must contain the following information:

27 (1) Name, residence, and business address of the applicant.

28 (2) If the applicant is a corporation, limited liability company, or association,
29 give full information as to ~~agents~~ officers, partners, managers, and
30 managing officers.

- 1 (3) ~~Statement showing each individual named is of good repute and~~
2 ~~possesses essential experience and education~~ Information concerning
3 the educational and business background and disciplinary history of all
4 officers, directors, partners, control persons, and owners of five percent
5 or more of the investment adviser.
- 6 (4) The plan and character of business, and the proposed method of
7 operation.
- 8 (5) Such other information as may be required.
- 9 c. If the applicant is a foreign corporation, limited liability company, or
10 association, it shall file with its application:
- 11 (1) A copy of its articles.
12 (2) Certificate showing authorization to transact business.
- 13 d. The commissioner may also require such additional information as to the
14 previous history, record, or association of the applicant, its officers, directors,
15 employees, members, partners, managers, or trustees, as the commissioner
16 deems necessary to establish whether or not the applicant should be
17 registered as an investment adviser under the provisions of this chapter.
- 18 e. There must be filed with such application:
- 19 (1) A written consent to the service of process upon the commissioner in
20 actions against the investment adviser conforming to the requirements
21 of section 10-04-14.
22 (2) Payment of the prescribed registration fee, which must be returned if
23 registration is refused.
24 (3) A financial statement or balance sheet, prepared in accordance with
25 standard accounting practice, showing the financial condition of the
26 applicant as of the most recent practicable date prior to the date of such
27 application, such financial statement or balance sheet to be certified to
28 by an independent certified public accountant or by a responsible officer
29 or member of the applicant, as the commissioner may require. An
30 investment adviser that maintains its principal place of business in a
31 state other than this state and that is registered with and in compliance

- 1 with such state's financial reporting requirements may satisfy this
2 requirement by filing with the commissioner a copy of those financial
3 statements, if any, that are filed by the investment adviser with the state
4 in which it maintains its principal place of business.
- 5 f. ~~The~~ Except as prohibited by the Investment Advisers Act of 1940, the
6 commissioner may require an indemnity bond ~~or a deposit of cash or other~~
7 ~~properties approved by the commissioner~~ running to the state of North Dakota
8 conditioned for the faithful compliance by the investment adviser and the
9 investment adviser's representatives with all the provisions of this law and for
10 the faithful performance and payment of all obligations of the investment
11 adviser and the investment adviser's representatives. The bond ~~or deposit~~
12 must be of such type as may be approved by the commissioner and must be
13 in such amount as the commissioner deems necessary to protect persons in
14 this state ~~when there is taken into consideration the volume of business~~
15 ~~engaged in by the applicant and the number of persons who represent the~~
16 ~~applicant.~~ Any such bond must have as surety thereon a surety company
17 authorized to do business in this state.
- 18 g. The commissioner may by rule provide for an examination, ~~which may be~~
19 ~~written or oral or both,~~ to be taken by any class of or all applicants, as well as
20 persons who represent or will represent an investment adviser in doing any of
21 the acts which make the person an investment adviser.
- 22 h. When an applicant has fully complied with the provisions of this subsection,
23 the commissioner may register such applicant as an investment adviser
24 unless the commissioner finds that the applicant is not of good business
25 reputation or is not solvent.
- 26 i. A registrant as investment adviser shall notify the commissioner of any
27 change of address.
- 28 4. Federal covered adviser. Except with respect to a federal covered adviser whose
29 clients are those described in paragraph 2 of subdivision a of subsection 3 or who
30 meets the criteria of paragraph 3 of subdivision a of subsection 3, it shall be
31 unlawful for a person to transact business in this state as a federal covered adviser

1 unless such person has made a notice filing with the commissioner consisting of a
2 copy of those documents that have been filed with the securities and exchange
3 commission as the commissioner may require by rule or otherwise and the
4 prescribed notice filing fee.

5 A notice filing is effective from receipt until the following May first. It may be
6 renewed by filing with the commissioner, prior to expiration, those documents filed
7 with the securities and exchange commission as the commissioner may require by
8 rule or otherwise, with the notice filing renewal fee.

9 If the information contained in any document filed with the commissioner is or
10 becomes inaccurate or incomplete in any material respect, the federal covered
11 adviser shall file an amendment with the commissioner whenever such amendment
12 is filed with the securities and exchange commission.

13 A notice filing may be terminated by a federal covered adviser by filing a
14 notice of termination with the commissioner.

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

- 22 a. Name, residence, and business address of the applicant.
- 23 b. Name of the investment adviser employing or proposing to employ the
24 applicant, unless the applicant is to be self-employed.
- 25 c. Applicant's ~~age and education~~ date of birth.
- 26 d. ~~The~~ All full and part-time work, self-employment, military service,
27 unemployment and full-time education for the period of ten years immediately
28 preceding the date of application. For all employment, include the nature of
29 the employment and the names and addresses of employers of the applicant
30 for the period of ten years immediately preceding the date of the application.

- 1 e. ~~Other state or federal laws under~~ A list of the states or other jurisdictions with
2 which the applicant ~~has ever been~~ is registered as an investment adviser
3 representative, and, if any registration has ever been refused, canceled,
4 limited, suspended, or revoked, full details with respect thereto.
- 5 f. Whether the applicant has ever been convicted of or pled guilty or nolo
6 contendere in a domestic, foreign, or military court to a felony or misdemeanor
7 ~~other than minor highway traffic offenses~~, and if so, all pertinent information
8 with respect to any such conviction or plea.

9 There must be filed with the application payment of the prescribed registration
10 fee, which must be returned if registration is refused.

11 When an applicant has fully complied with the provisions of this subsection,
12 the commissioner may register the applicant as an investment adviser
13 representative unless the commissioner finds that: the applicant is not of good
14 business reputation ~~or~~; that the investment adviser named in the application is not
15 a registered investment adviser; or the federal covered adviser named in the
16 application has not made a notice filing with the commissioner. When the
17 commissioner has registered an applicant as an investment adviser representative,
18 the commissioner shall immediately notify the ~~applicant~~ investment adviser or the
19 federal covered adviser, as applicable, of such registration.

20 Every registered investment adviser shall promptly notify the commissioner of
21 the termination of the employment by the adviser of a registered investment
22 adviser representative. Every registered investment adviser representative
23 employed by a federal covered adviser or the federal covered adviser shall
24 promptly notify the commissioner of the termination of such employment. The
25 registration of the investment adviser representative is automatically suspended
26 from the time of termination of employment until such time as the representative
27 ~~notifies~~ is registered by the commissioner of employment by as a representative of
28 another investment adviser or federal covered adviser.

29 The commissioner may by rule provide for an examination to be taken by the
30 applicant.

1 5- 6. Refusal of registration. If the commissioner has reason to believe there are
2 grounds to refuse the approval of any application under this section, the
3 commissioner may, by order, summarily postpone the approval of any application
4 made under this section. If, after affording an applicant a hearing or an opportunity
5 for a hearing as provided in section 10-04-12, the commissioner finds that there is
6 sufficient ground to refuse to register such applicant as provided in this section, the
7 commissioner shall enter an order refusing to register such applicant. Such order
8 shall state specifically the grounds for its issuance. A copy of such order must be
9 mailed to the applicant at the applicant's business address, and if the application is
10 for registration as a ~~salesman~~ an agent, to the registered dealer or issuer or if the
11 application is for registration as an investment adviser representative to the
12 investment adviser or federal covered adviser who proposed to employ such
13 applicant. If the commissioner finds that an applicant has been guilty of any act or
14 omission which would constitute a sufficient ground for revocation of a dealer's,
15 ~~salesman's~~ agent's, investment adviser's, or investment adviser representative's
16 registration under section 10-04-11, such act or omission may constitute a
17 sufficient ground for a finding by the commissioner that such applicant is not of
18 good business reputation.

19 6- 7. Record and renewal of registrations. The names and addresses of all persons who
20 have been registered as dealers, ~~salesmen~~ agents, investment advisers, or
21 investment adviser representatives, and all orders with respect thereto, and the
22 names and addresses of all federal covered advisers who have made a notice
23 filing must be recorded in a register of dealers, ~~salesmen~~ agents, investment
24 advisers, federal covered advisers, and investment adviser representatives in the
25 office of the commissioner. Every registration and notice filing under this section
26 expires ~~one year from its effective date~~ on May first of each year unless renewed.
27 The commissioner may by rule provide for expirations and renewals, including
28 dates, forms, and procedures, adjust registration and notice filing fees to
29 correspond with expiration dates, and do any other thing which may be necessary
30 or convenient in order to participate in a central registration depository or any
31 similar arrangement designed to promote uniformity, to ease regulatory burdens, or

1 to encourage cooperation with other states, the securities and exchange
2 commission, or any registered national securities association or exchange. ~~Upon~~
3 ~~any change in the proprietors, partners, officers, or directors of a registered dealer~~
4 ~~or investment adviser, such registered dealer or investment adviser shall promptly~~
5 ~~notify the commissioner in writing of such changes. The commissioner shall record~~
6 ~~such changes, without fee, in the register of dealers, salesmen, investment~~
7 ~~advisers, and investment adviser representatives.~~

8 ~~7.~~ 8. Fees. The fee, which must accompany the application, for registration, transfer, or
9 notice filing, and for each annual renewal thereof is:

10	a. For each dealer	\$200.00
11	b. For each salesman <u>agent</u>	\$50.00 <u>60.00</u>
12	c. For each investment adviser <u>or federal covered adviser</u>	\$100.00
13	d. For each investment adviser representative	\$35.00 <u>50.00</u>

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

17 **SECTION 14. AMENDMENT.** Section 10-04-10.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **10-04-10.1. Advisory activities.**

20 1. It is unlawful for any person who receives, directly or indirectly, any consideration
21 from another person for advising the other person as to the value of securities or
22 their purchase or sale, whether through the issuance of analyses or reports or
23 otherwise:

- 24 a. To employ any device, scheme, or artifice to defraud the other person; or
- 25 b. To engage in any act, practice, or course of business which operates or would
- 26 operate as a fraud or deceit upon the other person; ;
- 27 e. ~~Acting as principal for the person's own account;~~

28 2. It is unlawful for any person, in the solicitation of a client for investment advisory
29 services, to make any false or misleading statement of material fact, or to fail to
30 disclose a material fact.

- 1 3. It is unlawful for any person who provides investment advisory services subject to
2 the provisions of this chapter to knowingly to sell any security to or purchase any
3 security from a client, ~~or acting as broker for a person other than the client,~~
4 knowingly to effect any sale or purchase of any security for the account of the
5 client, without disclosing to the client in writing before the completion of the
6 transaction the capacity in which the person is acting and obtaining the consent of
7 the client to the transaction. ~~The prohibitions of this subsection do not apply to any~~
8 transaction with a customer of a dealer if the dealer is not acting as an investment
9 adviser in relation to the transaction; or while acting for the person's own account
10 or as a broker for another client unless the person first makes a written disclosure
11 to the client of the capacity in which the person is acting and obtains the client's
12 written consent to the transaction.
- 13 ~~e.~~ 4. ~~To~~ It is unlawful for any person who provides investment advisory services subject
14 to the provisions of this chapter to engage in dishonest or unethical practices as
15 the commissioner may define by rule.
- 16 2. ~~In the solicitation of advisory clients, it is unlawful for any person to make any~~
17 untrue statement of a material fact, ~~or omit to state a material fact necessary in~~
18 order to make the statements made, in light of the circumstances under which they
19 are made, not misleading.
- 20 ~~3.~~ 5. It is unlawful for any investment adviser to enter into, extend, or renew any
21 investment advisory contract unless it provides in writing that:
- 22 a. ~~That the~~ The investment adviser shall not be compensated on the basis of a
23 share of capital gains ~~upon~~, earnings, or capital appreciation of the funds or
24 any portion of the funds of the client. This does not prohibit an investment
25 advisory contract that provides for compensation based on the total value of a
26 fund determined as of a definite date or averaged as of definite dates or over
27 a definite period.
- 28 b. ~~That no~~ An assignment of the investment advisory contract may not be made
29 by the investment adviser ~~without~~ unless the investment adviser notifies the
30 client of the intended assignment and obtains the prior written consent of the
31 ~~other party to the contract~~ client.

1 c. ~~That the~~ The investment adviser, if a limited liability company or partnership,
2 ~~shall notify~~ shall provide written notice to the other party to the contract client
3 within fifteen days of any change in the membership of the limited liability
4 ~~company or partnership within a reasonable time after the change of~~
5 ownership in excess of five percent.

6 ~~Subdivision a does not prohibit an investment advisory contract which provides for~~
7 ~~compensation based upon the total value of a fund averaged over a definite period,~~
8 ~~or as of definite dates or taken as of a definite date. "Assignment", as used in~~
9 ~~subdivision b, includes any direct or indirect transfer or hypothecation of an~~
10 ~~investment advisory contract by the assignor or of a controlling block of the~~
11 ~~assignor's outstanding voting securities by a securityholder of the assignor; but, if~~
12 ~~the investment adviser is a limited liability company or partnership, no assignment~~
13 ~~of an investment advisory contract is considered to result from the death or~~
14 ~~withdrawal of a minority of the members of the investment adviser having only a~~
15 ~~minority interest in the business of the investment adviser, or from the admission to~~
16 ~~the investment adviser of one or more members who, after admission, will be only~~
17 ~~a minority of the members and will have only a minority interest in the business.~~

18 d. The investment adviser shall provide written notice to the client within fifteen
19 days of a change of controlling interest of the investment adviser. The client
20 may terminate the investment advisory contract without penalty by providing a
21 written notice to the investment adviser within thirty days after the client's
22 receipt of the notice of change of controlling interest.

23 4. 6. It is unlawful for any investment adviser to take or have custody of any securities or
24 funds of any client if:

25 a. The commissioner by rule prohibits custody; or
26 b. ~~In the absence of rule, the~~ The investment adviser fails to notify the
27 commissioner that the investment adviser adviser has or may have custody.

28 5. 7. No action may be brought under this section by the commissioner after six years
29 from the date of the alleged violation.

30 **SECTION 15. AMENDMENT.** Section 10-04-10.2 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **10-04-10.2. Conviction not bar to registration - Exceptions.** Conviction of an
2 offense does not disqualify a person from registration under this chapter unless the
3 commissioner determines that the offense has a direct bearing upon a person's ability to serve
4 the public as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser
5 representative, or that, following conviction of any offense, the person is not sufficiently
6 rehabilitated under section 12.1-33-02.1.

7 **SECTION 16. AMENDMENT.** Section 10-04-10.3 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-04-10.3. Postregistration provisions.**

- 10 1. Every registered dealer, ~~salesman~~ agent, investment adviser, and investment
11 adviser representative shall make and keep such accounts, correspondence,
12 memoranda, papers, books, and other records as the commissioner prescribes by
13 rule. All records so required must be preserved for three years unless the
14 commissioner prescribes otherwise by rule for particular types of records.
- 15 2. Every registered dealer, ~~salesman~~ agent, investment adviser, and investment
16 adviser representative shall file such financial reports as the commissioner
17 prescribes by rule.
- 18 3. If the information contained in any document filed with the commissioner is or
19 becomes inaccurate or incomplete in any material respect, the registrant shall
20 promptly file a correcting amendment.
- 21 4. All the records referred to in subsection 1 are subject at any time or from time to
22 time to such reasonable periodic, special, or other examinations by representatives
23 of the commissioner, within or outside this state, as the commissioner deems
24 necessary or appropriate in the public interest or for the protection of investors.
25 For the purpose of avoiding unnecessary duplication of examinations, the
26 commissioner, if deemed practicable in administering this subsection, may
27 cooperate with the securities administrators of other states, the securities and
28 exchange commission, any national securities exchange or national securities
29 association registered under the Securities Exchange Act of 1934, or any other
30 jurisdiction, agency, or organization charged by law or statute with regulating or

1 prosecuting any aspect of the securities business, and in so cooperating may
2 share any information obtained as a result of any investigation or examination.

3 5. The commissioner and the commissioner's representatives may copy records or
4 require a registrant to copy records and provide the copies to the commissioner
5 and the commissioner's representatives to the extent and in a manner reasonable
6 under the circumstances.

7 **SECTION 17. AMENDMENT.** Section 10-04-11 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-04-11. Suspension or revocation of dealer's, ~~salesman's~~ agent's, investment**
10 **adviser's, and investment adviser representative's registration.**

11 1. The commissioner may censure, place limitations on the activities of, suspend for a
12 period not exceeding twelve months, or revoke the registration of any dealer,
13 ~~salesman~~ agent, investment adviser, or investment adviser representative or any
14 partner, officer, or director, any person occupying a similar status or performing
15 similar functions, or any person directly or indirectly controlling the dealer or
16 investment adviser if, after a hearing or opportunity for hearing as provided in
17 section 10-04-12, the commissioner finds that such registered dealer, ~~salesman~~
18 agent, investment adviser, or investment adviser representative:

- 19 a. Has violated or failed to comply with any provisions of this chapter or any
20 order or rule of the commissioner under this chapter;
- 21 b. Is, in the case of a dealer or investment adviser, insolvent;
- 22 c. Has engaged in dishonest, fraudulent, or unethical practices in the securities
23 business;
- 24 d. Conducts business in purchasing or selling securities at such variations from
25 current market prices as, in the light of all the circumstances, are
26 unconscionable or unfair to the purchasing public, or if such variance,
27 including commissions on sales, unreasonably exceeds the price quoted by a
28 recognized national quotation list as prescribed by the commissioner;
- 29 e. Has failed to file with the commissioner any financial record required pursuant
30 to section 10-04-10.3, or has refused to permit an examination into the
31 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,
8 ~~salesman~~ agent, investment adviser, or investment adviser representative, or
9 the commissioner finds that a person, following conviction of any offense, is
10 not 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, ~~salesman~~ agent, investment adviser, or
16 investment 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, ~~salesman~~ agent, investment adviser, or investment
20 adviser representative, or the substantial equivalent of those terms as defined
21 in this chapter, or is the subject of an order suspending or expelling
22 membership in or association with a member of a self-regulatory organization
23 registered under the Securities Exchange Act of 1934, the Commodity
24 Exchange Act, or the Investment ~~Advisers~~ Advisers Act of 1940; or is the
25 subject of a United States 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 ~~salesmen~~ agents if the
2 person is a dealer or the person's employees or investment adviser
3 representatives if the 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 agent, broker, consultant, or the
6 substantial equivalent of those terms as defined in section 26.1-26-02.
- 7 2. It is sufficient cause for revocation of registration of a dealer or investment adviser
8 as provided in this section, in case of a partnership, corporation, limited liability
9 company, or any unincorporated association, if any member of a partnership or any
10 officer or director of the corporation or association or any manager or governor of a
11 limited liability company has been guilty of any act or omission which would be
12 sufficient grounds for revoking the registration of an individual dealer or investment
13 adviser.
- 14 3. If the commissioner has reasonable grounds to believe that the registration of any
15 registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser
16 representative should be censured, suspended, or revoked upon any grounds
17 specified in this section, the commissioner or the commissioner's agent may
18 conduct an examination into the affairs of any such registered dealer, ~~salesman~~
19 agent, investment adviser, or investment adviser representative. In making any
20 such examination, the commissioner or the commissioner's agent shall have
21 access to and may compel the production of all the books and papers of a
22 registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser
23 representative, and may administer oaths to and examine the officers and
24 employees of such dealer or investment adviser as to the dealer's or investment
25 ~~adviser's~~ adviser's business and affairs.
- 26 4. If the commissioner ~~has reasonable grounds to believe that a registered dealer,~~
27 ~~salesman, investment adviser, or investment adviser representative has been~~
28 ~~guilty of any act or omission which would be sufficient grounds for revoking the~~
29 ~~registration of such dealer, salesman, investment adviser, or investment adviser~~
30 ~~representative~~ makes written findings of fact to support the conclusion that grounds
31 exist pursuant to subsection 1 for the commissioner to suspend or revoke any

1 ~~registration, the commissioner may enter an by order suspending the registration~~
2 ~~of such dealer, salesman, investment adviser, or investment adviser representative~~
3 ~~summarily suspend registration pending an examination into the affairs of such~~
4 ~~dealer, salesman, investment adviser, or investment adviser representative or~~
5 ~~pending a hearing or opportunity for hearing as provided in section 10-04-12;~~
6 ~~provided, that no such order shall be effective for more than thirty days, and such~~
7 ~~order, if not withdrawn by the commissioner within thirty days, shall automatically~~
8 ~~terminate thirty days after the date of its issuance. Such suspension order shall~~
9 ~~state specifically the grounds for its issuance. Upon the entry of such suspension~~
10 ~~order, or of an order withdrawing a suspension order previously entered, the~~
11 ~~commissioner shall send a copy of such order by registered or certified mail to the~~
12 ~~dealer, salesman, investment adviser, or investment adviser representative whose~~
13 ~~registration is affected thereby at the person's business address, and, to the~~
14 ~~registered dealer or registered investment adviser who employs any salesman or~~
15 ~~investment adviser representative affected by such order~~ final determination of any
16 ~~proceeding under this section. Upon the entry of the summary order, the~~
17 ~~commissioner shall promptly notify the applicant, as well as the employer or~~
18 ~~prospective employer if the applicant is an agent or investment adviser~~
19 ~~representative, that it has been entered and the reasons. The person subject to~~
20 ~~the order, if desiring a hearing, must make a written request for a hearing to the~~
21 ~~commissioner within fifteen days after receipt of the notice. Within fifteen days~~
22 ~~after receipt by the commissioner of a written request the matter will be set for~~
23 ~~hearing to determine if the order should be modified, vacated, or extended pending~~
24 ~~a final determination. If a hearing is not requested and none is ordered by the~~
25 ~~commissioner, the order will remain in effect until modified or vacated by the~~
26 ~~commissioner.~~
27 5. If the commissioner finds, after affording a registered dealer, a registered
28 ~~salesman~~ agent, a registered investment adviser, or a registered investment
29 adviser representative a hearing or opportunity for hearing as provided in section
30 10-04-12, that there are grounds to censure, suspend, or revoke the registration of
31 such dealer, ~~salesman~~ agent, investment adviser, or investment adviser

1 representative, the commissioner may enter an order in the register of dealers,
2 ~~salesmen~~ agents, investment advisers, and investment adviser representatives;
3 censuring, suspending, or revoking the registration of such dealer, ~~salesman~~
4 agent, investment adviser, or investment adviser representative. Such order shall
5 state specifically the grounds for its issuance. A copy of such order shall be sent
6 by registered mail to the dealer, ~~salesman~~ agent, investment adviser, or
7 investment adviser representative whose registration is censured, suspended, or
8 revoked thereby at the person's business address and, if the censure, suspension,
9 or revocation is of the registration of a ~~salesman~~ an agent, or investment adviser
10 representative, to the registered dealer or registered investment adviser who
11 employs such person. Suspension or revocation of the registration of a dealer
12 shall also suspend or revoke the registration of all of the dealer's ~~salesmen~~ agents.
13 Suspension or revocation of the registration of an investment adviser also
14 suspends or revokes the registration of all of the investment adviser's investment
15 adviser representatives. Suspension or revocation of the registration of a
16 ~~salesman~~ an agent or investment adviser representative solely because of
17 employment by a dealer or investment adviser whose registration was suspended
18 or revoked shall not prejudice subsequent applications for registration by such
19 person.

20 6. No action may be brought under this section by the commissioner after ten years
21 from the date of the alleged violation.

22 **SECTION 18. AMENDMENT.** Section 10-04-12 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **10-04-12. Hearings.** Before entering an order revoking the registration of any
25 securities as provided in section 10-04-09, the commissioner shall send to the issuer of the
26 securities, and if the application for registration of the securities was filed by a registered dealer,
27 to the registered dealer, a notice of opportunity for hearing. Before entering an order refusing to
28 register any person as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser
29 representative, as provided in section 10-04-10, or censuring, placing limitations, suspending,
30 or revoking the registration of any person as a registered dealer, ~~salesman~~ agent, investment
31 adviser, or investment adviser representative as provided in section 10-04-11, the

1 commissioner shall send to that person, and if that person is ~~a salesman~~ an agent or
2 investment adviser representative or an applicant for registration as ~~a salesman~~ an agent or
3 investment adviser representative, to the registered dealer or investment adviser who employs
4 or proposes to employ that ~~salesman~~ agent or investment adviser representative, a notice of
5 opportunity for hearing.

- 6 1. Notices of opportunity for hearing must be sent by registered mail, returned receipt
7 requested, to the addressee's business address, and the notice must state:
 - 8 a. The order the commissioner proposes to issue.
 - 9 b. The grounds for issuing the proposed order.
 - 10 c. That the person to whom the notice is sent may be afforded a hearing upon
11 request to the commissioner if the request is made within ~~ten~~ fifteen days
12 after receipt of the notice.
- 13 2. Whenever a person requests a hearing in accordance with this section, the
14 commissioner shall immediately set a date, time, and place for the hearing and
15 shall ~~forthwith~~ notify the person requesting the hearing. The date set for the
16 hearing must be within ~~fifteen~~ thirty days, but not earlier than ~~five~~ fifteen days, after
17 the request for hearing has been made, unless otherwise agreed to by both the
18 commissioner and the person requesting the hearing.
- 19 3. Any hearing conducted under this section must be conducted in accordance with
20 chapter 28-32.
- 21 4. If the commissioner does not receive a request for a hearing within the prescribed
22 time, the commissioner may enter a final order which must set forth the findings
23 with respect to the matters involved.

24 **SECTION 19. AMENDMENT.** Section 10-04-14 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **10-04-14. Service of process.**

- 27 1. Every applicant for registration under this chapter ~~and~~, every issuer which
28 proposes to offer a security in this state through any person acting on an agency
29 basis in the common-law sense, and every person making a notice filing under this
30 chapter shall file with the commissioner, in such form as the commissioner
31 prescribes, an irrevocable consent appointing the commissioner or the

1 commissioner's successor in office to be the applicant's attorney to receive service
2 of any lawful process in any noncriminal suit, action, or proceeding against the
3 applicant or the applicant's successor, executor, or administrator which arises
4 under this chapter or any rule or order hereunder after the consent has been filed,
5 with the same force and validity as if served personally on the person filing the
6 consent. A person who has filed such a consent in connection with a previous
7 registration or notice filing need not file another. Service may be made by leaving
8 a copy of the process in the office of the commissioner, but it is not effective unless
9 the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted
10 by commissioner, forthwith sends notice of the service and a copy of the process
11 by registered or certified mail to the defendant or respondent at the defendant's or
12 respondent's last address on file with the commissioner, and the plaintiff's affidavit
13 of compliance with this subsection is filed in the case on or before the return day of
14 the process, if any, or within such further time as the court allows.

15 2. When any person, including any nonresident of this state, engages in conduct
16 prohibited or made actionable by this chapter or any rule or order hereunder, and
17 the person has not filed a consent to service of process under subsection 1 and
18 personal jurisdiction over the person cannot otherwise be obtained in this state,
19 that conduct shall be considered equivalent to the person's appointment of the
20 commissioner or the commissioner's successor in office to be the person's attorney
21 to receive service of any lawful process in any noncriminal suit, action, or
22 proceeding against the person or the person's successor, executor, or
23 administrator which grows out of that conduct and which is brought under this
24 chapter or any rule or order hereunder, with the same force and validity as if
25 served on the person personally. Service may be made by leaving a copy of the
26 process in the office of the commissioner, and it is not effective unless the plaintiff,
27 who may be the commissioner in a suit, action, or proceeding instituted by the
28 commissioner, forthwith sends notice of the service and a copy of the process by
29 registered or certified mail to the defendant or respondent at the defendant's or
30 respondent's last known address or takes other steps which are reasonably
31 calculated to give actual notice, and the plaintiff's affidavit of compliance with this

1 subsection is filed in the case on or before the return day of the process, if any, or
2 within such further time as the court allows.

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

6 **SECTION 20. AMENDMENT.** Section 10-04-16.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **10-04-16.1. Investigations and subpoenas.**

9 1. The commissioner may:

- 10 a. Make such public or private investigations within or outside of this state as the
11 commissioner deems necessary to determine whether any person has
12 violated, is violating, or is about to violate any provision of this chapter or any
13 rule or order hereunder, or to aid in the enforcement of this chapter or in the
14 prescribing of rules and forms hereunder. In the discretion of the
15 commissioner, the expense reasonably attributed to an investigation under
16 this section must be paid by the dealer, ~~salesman~~ agent, investment adviser,
17 or investment adviser representative whose affairs are investigated, but the
18 expense so payable may not exceed an amount that the commissioner
19 prescribes by rule.
- 20 b. Require or permit any person to file a statement in writing, under oath or
21 otherwise as the commissioner determines, as to all the facts and
22 circumstances concerning the matter to be investigated.
- 23 c. Publish information concerning any violation of this chapter or any rule or
24 order hereunder, and may keep confidential the information or documents
25 obtained or prepared in the course of any investigation conducted under this
26 section but only during an active and ongoing investigation. If an investigation
27 under this section extends beyond six months, the commissioner shall, upon a
28 request by any party, state in writing that the need for confidentiality still
29 exists, the general reason why the need exists, and the date, as can best be
30 determined at the time, when the need for confidentiality will cease.

- 1 2. For the purpose of any investigation or proceeding under this chapter, the
2 commissioner or any officer designated by the commissioner may administer oaths
3 and affirmations, subpoena witnesses, compel their attendance, take evidence,
4 and require the production of any books, papers, correspondence, memoranda,
5 agreements, or other documents or records which the commissioner deems
6 relevant or material to the inquiry.
- 7 3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the
8 district court, upon application by the commissioner, may issue to the person an
9 order requiring the person to appear before the commissioner, or the officer
10 designated by the commissioner, there to produce documentary evidence if so
11 ordered or to give evidence touching the matter under investigation or in question.
12 Failure to obey the order of the court may be punished by the court as a contempt
13 of court.
- 14 4. No person is excused from attending and testifying or from producing any
15 document or record before the commissioner, or in obedience to the subpoena of
16 the commissioner or any officer designated by the commissioner, or in any
17 proceeding instituted by the commissioner, on the ground that the testimony or
18 evidence, documentary or otherwise, required of the person may tend to
19 incriminate the person or subject the person to a penalty or forfeiture. No
20 testimony or evidence, documentary or otherwise, compelled from an individual
21 after a valid claim of the privilege against self-incrimination has been made may be
22 used against the individual in any criminal proceeding, or in any proceeding to
23 subject the individual to a penalty or forfeiture, except that the individual testifying
24 is not exempt from prosecution and punishment for perjury or contempt committed
25 in testifying.

26 **SECTION 21. AMENDMENT.** Section 10-04-17 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **10-04-17. Remedies.** Every sale or contract for sale made in violation of any of the
29 provisions of this chapter, or of any rule or order issued by the commissioner under any
30 provisions of this chapter, shall be voidable at the election of the purchaser. The person
31 making such sale or contract for sale, and every director, officer, ~~salesman~~, or agent of or for

1 such seller who shall have participated or aided in any way in making such sale shall be jointly
2 and severally liable to such purchaser who may sue either at law or in equity to recover the full
3 amount paid by such purchaser, together with all taxable court costs, interest as provided in
4 subsection 2, and reasonable attorney's fees, less the amount of any income received on the
5 securities, upon tender to the seller, in person or in open court, of the securities sold or of the
6 contracts made, or for damages if the purchaser no longer owns the securities. Damages are
7 the amount that would be recoverable upon a tender less the value of the securities when the
8 purchaser disposed of them and interest as provided in subsection 2 from the date of
9 disposition. Provided:

- 10 1. That no action may be brought under this section for the recovery of the purchase
11 price after five years from the date that the aggrieved party knew or reasonably
12 should have known about the facts that are the basis for the alleged violation; and
- 13 2. That no purchaser shall claim or have the benefit of this section if the purchaser
14 shall have refused or failed to accept, within thirty days from the date of such offer,
15 an offer in writing of the seller to take back the securities in question and to refund
16 the full amount paid by such purchaser, together with interest on such amount for
17 the period from the date of payment by such purchaser down to the date of
18 repayment, such interest to be computed:
 - 19 a. In case such securities consist of interest-bearing obligations, at the same
20 rate as provided in such securities, less the amount of any income received
21 on the securities.
 - 22 b. In case such securities consist of other than interest-bearing obligations, at
23 the legal rate specified in section 47-14-05, less the amount of any income
24 received on the securities.
- 25 3. The provisions of this section do not apply to a violation of section 10-04-08.4.
- 26 4. Nothing in this chapter shall limit any statutory or common-law right of any person
27 in any court for any act involved in the sale of securities.

28 **SECTION 22. AMENDMENT.** Section 10-04-18 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **10-04-18. Penalties.**

- 1 1. Any person who willfully violates any provision of this chapter, except section
2 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order of the
3 commissioner made pursuant to the provisions of this chapter, or who engages in
4 any act, practice, or transaction declared by any provision of this chapter to be
5 unlawful shall be guilty of a class B felony.
- 6 2. As used in this section, the term "willfully", except as it applies to subdivisions a
7 and b of subsection 1 of section 10-04-10.1 and subsections 2 and 4 of section
8 10-04-15, means that the person acted intentionally in the sense that the person
9 was aware of what the person was doing. Proof of evil motive or intent to violate
10 the law or knowledge that the law was being violated is not required.
- 11 3. Each violative act or omission constitutes a separate offense, and a prosecution or
12 conviction for any one offense shall not bar a prosecution or conviction for any
13 other offense.
- 14 4. An information must be filed or an indictment must be found under this chapter
15 within five years after the alleged violation.
- 16 5. No action may be brought under this chapter by the commissioner after five years
17 from the date that the commissioner knew or reasonably should have known about
18 the facts that are the basis for the alleged violation. This subsection does not
19 apply to any action under sections 10-04-09, 10-04-10.1, 10-04-11, and 10-04-15.