

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1100
(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

AN ACT to create and enact a new subdivision to subsection 17 of section 10-04-06 of the North Dakota Century Code, relating to the sale of securities; and to amend and reenact subdivision m of subsection 9 of section 10-04-02, subsections 4, 5, 11, and 13 of section 10-04-06, subsection 2 of section 10-04-08, and subsection 2 of section 10-04-08.4 of the North Dakota Century Code, relating to the definition of institutional investor, securities transactions exempt from registration, securities registration filing fees, and electronic filing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision m of subsection 9 of section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

- m. A qualified ~~investment~~ institutional buyer as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933;

SECTION 2. AMENDMENT. Subsections 4, 5, 11, and 13 of section 10-04-06 of the North Dakota Century Code are amended and reenacted as follows:

- 4. A transaction by an issuer for:
 - a. Securities dividends or other distributions by a corporation, cooperative, limited partnership, limited liability limited partnership, or a limited liability company out of its earnings or surplus; ~~or the~~
 - b. The sale or distribution of additional capital stock of a corporation or cooperative, interest of a partnership, or membership interest of a limited liability company to or among its own stockholders, partners, or members, ~~including persons who at the time of the transaction are holders of nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, when no commission or other remuneration is paid or given directly or indirectly for soliciting or effecting such sale or distribution to stockholders or members in this state.~~
- 5. ~~Any offer or A sale of securities or offer to sell to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or similar benefit plan, or other financial institution, or qualified institutional buyer, or to a broker-dealer, or any government or political subdivision or instrumentality thereof, whether the purchaser is acting for itself or in a fiduciary capacity.:~~
 - a. An institutional investor;
 - b. A federal covered investment advisor; or
 - c. Any other person exempted by rule adopted or order issued by the commissioner.
- 11. Any security issued in connection with an ~~employee's~~ employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned

subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:

- a. Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
 - b. Family members who acquire such securities from those persons through gifts or domestic relations orders;
 - c. Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
 - d. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations.
13. Any offer or sale of shares of capital stock issued by a professional corporation ~~or~~, professional limited liability company, or professional limited liability partnership which is organized and operated pursuant to chapter 10-31.

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

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

SECTION 4. AMENDMENT. Subsection 2 of section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

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

- a. ~~One-tenth For an initial filing, one-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price amount of each security or class of security to be registered but not more than two thousand five hundred dollars.~~
- b. ~~One twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of~~ In no event may an initial filing fee be less than one hundred fifty dollars for each security or class of security to be registered.
- c. ~~In no event may such filing fee be less than one hundred dollars for~~ An applicant may increase the aggregate amount of each security or class of security to be registered by filing a notice of the additional aggregate dollar amount to be registered and payment of a filing fee of one-tenth of one percent of the additional aggregate dollar amount but not more than five hundred dollars.
- d. ~~Provided, further, that any applicant may increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be computed as provided in subdivisions a and b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year No application shall be deemed to be filed or pending and no securities covered by such application shall be deemed to be registered unless a filing fee has been paid. The filing fee shall be retained even if the filing is withdrawn, denied, suspended, revoked, or abandoned.~~

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

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

- 2. Any federal covered security that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended, may be offered and sold under the following conditions:
 - a. A notice of intent is filed in writing or electronically on SEC form D or other prescribed form with a consent to service of process and a nonrefundable filing fee of one hundred dollars within fifteen calendar days after the first sale in this state.
 - b. A copy of any document filed with the securities and exchange commission is provided, as the commissioner may require.
 - c. The notice filing is effective for a period of one year from the date the filing is received by the commissioner.
 - d. The filing fee shall be two hundred fifty dollars in the event the filing is not made within the time period specified in subdivision a.

No security may be offered or sold under this subsection, except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1100.

House Vote: Yeas 89 Nays 0 Absent 5

Senate Vote: Yeas 43 Nays 0 Absent 4

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State