

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the  
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,  
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1144  
(Industry, Business and Labor Committee)  
(At the request of the Securities Commissioner)

AN ACT to create and enact section 10-04-08.4 of the North Dakota Century Code, relating to filing requirements for federal covered securities; and to amend and reenact sections 10-04-02, subsections 4 and 5 of section 10-04-03, sections 10-04-04, 10-04-05, 10-04-06, 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, 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 the North Dakota Century Code, relating to definitions, administration, and registration of securities under the Securities Act of 1951, advertising of and statements about securities, federal covered securities, suspensions and revocation of securities registrations, registration of dealers, agents, investment advisers, and investment adviser representatives, suspension and revocation of registrations of dealers, agents, investment advisers and investment adviser representatives, hearing provisions, securities investigations, consent to service of process, remedies available to investors, and penalties.

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

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

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

1. "Agent" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in effecting transactions in a covered security as described in section 18(b)(3) and 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Act of 1934.
2. "Commissioner" means the securities commissioner of this state.
3. "Dealer" means every a person, other than a salesman an agent, who engages in this state, either for all or part of the person's time: engaged in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account.
  - a. Directly or indirectly, as agent, broker, or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person; or
  - b. Directly or through an officer, director, employee, or agent, which officer, director, employee, or agent is not registered as a dealer under this chapter, in selling securities issued by such person.
4. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.
5. "Federal covered security" means any security that is a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.
6. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of

securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

- a. An investment adviser representative.
- b. A bank, savings institution, or trust company.
- c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.
- d. A broker or dealer or its ~~salesman agent~~ whose performance of these services is solely incidental to the conduct of business as a broker or dealer and who receives no special compensation for them.
- e. A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication of general, regular, and paid circulation or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.
- f. A federal covered adviser.
- g. A person who is exempted from the federal definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.
- h. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

4. 7. "Investment adviser representative" means:

- a. With respect to an investment adviser, any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual who is either employed by or associated with an investment adviser, except clerical or ministerial personnel, who is registered or required to be registered under this chapter who:
  - a. (1) Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;
  - b. (2) Manages the accounts or portfolios of clients;
  - c. (3) Determines which recommendations or advice regarding securities should be given ~~if that person is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or, if the investment adviser has no investment committee, the person determines general client advice (if there are more than five such persons, only the supervisors of such persons are deemed to be investment adviser representatives);~~
  - d. (4) Solicits, offers, or negotiates for the sale of or sells investment advisory services ~~unless that person is a dealer licensed in this state or a licensed salesman of a dealer and the person would not be an investment adviser representative except for the performance of the activities described in this subdivision; or~~
  - e. (5) Immediately supervises employees in the performance of any of the foregoing.

- b. With respect to a federal covered adviser, any person who is an "investment adviser representative" who has a "place of business" in this state, as those terms are defined by the securities and exchange commission pursuant to section 203A of the Investment Advisers Act of 1940.
  - c. "Investment adviser representative" does not include clerical or ministerial personnel.
- 5- 8. "Issuer" means every person who issues or proposes to issue any security, except that:
- a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.
  - b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.
  - c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.
- 6- 9. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, must be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:
- a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;
  - b. No money or other tangible property is given for the option; and
  - c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.
- 7- 10. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, or any other unincorporated organization.
11. "Registered agent" means an agent registered under this chapter.
- 8- 12. "Registered dealer" means a dealer registered under this chapter.
- 9- ~~"Registered salesman" means a salesman registered under this chapter.~~
- 40- 13. "Sale" or "sell" means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, must be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
- 11- ~~"Salesman" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar functions is a "salesman" only if the person otherwise comes within the definition.~~

42. 14. "Securities Act of 1933" means the Act of Congress known as the Securities Act of 1933, as now or hereafter amended.
43. 15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

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

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

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

**10-04-04. Registration of securities.** It is unlawful for any person to sell, or offer for sale, any securities security in this state, except those unless it is registered under this chapter or the security or transaction is exempt under section 10-04-05, those sold in transactions exempt under section 10-04-06, or those registered by description under section 10-04-07 or by announcement under section 10-04-07.1, unless such securities have been registered by qualification as provided in section 10-04-08 or it is a federal covered security.

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

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

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise

unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.
3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable or fixed annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or other public service utility, if the corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, ~~provided, however, that a corporation or limited liability company issuing securities exempted under this subsection and which has not filed an application for approval of such securities with the public service commission of the state of North Dakota, shall file with the commissioner a copy of the registration statement with all amendments thereto filed with the securities and exchange commission of the United States, if such a registration statement is made or filed, or a copy of the informative statement made to or filed with any commission, board, or body of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, by which said corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities, and shall pay a filing fee of twenty five dollars.~~
5. ~~Securities~~ Any security issued by a any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes and not for pecuniary profit; provided that prior to any offer of such security each person must meet the following conditions:
  - a. Apply for and obtain the written approval of the commissioner.
  - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.
  - c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.
  - d. Must not pay a commission or other remuneration, directly or indirectly, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.
  - e. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

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

6. ~~Securities issued by an issuer which meets all of the following conditions:~~

- a. ~~If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus.~~
- b. ~~A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 [Pub. L. 73-290; 48 Stat. 881; 15 U.S.C. 78a et seq.] and has been so registered for the three years immediately preceding the offering date.~~
- e. ~~Neither the issuer nor a significant subsidiary has had a material default during the lesser of the last seven years or the issuer's existence in the payment of (1) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (2) rentals under leases with terms of three years or more. A "material default" is a failure to pay, the effect of which is to cause indebtedness to become due prior to its stated maturity or to cause termination or reentry under a lease prior to its stated expiration, if the indebtedness or the rental obligation for the unexpired term exceeds five percent of the issuer's and its consolidated subsidiaries' total assets, or if the arrearage in required dividend payments on preferred stock is not cured within thirty days.~~
- d. ~~The issuer has had annual consolidated net income before extraordinary items and the cumulative effect of accounting changes as follows: (1) at least one million dollars in four of its last five fiscal years including its last fiscal year, and (2) if the offering is of interest bearing or of fixed or floating rate dividend securities, at least one and a half times its annual interest and dividend expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds for its last fiscal year. Floating rate dividend shall be calculated with reference to interest rates in the marketplace at the time of the offering. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than fifteen months from the commencement of the offering.~~
- e. ~~If the offering is of stock or shares other than preferred stock or shares, and except as otherwise required by law, the securities have voting rights at least equal to the securities of each of the issuer's outstanding classes of stock or shares other than preferred stock or shares, with respect to (1) the number of votes per share, and (2) the right to vote on the same general corporate decisions.~~
- f. ~~If the offering is of stock or shares other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least one thousand two hundred persons, and on that date there are at least seven hundred fifty thousand of the shares outstanding with an aggregate market value, based on the average bid price, of at least three million seven hundred fifty thousand dollars. In determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owners.~~
- g. ~~Provided that, if the securities to be issued are listed, or approved for listing upon notice of issuance, on the New York stock exchange, inc., or the American stock exchange, inc., and the current original listing standards of that exchange are satisfied as of the end of the issuer's most recent fiscal year, the conditions of subdivision c need be met for only five years and the annual net earnings requirement of paragraph 1 of subdivision d shall be two hundred fifty thousand dollars.~~
- h. ~~And provided further that, if the issuer of the securities is a finance company with liquid assets of at least one hundred five percent of its liabilities other than deferred income taxes, deferred investment tax credits, capital stock, and surplus at the end of each of its last five fiscal years, the net income requirement of paragraph 2 of subdivision d, but before deduction for interest expense, shall be one and a quarter times its annual interest expense. "Finance company" means a company engaged~~

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

- ~~i.~~ If the issuer is a successor to another issuer, it shall be deemed to have met the conditions in subdivisions b, c, and d if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.
- ~~7.~~ Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which is ~~eligible for discounting by federal reserve banks,~~ has at the time of issuance a definite maturity ~~(after all days of grace, if any)~~ of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.
- ~~8.~~ 7. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale. ~~The exemptions herein specified must be proved by any person who may legally offer such securities for sale in the state of North Dakota by filing with the commissioner evidence in such form as the commissioner may require for each issue of securities for which exemption is provided herein and paying a filing fee of ten dollars.~~
- ~~9.~~ 8. Securities, including patronage dividends or refunds, issued by any cooperative ~~formed or organized~~ under the statutes of ~~the state of North Dakota~~ this state.
- ~~10.~~ 9. Any equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security where the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note.
- ~~11.~~ 10. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 10, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby. ~~Before any security described in this subsection is offered for sale, the person intending to offer it shall file with the commissioner descriptive circulars of the collateral securities and pay a filing fee to the commissioner of twenty five dollars. Unless the commissioner makes an order within three days after the receipt of such circulars requiring the securities to be qualified by application under this chapter, the securities shall be exempt.~~
- ~~12.~~ 11. The execution of orders for purchase of securities by a registered dealer provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid

to the registered dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker.

43. 12. Securities issued by a venture capital corporation or limited liability company organized under chapter 10-30.1.
44. 13. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.
45. 14. a. Any security, other than a security that is a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any filing or registration requirements under this chapter, listed or designated, or approved for listing or designation upon notice of issuance on:
- (1) The New York stock exchange;
  - (2) The American stock exchange;
  - (3) The national association of securities dealers automated quotation national market system; ~~or~~
  - (4) Tier I of the Philadelphia stock exchange;
  - (5) Tier I of the Pacific stock exchange;
  - (6) Chicago board options exchange; or
  - (7) Any other stock exchange or automated quotation system which the commissioner approves by rule;
- b. Any other security of the same issuer which is of senior or substantially equal rank;
- c. Any security called for by subscription rights or warrants so listed or approved; or
- d. Any warrant or right to purchase or subscribe to any of the foregoing.

~~The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that the exchange, system, or particular security does not comply with paragraphs 1 through 4 of the memorandum of understanding regarding a model uniform marketplace exemption from state securities registration requirements [53 Federal Register 52550, December 28, 1988], as they may be amended by agreement of the parties to that memorandum. The commissioner shall make this determination in accordance with the provisions of section 10-04-06.1, except that no summary suspension may be entered pending a final determination for an exchange or system it would be in the public interest.~~

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

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

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



1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy.
2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt, ~~provided that the amount of such securities does not exceed two percent of the entire issue of each issue of such securities outstanding, and provided further that before proceeding to sell such pledged securities the pledgee shall notify the commissioner and obtain the commissioner's permission to such sale, unless such securities are exempted under section 10-04-05.~~
3. Any isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, dealer, or ~~salesman~~ agent and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any dealer or ~~salesman~~ agent participating in an isolated sale from registering in accordance with section 10-04-10, nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.
4. ~~Stock~~ Securities dividends or other distributions by a corporation or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation or membership interest of a limited liability company to or among its own stockholders 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, where 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 sale of securities 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 institutional buyer~~, or to a dealer, whether the purchaser is acting for itself or in a fiduciary capacity.
6. Any transaction incident to a vote by stockholders pursuant to the articles of incorporation or the applicable corporation or limited liability company statute on a merger, consolidation, reclassification of securities, or sale of corporate or limited liability company assets in consideration of the issuance of securities of another corporation or limited liability company, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
  - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.
  - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.

- c. ~~A nationally recognized~~ Such securities are listed in the standards and poor's standard corporation descriptions, Moody's industrial manual approved by the commissioner contains, and has contained for a period of not less than ninety days prior to the sale, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal year preceding that date or the most recent year of operations, Moody's bank and finance manual, Moody's transportation manual, Moody's public utility manual, or Fitch's individual stock bulletin.
  - d. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.
  - e. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than ~~twenty-five~~ thirty-five persons, other than those designated in subsection 5, in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- (1) The seller reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
  - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in subsection 5, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.
  - (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a nonrefundable filing fee of one hundred fifty dollars, which fee must accompany the application for approval.
- ~~Provided, however, that the~~ The commissioner may ~~by rule or order,~~ as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the ~~conditions~~ condition in ~~paragraphs~~ paragraph 1, 2, and 3 ~~with or without the substitution of a limitation on remuneration.~~
- b. Any offer or sale in this state of common stock, preferred stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:
    - (1) The issuer reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
    - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in subsection 5, except reasonable and customary commissions paid by the issuer to a dealer or salesman and agent registered under this chapter or others who the commissioner may designate by rule in this state in connection with the offer or sale of the security to a resident of this state.
    - (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.

- (4) No public advertising matter or general solicitation, ~~other than except~~ tombstone advertisements ~~that approved by the commissioner shall prescribe~~ by rule, is used in connection with any offers or sales.
- (5) ~~At least eighty percent of the net proceeds from the sale of the securities must be used in connection with the operations of the issuer in this state. "Net proceeds" means gross proceeds less commissions and sales expenses.~~
- ~~(6)~~ (6) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree no less than seventy-two hours prior to the sale of the security.
- ~~(7)~~ (6) The gross proceeds of the offering may not exceed ~~five hundred thousand~~ one million dollars.
- ~~(8)~~ (7) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a nonrefundable filing fee of one hundred fifty dollars.
- ~~(9)~~ (8) All funds raised in the offering are placed in an escrow account until the total offering amount has been sold.

~~Provided, however, that the~~ The commissioner may ~~by rule or order, as to any security or transaction or any type of security or transaction,~~ withdraw or further condition this exemption or waive the conditions in paragraphs 5 and 6 ~~and 7~~.

- c. ~~The offer or sale of a security offered or sold in compliance with a limited offering transactional exemption that the commissioner, by rule, may adopt to further the objectives of compatibility with the exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states. The issuer must file a report of all offers and sales made in this state pursuant to subdivision a or b on a form prescribed by the commissioner within thirty days after the completion of the offering or expiration of the twelve-month approval period, whichever occurs first.~~
- d. The exemptions provided under subdivisions a; and b, ~~and e~~ may not be combined.
- e. An exemption under this subsection is not available for the securities of any issuer if the issuer or any promoter, officer, director, manager, partner, or underwriter of the issuer:
  - (1) Has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application required under this exemption.
  - (2) Has been convicted within five years prior to the filing of the application required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.
  - (3) Is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years prior to the filing of the application required under this exemption or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts, was found and the order of judgment was entered within five years prior to the filing of the application required under this exemption.

- (4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
  - (5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such part from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of any false filing with any state or with the securities and exchange commission entered within five years prior to the filing of the application required under this exemption.
  - (6) Has been or is the subject of any order issued by the United States postal service that was entered within five years prior to reliance on this exemption and alleged any fraudulent or unlawful conduct.
- f. Subdivision e does not apply if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption should not be denied.
10. The sale of capital stock of a corporation or membership interests of a limited liability company ~~may be exempted by the securities commissioner~~ if the corporation or limited liability company is organized under ~~chapter 10-30 or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended;~~ the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated under chapter 10-24 ~~may be exempted by the securities commissioner~~ if the corporation or limited liability company is organized and operated for the primary purpose of promoting community development.
11. Any security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, a self-employed person's retirement plan, or similar benefit plan; ~~provided, that the securities which fund the plan or are the subject of the plan are otherwise exempt pursuant to section 10-04-05.~~
12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty dollars in connection with the transaction.
13. The sale of capital stock or membership interests of a venture capital corporation or limited liability company organized under chapter 10-30.1.
14. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.
15. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.
16. The distribution of a prospectus or similar disclosure document by an issuer to "test the waters" with an offer of a security for the sole purpose of discussing possible business strategies or economic development or soliciting potential indications of interest from prospective purchasers if the issuer:

- a. Is organized under the laws of this state and operates its principal place of business in this state or is a person who is a member of the North Dakota private capital investment network or multistate angel capital electronic network who has registered with the commissioner and who offers, sells, purchases, or exchanges only securities that are registered with the commissioner or the securities and exchange commission.
- b. Does not engage in or propose activities for petroleum exploration, oil production, extractive mining, or any blind pool offering without a specific business purpose.
- c. Discusses potential business strategies and economic development or solicits indications of potential interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state or involving a resident of this state unless the person who receives the commission or fee is registered as a dealer or sales agent in this state.
- d. Intends to file an application to register securities in this state or to receive approval for an exemption under subsection 9 and the issuer intends to offer and sell securities described in section 3(a)11 of the federal Securities Act of 1933, in regulation A or rule 504 of regulation D of the securities and exchange commission, in a small corporate offering registration, or in a state or federal securities registration for a private placement involving only accredited investors as defined by the securities and exchange commission.
- e. Files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.
- f. Obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials, or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.
- g. Stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.
- h. Does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration in this state.
- i. Includes the name, address, and telephone number of the chief executive officer of the issuer, a general description of the business and products, and the following statements in any published notice, marketing materials, or broadcast scripts:

NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED UNTIL AFTER THESE SECURITIES ARE REGISTERED OR QUALIFIED WITH THE SECURITIES COMMISSIONER OF THIS STATE AND WITH THE SECURITIES AND EXCHANGE COMMISSION.

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

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

- j. Does not know and, in the exercise of reasonable care, could not have known that the issuer or any officer, director, ten percent shareholder, promoter, partner, manager or agent of the issuer has:
  - (1) Been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration, offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts; or
  - (2) Been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security, franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or a similar financial crime.
- 17. An offer or sale of common stock, limited liability company membership interests, or limited partnership interests by a person to a person or other subscribers, not exceeding ten in number, for the sole purpose of organization in this state, if the securities are not acquired for the purpose of resale to others for a period of twelve months, advertising has not been published or circulated in connection with the offer or sale, and all sales are consummated within ten days after the date of organization.
- 18. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:
  - a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
  - b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
  - c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.
  - d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:
    - (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;
    - (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;



- (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
  - g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
  - h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
  - i. The issuer shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.
19. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.

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

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

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

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

- a. A balance sheet and an earnings statement showing statutory net earnings after all dividends (returned premiums) to policyholders and after all expenses including state and federal income taxes for the fiscal period ended not more than twelve months prior to the filing date upon which either an unqualified or a qualified opinion has been expressed by a certified public accountant; provided, however, that any qualification of opinion relates only to generally accepted principles of accounting which may have been modified to meet the reporting requirements of the various state insurance departments.
- b. Such balance sheet separates the surplus account into its component parts and shows a positive balance in the accumulated unrestricted retained earnings account, on statutory basis.
- c. Earnings statements for the four fiscal years immediately preceding the beginning date of the earnings statement required in subdivision a prepared by the same certified public accountant showing statutory net earnings after the deductions enumerated in subdivision a for each fiscal year; provided, however, that these statements need not be accompanied by an unqualified or a qualified opinion of the certified public accountant unless such certified public accountant did actually perform an audit of the company for any year or years covered by the earnings statements in which case the requirements of subdivision a apply for the year or years so audited.
- d. A statement prepared by a certified public accountant or actuary showing a net gain in insurance in force for each of the last five fiscal years.



2. Securities entitled to registration by announcement may be registered only by a dealer registered in the office of the commissioner as provided for in section 10-04-10 by filing in the office of the commissioner a written announcement of intention to trade in the securities, ~~which announcement may be given by telegram sent to the commissioner by the dealer,~~ containing the following:
  - a. Name of issuer and location of the headquarters or principal office.
  - b. A brief description of the security, including price and current earnings.
  - c. A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid.
  - d. A ~~statement that a~~ balance sheet not more than twelve months old ~~has been or will be mailed to the commissioner.~~
  - e. A statement that the security has been registered in North Dakota or by the securities and exchange commission.
3. The filing of such announcement in the office of the commissioner constitutes the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such dealer shall pay to the commissioner a filing fee of twenty-five dollars ~~within thirty-six hours after the time of such filing.~~ Upon registration, such securities may be sold in this state for a period of one year from date of registration by registered dealers at a price or prices reasonably related to the current market price of such security at the time of sale, subject, however, to any and all rights and authority granted the commissioner and to any person or purchaser under chapter 10-04, in respect of securities registered in the office of the commissioner by description or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, that no security, the registration of which has been revoked by the commissioner, or application for registration of which has been denied by the commissioner, or withdrawn by the applicant, shall be registered under this section.
4. ~~Nothing in this section shall be held or construed to require registration of securities under this section after said securities have been registered by description or qualification as provided in section 10-04-07 or 10-04-08 for one year after registration.~~ Securities registered pursuant to section 10-04-07 or 10-04-08 become eligible for trading in the secondary market at current market prices upon completion of the original offering when said securities are outstanding and in the hands of the public and remain so until the end of the registration year when renewal for secondary is permissible. Notification of completion of initial offering should be sent to the commissioner when the offering is completed requesting change to secondary.

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

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

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

- of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.
- b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the application for registration to which the person has indicated an intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected.
  - c. With respect to persons covered by subdivision b: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate.
  - d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision b other than the person's occupation.
  - e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision b, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment.
  - f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of the person's reasons for making the offering.
  - g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person, corporation, or limited liability company shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.
  - h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in

- connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition.
- i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person.
  - j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.
  - k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.
  - l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment.
  - m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.
  - n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.
  - o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant.
  - p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn; and, if application has been made to register the securities under the Federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.
  - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
2. a. Payment of a ~~registration~~ filing fee for each security or class of security to be registered as follows:
    - (+) a. One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.

- ~~(2)~~ b. One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
  - ~~(3)~~ c. In no event may such ~~registration~~ filing fee be less than one hundred dollars for each security or class of security to be registered. If the application for ~~registration~~ filing is denied, such ~~registration~~ filing fee less the actual cost to the state of processing and investigating as determined by the commissioner must be returned to the applicant.
  - ~~(4)~~ d. Provided, further, that any applicant may ~~register additional~~ increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the ~~registration~~ certificate of effectiveness at the same reduced fee, which must be computed as provided in ~~paragraphs 4 subdivisions a and 2 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.
  - ~~(5)~~ 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 dollars.
- ~~b.~~ (1) ~~Each open end management company, unit investment trust, and face amount certificate company, as defined in the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] may register an indefinite number or amount of securities by including on the facing sheet of its registration statement a declaration that an indefinite number or amount of securities is being registered by such registration statement.~~
- ~~(2)~~ ~~At the time a declaration is filed there must be paid a registration fee of five hundred dollars.~~
  - ~~(3)~~ ~~Provided, further, that those issuers of several classes of such securities may not combine the registration of several classes.~~
  - ~~(4)~~ ~~Each open end management company, unit investment trust, and face amount certificate company, as defined in the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] having an effective registration statement relating to an indefinite number or amount of securities shall, within sixty days after the end of any fiscal year and after the registration is terminated, file a report of the aggregate public offering price of securities sold in this state during the fiscal year and shall pay a filing fee of one twentieth of one percent of such amount, but in no case may such filing fee be less than one hundred dollars nor more than two hundred fifty dollars. Failure to file the report and fee is cause for the issuance of a stop order.~~
3. If the applicant is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.
  4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 be submitted to the commissioner and the same prospectus must be sent or given to each person to whom a sale or an offer to sell is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any application for registration. In all cases in which an application is filed to register securities and a registration statement covering the same securities has been filed with the federal securities and exchange commission, a copy of the registration statement so filed must be accepted by the commissioner in lieu of the information specified in subdivisions a through q of subsection 1, except that it must be accompanied by a statement of the amount of such securities to be offered in this state. All of the

statements, exhibits, or documents of every kind required under this section must be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event may the registration fee be returned.

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

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

**10-04-08.1. Authority of commissioner as to registration of securities.** The right to sell securities in this state shall not be granted in any case where it appears to the commissioner that the sale of such securities would work a fraud or deception on purchasers or the public, or that the proposed disposal of the securities is on unfair terms, or if the proposed plan of business of the applicant appears to be unfair, unjust, or inequitable. When the commissioner deems it necessary the commissioner has power, in connection with pending applications and at the expense of the applicant, to require the applicant to furnish additional information, to order appraisals, audits, or other examinations and reports, and, where the applicant is the issuer of the securities, or the proposed sale is to be on behalf of the issuer, to make an investigation of the books, records, property, business, and affairs of such issuer.

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

1. The commissioner may by rule, order, or directive require that any security issued or to be issued to a promoter for a consideration different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow with the commissioner or some other depository satisfactory to the commissioner under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the commissioner to have been held actually earned on the investment in any common stock as held. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities have been paid in full.
2. The commissioner may by rule, order, or directive require that all the proceeds from the sale of the approved or registered security be impounded until the issuer receives a specified amount of funds, which amount shall be determined by the commissioner.
3. The commissioner may refuse to allow the granting of any stock options to any person, but if such an option is allowed, the commissioner may prescribe that the price at which the option can be exercised shall be increased each year in which it is not exercised in an

amount to be determined by the commissioner and that the option shall lapse altogether after a specified period to be set by the commissioner.

4. If any stock is given for past services or consideration, the commissioner may require that the issuer submit to the commissioner a strict and comprehensive evaluation of such past services or consideration and may limit the amount of stock so given in order that it is commensurate with the value of the past services and in no case shall the commissioner allow stock to be given for future services.
5. The commissioner may limit the price at which the securities, either of par or no par value, may be sold, and if such securities are quoted by a recognized quotation list such price shall be limited to an amount not unreasonably in excess of the amount quoted.
6. The commissioner may by rule, order, or directive limit compensation, and all other expenses paid or incurred, directly or indirectly, in connection with the organization, approval, registration, or sale of securities, to an amount not in excess of compensation paid or expenses incurred in connection with the organization, approval, registration, or sale of similar securities.
7. If more than one class of stock is issued and one class of stock is issued for the purpose of giving preference as to dividends, the commissioner may require that a greater consideration, commensurate with the value of the dividend preference, be paid per share for such stock.
8. The commissioner may by rule, order, or directive require that any security approved or registered be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved by the corporation, partnership, or limited liability company for any period up to three years specified in the rule ~~or~~, order, or directive.
9. So long as the approval or registration is effective, the commissioner may by rule or order require the person who filed for approval or registration to file reports, not more often than quarterly, to provide reasonably current information upon the matters contained in the application or registration statement, and to disclose the progress of the offering.
10. The commissioner has the authority to disapprove an application for approval or registration of any security when it is established that one or more of the promoters are not of good business reputation or character.

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

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

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

1. No circular, prospectus, advertisement, form or market letter, report, document, pamphlet, leaflet, script, or other written or printed matter, or any communication by radio, television, or similar communications media, hereinafter referred to as advertising matter, used in connection with the offer, sale, ~~or purchase of~~ or rendering investment advice with respect to any security in this state shall be published, circulated, distributed, broadcast, or caused to be published, circulated, distributed, or broadcast in any manner unless and until such advertising matter shall have been filed with the commissioner at least five business days prior to its first publication, circulation, distribution, or broadcast, unless such advertising matter pertains to a security or transaction exempted in 10-04-05 or 10-04-06, relates to a federal covered security, or is used by a federal covered adviser.
2. The commissioner may by rule or order and subject to such terms and conditions as may be prescribed therein exempt any advertising matter from the filing requirement imposed under subsection 1 if the commissioner finds that the imposition of the filing requirement is not necessary or appropriate in the public interest or for the protection of investors.

3. The commissioner has the power to disapprove any advertising matter filed pursuant to subsection 1, which the commissioner deems in conflict with the purposes of this chapter.
4. Nothing in this section or section 10-04-04 shall be construed to prohibit the publication or distribution to the public of a preliminary prospectuses or preliminary summary prospectuses under the Securities Act of 1933, as amended prospectus, provided that no solicitation is made or order or conditional order accepted prior to registration in this state, and provided also that, unless the preliminary prospectus relates to a federal covered security, the following legend appears on each such prospectus or preliminary prospectus:

A registration statement relating to these securities has been filed ~~with the securities and exchange commission~~ but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation, or sale would be unlawful prior to registration or ~~qualification approval~~ under the securities laws of any such state.

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

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

1. Neither the fact that an application for approval under sections 10-04-05 or 10-04-06 or registration under sections 10-04-07, 10-04-07.1, 10-04-08, or 10-04-10 or a notice filing under section 10-04-08.4 has been filed nor the fact that a security or person is effectively approved or registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any security, transaction, or person.
2. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection 1.

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

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

1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act of 1933, as amended, may be offered and sold upon the filing of:
  - a. A copy of the issuer's registration statement or a notice of intent in writing or electronically for an indefinite or definite dollar amount for each security or class of security on a form prescribed by the commissioner with a consent to service of process.
  - b. If the notice filing is for a definite dollar amount, at the time of the initial notice filing the issuer shall pay a nonrefundable filing fee of one-tenth of one percent of the first seven hundred fifty thousand dollars and one-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security. In no event, however, may such filing fee be less than one hundred dollars for each security or class of security.
  - c. If the notice filing is for an indefinite dollar amount, at the time of the initial notice filing the issuer shall pay a nonrefundable filing fee of five hundred dollars for each security or class of security.

- d. A notice filing for a definite dollar amount may be increased before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be calculated as provided in subdivision b as a separate fee for each additional amount.
  - e. A notice filing for a definite dollar amount may be renewed for additional periods of one year by filing, at least fifteen days prior to its expiration, a renewal and sales report notice with a fee of one hundred dollars to renew the unsold balance.
  - f. A notice filing for an indefinite dollar amount may be renewed by filing, within sixty days following the issuer's fiscal year, a renewal and sales report notice with a fee of one-twentieth of one percent of the amount of securities sold in this state during the period of the notice filing being renewed. In no case may such fee be less than one hundred dollars nor more than two hundred fifty dollars.
  - g. A notice filing may be terminated by the issuer upon providing the commissioner a notice of such termination.
  - h. The provision for each security or class of security in this subsection is effective when the federal registration statement becomes effective with the securities and exchange commission or the date the notice of intent is received by the commissioner, whichever is later. A filing notice for a definite dollar amount is effective for a period of one year from the date of effectiveness.
  - i. A copy of any document filed with the securities and exchange commission as the commissioner may require.
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 upon a filing of:
- a. A notice of intent is filed in writing 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 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.

For any security offered or sold under this subsection, no commission or other remuneration may be paid, either directly or indirectly, for soliciting any prospective buyer in this state, except to a dealer and agent registered in accordance with section 10-04-10.

- 3. The commissioner, by rule or otherwise, may require the filing of a notice or any document filed with the securities and exchange commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or 18(b)(4) of the Securities Act of 1933, together with a filing fee.
- 4. The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, as amended, if it is found to be in the public interest or there is a failure to comply with any of the provisions stated in this section.

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

**10-04-09. Suspension or revocation of registration of securities.** The commissioner may revoke the registration of any securities registered under this chapter if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that any provisions of this chapter



or any rule, order, or condition lawfully imposed under this chapter has been violated, or if the commissioner finds any of the following:

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

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

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

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

the registration of securities shall invalidate any sale of such securities made prior to the entry of such order.

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

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

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information:
  - a. The name of the applicant.
  - b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.
  - c. The form of business organization and the date of organization of the applicant.
  - d. The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.
  - e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
  - f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.
  - g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
  - h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
  - i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
  - j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require. A dealer that is registered under the Securities Exchange Act of 1934 may satisfy this

requirement by filing with the commissioner the dealer's most recent financial statements prepared under such Act.

- k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.
- l. Any other information which the commissioner may by rule or order require.

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

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

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

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

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

- 2. ~~Salesmen~~ Agent. Application for registration as ~~a salesman~~ an agent may be made by any individual eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed in the office of the commissioner and must contain the following information:
  - a. Name and residence and business address of the applicant.
  - b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.
  - c. ~~Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.~~
  - d. Applicant's ~~age and education~~ date of birth.
- e. d. The All full and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment, include the nature of the employment and the

names and addresses of employers of the applicant ~~for the period of ten years immediately preceding the date of application.~~

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

The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation, limited liability company, or partnership, all officers, directors, managers, governors, or partners doing securities business in this state, pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as ~~a salesman~~ an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within ~~five~~ three years as such ~~salesman agent~~ for this or any other issuer without passing the written examination.

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

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

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by the dealer or issuer of a registered ~~salesman agent~~. ~~The registration of such salesman shall automatically be suspended from the time of termination of such employment until the salesman notifies the commissioner of the salesman's employment by another registered dealer or issuer.~~

3. Investment advisers.

- a. It is unlawful for any person to transact business in this state as an investment adviser unless:
  - (1) The person is registered under this chapter.

- (2) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or
  - (3) Such person is registered either under the laws of the state where its principal place of business is located or with the securities and exchange commission, if the investment adviser has no place of business in this state and, during the preceding twelve-month period has had not more than six clients, other than those specified in paragraph 2, who are residents of this state.
- b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information:
- (1) Name, residence, and business address of the applicant.
  - (2) If the applicant is a corporation, limited liability company, or association, give full information as to ~~agents~~ officers, partners, managers, and managing officers.
  - (3) ~~Statement showing each individual named is of good repute and possesses essential experience and education~~ Information concerning the educational and business background and disciplinary history of all officers, directors, partners, control persons, and owners of five percent or more of the investment adviser.
  - (4) The plan and character of business, and the proposed method of operation.
  - (5) Such other information as may be required.
- c. If the applicant is a foreign corporation, limited liability company, or association, it shall file with its application:
- (1) A copy of its articles.
  - (2) Certificate showing authorization to transact business.
- d. The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.
- e. There must be filed with such application:
- (1) A written consent to the service of process upon the commissioner in actions against the investment adviser conforming to the requirements of section 10-04-14.
  - (2) Payment of the prescribed registration fee, which must be returned if registration is refused.
  - (3) A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial

statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of the applicant, as the commissioner may require. An investment adviser that maintains its principal place of business in a state other than this state and that is registered with and in compliance with such state's financial reporting requirements may satisfy this requirement by filing with the commissioner a copy of those financial statements, if any, that are filed by the investment adviser with the state in which it maintains its principal place of business.

- f. ~~The~~ Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond ~~or deposit~~ must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state ~~when there is taken into consideration the volume of business engaged in by the applicant and the number of persons who represent the applicant.~~ Any such bond must have as surety thereon a surety company authorized to do business in this state.
  - g. The commissioner may by rule provide for an examination, ~~which may be written or oral or both,~~ to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.
  - h. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.
  - i. A registrant as investment adviser shall notify the commissioner of any change of address.
4. Federal covered adviser. Except with respect to a federal covered adviser whose clients are those described in paragraph 2 of subdivision a of subsection 3 or who meets the criteria of paragraph 3 of subdivision a of subsection 3, it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the commissioner consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.

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

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

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

5. Investment adviser representatives. Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be ~~made~~ submitted in writing or electronically in a form prescribed by the commissioner, be signed by the applicant and if applicable, by the

investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed in the office of the commissioner, and contain the following information:

- a. Name, residence, and business address of the applicant.
- b. Name of the investment adviser employing or proposing to employ the applicant, unless the applicant is to be self-employed.
- c. Applicant's ~~age and education~~ date of birth.
- d. ~~The All full and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment, include the nature of the employment and the names and addresses of employers of the applicant for the period of ten years immediately preceding the date of the application.~~
- e. ~~Other state or federal laws under~~ A list of the states or other jurisdictions with which the applicant has ever been is registered as an investment adviser representative, and, if any registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.
- f. Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction or plea.

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

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

Every registered investment adviser shall promptly notify the commissioner of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the commissioner of the termination of such employment. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative ~~notifies is registered by~~ is registered by the commissioner ~~of employment by~~ as a representative of another investment adviser or federal covered adviser.

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

- ~~5.~~ 6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must be mailed to the applicant at the applicant's business address, and if the application is for registration as a salesman an agent, to the registered dealer or issuer or if the application is for registration as an investment adviser representative to the

investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, ~~salesman's~~ agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.

6. ~~7.~~ 7. Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, ~~salesmen~~ agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of dealers, ~~salesmen~~ agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires ~~one year from its effective date~~ on May first of each year unless renewed. The commissioner may by rule provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange. ~~Upon any change in the proprietors, partners, officers, or directors of a registered dealer or investment adviser, such registered dealer or investment adviser shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes, without fee, in the register of dealers, salesmen, investment advisers, and investment adviser representatives.~~
7. ~~8.~~ 8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:
- |   |                                 |
|---|---------------------------------|
| a. For each dealer  | \$200.00                        |
| b. For each <del>salesman</del> <u>agent</u>              | <del>\$50.00</del> <u>60.00</u> |
| c. For each investment adviser or federal covered adviser | \$100.00                        |
| d. For each investment adviser representative             | <del>\$35.00</del> <u>50.00</u> |

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

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

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

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
  - a. To employ any device, scheme, or artifice to defraud the other person; or
  - b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; ;
  - e. ~~Acting as principal for the person's own account;~~
2. It is unlawful for any person, in the solicitation of a client for investment advisory services, to make any false or misleading statement of material fact, or to fail to disclose a material fact.
3. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than the client, knowingly to effect any sale



~~or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction. The prohibitions of this subsection do not apply to any transaction with a customer of a dealer if the dealer is not acting as an investment adviser in relation to the transaction; or while acting for the person's own account or as a broker for another client unless the person first makes a written disclosure to the client of the capacity in which the person is acting and obtains the client's written consent to the transaction.~~

- ~~4.~~ 4. ~~It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to engage in dishonest or unethical practices as the commissioner may define by rule.~~
- ~~2.~~ 2. ~~In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.~~
- ~~3.~~ 5. ~~It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:~~
  - ~~a. That the~~ The ~~investment adviser shall not be compensated on the basis of a share of capital gains upon, earnings, or capital appreciation of the funds or any portion of the funds of the client. This does not prohibit an investment advisory contract that provides for compensation based on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period.~~
  - ~~b. That no~~ An ~~assignment of the investment advisory contract may not be made by the investment adviser without unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the other party to the contract client.~~
  - ~~c. That the~~ The ~~investment adviser, if a limited liability company or partnership, shall notify shall provide written notice to the other party to the contract client within fifteen days of any change in the membership of the limited liability company or partnership within a reasonable time after the change of ownership in excess of five percent.~~

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

- ~~d.~~ d. ~~The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.~~
- ~~4.~~ 6. ~~It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:~~
    - ~~a. The commissioner by rule prohibits custody; or~~

- b. ~~In the absence of rule, the~~ The investment adviser fails to notify the commissioner that the investment ~~adviser~~ adviser has or may have custody.
5. 7. No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

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

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

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

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

1. Every registered dealer, ~~salesman agent~~, investment adviser, and investment adviser representative shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner prescribes by rule. All records so required must be preserved for three years unless the commissioner prescribes otherwise by rule for particular types of records.
2. Every registered dealer, ~~salesman agent~~, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.
3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.
4. All the records referred to in subsection 1 are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.
5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

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

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

1. The commissioner may censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or revoke the registration of any dealer, ~~salesman agent~~, investment adviser, or investment adviser representative or any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person

directly or indirectly controlling the dealer or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that such registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative:

- a. Has violated or failed to comply with any provisions of this chapter or any order or rule of the commissioner under this chapter;
- b. Is, in the case of a dealer or investment adviser, insolvent;
- c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business;
- d. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner;
- e. Has failed to file with the commissioner any financial record required pursuant to section 10-04-10.3, or has refused to permit an examination into the person's affairs as provided by section 10-04-10.3 and subsection 3;
- f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1;
- h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
- i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative;
- j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the Commodity Exchange Act, or the Investment ~~Advisers~~ Advisers Act of 1940; or is the subject of a United States post-office fraud order;
- k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security;
- l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;

- m. Has failed reasonably to supervise the person's ~~salesmen~~ agents if the person is a dealer or the person's employees or investment adviser representatives if the person is an investment adviser; or
  - n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an agent, broker, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.
2. It is sufficient cause for revocation of registration of a dealer or investment adviser as provided in this section, in case of a partnership, corporation, limited liability company, or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association or any manager or governor of a limited liability company has been guilty of any act or omission which would be sufficient grounds for revoking the registration of an individual dealer or investment adviser.
  3. If the commissioner has reasonable grounds to believe that the registration of any registered dealer, ~~salesman agent~~, investment adviser, or investment adviser representative should be censured, suspended, or revoked upon any grounds specified in this section, the commissioner or the commissioner's agent may conduct an examination into the affairs of any such registered dealer, ~~salesman agent~~, investment adviser, or investment adviser representative. In making any such examination, the commissioner or the commissioner's agent shall have access to and may compel the production of all the books and papers of a registered dealer, ~~salesman agent~~, investment adviser, or investment adviser representative, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to the dealer's or investment ~~adviser's~~ adviser's business and affairs.
  4. ~~If the commissioner has reasonable grounds to believe that a registered dealer, salesman, investment adviser, or investment adviser representative has been guilty of any act or omission which would be sufficient grounds for revoking the registration of such dealer, salesman, investment adviser, or investment adviser representative makes written findings of fact to support the conclusion that grounds exist pursuant to subsection 1 for the commissioner to suspend or revoke any registration, the commissioner may enter an by order suspending the registration of such dealer, salesman, investment adviser, or investment adviser representative summarily suspend registration pending an examination into the affairs of such dealer, salesman, investment adviser, or investment adviser representative or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such order shall be effective for more than thirty days, and such order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of such suspension order, or of an order withdrawing a suspension order previously entered, the commissioner shall send a copy of such order by registered or certified mail to the dealer, salesman, investment adviser, or investment adviser representative whose registration is affected thereby at the person's business address, and, to the registered dealer or registered investment adviser who employs any salesman or investment adviser representative affected by such order final determination of any proceeding under this section. Upon the entry of the summary order, the commissioner shall promptly notify the applicant, as well as the employer or prospective employer if the applicant is an agent or investment adviser representative, that it has been entered and the reasons. The person subject to the order, if desiring a hearing, must make a written request for a hearing to the commissioner within fifteen days after receipt of the notice. Within fifteen days after receipt by the commissioner of a written request the matter will be set for hearing to determine if the order should be modified, vacated, or extended pending a final determination. If a hearing is not requested and none is ordered by the commissioner, the order will remain in effect until modified or vacated by the commissioner.~~
  5. If the commissioner finds, after affording a registered dealer, a registered ~~salesman agent~~, a registered investment adviser, or a registered investment adviser representative a

hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to censure, suspend, or revoke the registration of such dealer, ~~salesman agent~~, investment adviser, or investment adviser representative, the commissioner may enter an order in the register of dealers, ~~salesmen agents~~, investment advisers, and investment adviser representatives; censuring, suspending, or revoking the registration of such dealer, ~~salesman agent~~, investment adviser, or investment adviser representative. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, ~~salesman agent~~, investment adviser, or investment adviser representative whose registration is censured, suspended, or revoked thereby at the person's business address and, if the censure, suspension, or revocation is of the registration of a ~~salesman an agent~~, or investment adviser representative, to the registered dealer or registered investment adviser who employs such person. Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of the dealer's ~~salesmen agents~~. Suspension or revocation of the registration of an investment adviser also suspends or revokes the registration of all of the investment adviser's investment adviser representatives. Suspension or revocation of the registration of a ~~salesman an agent~~ or investment adviser representative solely because of employment by a dealer or investment adviser whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such person.

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

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

**10-04-12. Hearings.** Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of the securities, and if the application for registration of the securities was filed by a registered dealer, to the registered dealer, a notice of opportunity for hearing. Before entering an order refusing to register any person as a dealer, ~~salesman agent~~, investment adviser, or investment adviser representative, as provided in section 10-04-10, or censuring, placing limitations, suspending, or revoking the registration of any person as a registered dealer, ~~salesman agent~~, investment adviser, or investment adviser representative as provided in section 10-04-11, the commissioner shall send to that person, and if that person is a ~~salesman an agent~~ or investment adviser representative or an applicant for registration as a ~~salesman an agent~~ or investment adviser representative, to the registered dealer or investment adviser who employs or proposes to employ that ~~salesman agent~~ or investment adviser representative, a notice of opportunity for hearing.

1. Notices of opportunity for hearing must be sent by registered mail, returned receipt requested, to the addressee's business address, and the notice must state:
  - a. The order the commissioner proposes to issue.
  - b. The grounds for issuing the proposed order.
  - c. That the person to whom the notice is sent may be afforded a hearing upon request to the commissioner if the request is made within ~~ten~~ fifteen days after receipt of the notice.
2. Whenever a person requests a hearing in accordance with this section, the commissioner shall immediately set a date, time, and place for the hearing and shall ~~forthwith~~ notify the person requesting the hearing. The date set for the hearing must be within ~~fifteen~~ thirty days, but not earlier than ~~five~~ fifteen days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting the hearing.
3. Any hearing conducted under this section must be conducted in accordance with chapter 28-32.

4. If the commissioner does not receive a request for a hearing within the prescribed time, the commissioner may enter a final order which must set forth the findings with respect to the matters involved.

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

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

1. Every applicant for registration under this chapter ~~and~~, every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense, and every person making a notice filing under this chapter shall file with the commissioner, in such form as the commissioner prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be the applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and the person has not filed a consent to service of process under subsection 1 and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner or the commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
3. When process is served under this section, the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

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

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

1. The commissioner may:
  - a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order

hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. Any investigation under this section may include an investigatory hearing held in accordance with section 28-32-08. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative whose affairs are investigated, ~~but the expense so payable may not exceed an amount that the commissioner prescribes by rule.~~

- b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.
  - c. Publish information concerning any violation of this chapter or any rule or order hereunder, and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.
2. For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
  3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
  4. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

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

**10-04-17. Remedies.** Every sale or contract for sale made in violation of any of the provisions of this chapter, or of any rule or order issued by the commissioner under any provisions of this chapter, shall be voidable at the election of the purchaser. The person making such sale or contract for sale, and every director, officer, ~~salesman~~, or agent of or for such seller who shall have participated or aided in any way in making such sale shall be jointly and severally liable to such purchaser who may sue either at law or in equity to recover the full amount paid by such purchaser, together with all taxable court costs, interest as provided in subsection 2, and reasonable attorney's fees, less the amount of any income received on the securities, upon tender to the seller, in person or in open court, of the securities sold or of the contracts made, or for damages if the purchaser no longer owns the securities. Damages are the amount that would be recoverable upon a tender less the value of the securities when the purchaser disposed of them and interest as provided in subsection 2 from the date of disposition. Provided:

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

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

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

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



\_\_\_\_\_  
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 Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1144.

House Vote:      Yeas    78      Nays    13      Absent    7

Senate Vote:    Yeas    47      Nays    0      Absent    2

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1999,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State