

HOUSE BILL NO. 1085

Introduced by

Industry, Business and Labor Committee

(At the request of the Securities Commissioner)

1 A BILL for an Act to amend and reenact subsection 3 of section 10-04-02, sections 10-04-05,
2 10-04-06, 10-04-07.1, 10-04-08.1, 10-04-08.3, and 10-04-08.4, and subsection 2 of section
3 10-04-10 of the North Dakota Century Code, relating to the definition of broker-dealer,
4 registration by coordination, federal covered securities, and qualifications of registered agents.

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

6 **SECTION 1. AMENDMENT.** Subsection 3 of section 10-04-02 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 3. "Broker-dealer" means a person engaged in the business of effecting transactions in
9 securities issued by another person or by such person for the account of others or for
10 the person's own account. The term does not include:

11 a. An agent; ~~or~~

12 b. A bank or savings institution if its activities as a broker-dealer are limited to those
13 specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if
14 limited to unsolicited transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities
15 Exchange Act of 1934 or a bank that satisfies the conditions described in
16 subsection 3(a)(4)(E) of the Securities Exchange Act of 1934; or

17 c. An issuer, including an officer, director, employee, or trustee of, or member or
18 manager of, or partner in, or a general partner of, an issuer, that sells, offers for
19 sale, or does any act in furtherance of the sale of a security that represents an
20 economic interest in that issuer, provided no commission, fee, or other similar
21 remuneration is paid to or received by the issuer for the sale.

22 **SECTION 2. AMENDMENT.** Section 10-04-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **10-04-05. Exempt securities.**

2 Sections 10-04-04, 10-04-07.1, 10-04-07.2, 10-04-08, and 10-04-08.4 do not apply to any of
3 the following securities:

- 4 1. A security, including a revenue obligation or a separate security as defined in rule 131
5 adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United
6 States, by a state, by a political subdivision of a state, by a public authority, agency, or
7 instrumentality of one or more states, by a political subdivision of one or more states,
8 or by a person controlled or supervised by and acting as an instrumentality of the
9 United States under authority granted by the Congress, or a certificate of deposit for
10 any of the foregoing, except that this exemption does not include a municipal security
11 with respect to the offer or sale in this state if the security is payable solely from
12 revenues to be received from a nongovernmental industrial or commercial enterprise,
13 unless such payments are made or unconditionally guaranteed by a person whose
14 securities are exempt from registration or the issuer first files a notice in a record
15 specifying the terms of the proposed offer or sale and pays a nonrefundable filing fee
16 of one hundred dollars.
- 17 2. Securities issued by and representing or that will represent an interest in or a direct
18 obligation of, or be guaranteed by a banking institution organized under the laws of the
19 United States, a member bank of the federal reserve system, or a depository
20 institution a substantial portion of the business of which consists or will consist of
21 receiving deposits or share accounts that are insured to the maximum amount
22 authorized by statute by the federal deposit insurance corporation, the national credit
23 union share insurance fund, or a successor authorized by federal law or exercising
24 fiduciary powers that are similar to those permitted for national banks under the
25 authority of the comptroller of currency pursuant to section 1 of Public Law 87-722 or
26 issued or guaranteed as to both principal and interest by an international bank of
27 which the United States is a member.
- 28 3. Securities issued by a building and loan association subject to supervision by an
29 agency of the state of North Dakota, or policy contracts, including variable annuity
30 contracts, of an insurance company subject to supervision by an agency of the state of
31 North Dakota.

1 4. Securities issued or guaranteed by a railroad, other common carrier, public utility, or
2 public utility holding company that is regulated in respect to its rates and charges by
3 the United States or a state, regulated in respect to the issuance or guarantee of the
4 security by the United States, a state, Canada, or a Canadian province or territory, or a
5 public utility holding company registered under the Public Utility Holding Company Act
6 of 1935 or a subsidiary of such a registered holding company within the meaning of
7 that Act.

8 5. Any security issued by any person organized and operated not for private profit but
9 exclusively for religious, educational, benevolent, fraternal, charitable, social, or
10 reformatory purposes; provided that prior to any offer of such security each person
11 must meet the following conditions:

12 a. Apply for and obtain the written approval of the commissioner.

13 b. File an application, offering disclosure document, and pay a nonrefundable filing
14 fee of one hundred fifty dollars, which document and fee must accompany the
15 application.

16 c. File a notice identifying the basis of its qualification under this exemption with
17 such additional information as the commissioner may require.

18 d. Provide a copy of the offering disclosure document to each person to whom an
19 offer to sell or sale is made.

20 The approval is effective for a period of one year from the date of approval. At least
21 thirty days prior to the expiration date, there must be filed an application, offering
22 disclosure document, and a nonrefundable fee of one hundred dollars for the renewal
23 of the filing for additional periods of one year.

24 6. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current
25 transaction or the proceeds of which have been or are to be used for current
26 transactions, is not the subject of a public offering, is prime quality negotiable
27 commercial paper which has at the time of issuance a definite maturity of not
28 exceeding nine months, is payable in cash only, and is not convertible into and does
29 not carry an option or right to receive payment or any bonus in any other security.

- 1 7. Securities, other than common stock, providing for a fixed return, which have been
2 outstanding and in the hands of the public for not less than five years and upon which
3 no default has occurred during the five years next preceding the date of sale.
- 4 8. Securities, including patronage dividends or refunds, issued by any cooperative
5 organized under the statutes of this state.
- 6 9. An equipment trust certificate with respect to equipment leased or conditionally sold to,
7 a person, if any security issued by the person would be exempt under this section or
8 would be a federal covered security under section 18(b)(1) of the Securities Act of
9 1933.
- 10 10. Any bond, note, or other evidence of debt issued by a holding corporation or limited
11 liability company and secured by collateral consisting of any of the securities
12 described in subsections 4 and 9, if the collateral securities equal in fair value at least
13 one hundred twenty-five percent of the par value of the bonds, notes, or other
14 evidences of debts secured thereby.
- 15 11. The execution of orders for purchase of securities by a registered broker-dealer
16 provided such broker-dealer acts as agent for the purchaser, has made no solicitation
17 of the order to purchase such securities, has no direct material interest in the sale or
18 distribution of the securities ordered, receives no commission, profit, or other
19 compensation other than the commissions involved in the purchase and sale of the
20 securities and delivery to the purchaser of written confirmation of the order which
21 clearly itemizes the commissions paid to the registered broker-dealer. Clear and
22 complete records of all transactions exempted under this subsection shall be
23 maintained by the registered broker-dealer.
- 24 12. Any security issued, insured, or guaranteed by a foreign government with which the
25 United States currently maintains diplomatic relations, or any of its political
26 subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or
27 guarantor.
- 28 13. a. A federal covered security specified in section 18(b)(1) of the Securities Act of
29 1933 or by rule adopted under that provision or a security listed or approved for
30 listing on:
31 (1) The New York stock exchange;

- 1 (2) The American stock exchange;
 - 2 (3) The national association of securities dealers automated quotation national
3 market system;
 - 4 (4) Tier I of the Philadelphia stock exchange, incorporated;
 - 5 (5) Tier I of the Pacific exchange, incorporated;
 - 6 (6) Chicago board options exchange, incorporated; or
 - 7 (7) Any other stock exchange or automated quotation system which the
8 securities and exchange commission approves by rule.
- 9 b. A put or call option contract; a warrant; a subscription right on or with respect to
10 such securities; or an option or similar derivative security on a security or an
11 index of securities or foreign currencies issued by a clearing agency registered
12 under the Securities Exchange Act of 1934 and listed or designated for trading on
13 a national securities exchange, a facility of a national securities exchange, or a
14 facility of a national securities association registered under the Securities
15 Exchange Act of 1934 or an offer or sale, of the underlying security in connection
16 with the offer, sale, or exercise of an option or other security that was exempt
17 when the option or other security was written or issued; or an option or a
18 derivative security designated by the securities and exchange commission under
19 section 9(b) of the Securities Exchange Act of 1934.
- 20 14. Securities issued by North Dakota united dues credit trust to members of North Dakota
21 united.
- 22 15. A security of a foreign issuer that is a margin security defined in regulations or rules
23 adopted by the board of governors of the federal reserve system.

24 **SECTION 3. AMENDMENT.** Section 10-04-06 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **10-04-06. Exempt transactions.**

27 Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07.1,
28 10-04-07.2, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following
29 transactions:

- 30 1. A transaction by an executor, administrator of an estate, sheriff, marshal, receiver,
31 guardian, conservator, or trustee in bankruptcy.

- 1 2. The sale, in good faith and not for the purpose of avoiding the provisions of this
2 chapter, by a pledgee of securities pledged for a bona fide debt.
- 3 3. An isolated sale of any security made by or on behalf of a bona fide owner for the
4 owner's account, such owner not being an issuer, underwriter, broker-dealer, or agent
5 and such sale not being made in the course of repeated and successive transactions
6 of a like character. This subsection shall not exempt any broker-dealer or agent
7 participating in an isolated sale from registering in accordance with section 10-04-10.
- 8 4. A transaction by an issuer for:
 - 9 a. Securities dividends or other distributions by a corporation, cooperative, limited
10 partnership, limited liability limited partnership, or limited liability company out of
11 its earnings or surplus; or
 - 12 b. The sale or distribution of additional capital stock of a corporation or cooperative,
13 interest of a partnership, or membership interest of a limited liability company to
14 or among its own stockholders, partners, or members.
- 15 5. A sale or offer to sell to:
 - 16 a. An institutional investor;
 - 17 b. A federal covered investment adviser; or
 - 18 c. Any other person exempted by rule adopted or order issued by the
19 commissioner.
- 20 6. Any transaction incident to a vote by stockholders, partners, or members pursuant to
21 the articles of incorporation, bylaws, partnership agreement, articles of organization,
22 member-control agreement, or the applicable corporation, partnership, or limited
23 liability company statute on a merger, consolidation, exchange of securities, or sale of
24 corporate, partnership, or limited liability company assets in consideration of the
25 issuance of securities of another corporation, partnership, or limited liability company,
26 other reorganization to which the issuer, or its parent or subsidiary and the other
27 person or its parent or subsidiary, are parties, or any transaction incident to a judicially
28 approved reorganization in which a security is issued in exchange for one or more
29 outstanding securities, claims, or property interests, or partly in such exchange and
30 partly for cash, or the solicitation of tenders of securities by an offeror in a tender offer
31 in compliance with rule 162 adopted under the Securities Act of 1933.

- 1 7. A transaction under an offer to existing securityholders of the issuer, including persons
2 that at the date of the transaction are holders of convertible securities, options, or
3 warrants, if a commission or other remuneration, other than a standby commission, is
4 not paid or given, directly or indirectly, for soliciting a securityholder in this state.
- 5 8. A nonissuer transaction by or through a broker-dealer and agent, both of which are
6 registered or exempt from registration under this chapter, or a resale transaction by a
7 sponsor of a unit investment trust registered under the Investment Company Act of
8 1940, in a security of a class that has been outstanding in the hands of the public for
9 at least ninety days, if, at the date of the transaction:
- 10 a. The issuer of the security is engaged in business, the issuer is not in the
11 organizational stage or in bankruptcy or receivership, and the issuer is not a
12 blank check, blind pool, or shell company that has no specific business plan or
13 purpose or has indicated that its primary business plan is to engage in a merger
14 or combination of the business with, or an acquisition of, an unidentified person;
- 15 b. Such securities are sold at prices reasonably related to the current market price;
- 16 c. Such securities do not constitute the whole or part of an unsold allotment to, or
17 subscription or participation by, the broker-dealer as an underwriter of the
18 security or a redistribution;
- 19 d. Such securities are listed in Mergent's Industrial Manual, Mergent's Bank and
20 Finance Manual, Mergent's Transportation Manual, Mergent's Public Utility
21 Manual, or Fitch investor service, incorporated, are on the OTCQX or OTCQB
22 markets operated by OTC Markets Group Incorporated, or are filed under
23 section 13 or 15(d) of the Securities Exchange Act of 1934 [ch. 404, title I, sec. 1;
24 48 Stat. 881; 15 U.S.C. 78 et seq.]; and
- 25 e. Any one of the following requirements is met:
- 26 (1) The issuer of the security has a class of equity securities listed on a national
27 securities exchange registered under section 6 of the Securities Exchange
28 Act of 1934 or designated for trading on the national association of
29 securities dealers automated quotation system;
- 30 (2) The issuer of the security is a unit investment trust registered under the
31 Investment Company Act of 1940;

- 1 (3) The issuer of the security, including its predecessors, has been engaged in
2 continuous business for at least three years; or
- 3 (4) The issuer of the security has total assets of at least two million dollars
4 based on an audited balance sheet as of a date within eighteen months
5 before the date of the transaction or, in the case of a reorganization or
6 merger when the parties to the reorganization or merger each had the
7 audited balance sheet, a pro forma balance sheet for the combined
8 organization.
- 9 9. a. Any transaction pursuant to an offer directed by the offeror to not more than
10 thirty-five persons, other than those designated in subsection 5, in this state
11 during any period of twelve consecutive months, whether or not the offeror or any
12 of the offerees is then present in this state, if all of the following conditions are
13 met:
- 14 (1) The seller reasonably believes that all the buyers in this state, other than
15 those designated in subsection 5, are purchasing for investment.
- 16 (2) Except for offers or sales with respect to persons designated in
17 subsection 5, no security may be offered or sold under this subdivision
18 except through or by a broker-dealer and agent registered in accordance
19 with section 10-04-10, unless it is offered and sold through an officer,
20 director, governor, or partner of the issuer and no commission or other
21 remuneration is paid, either directly or indirectly.
- 22 (3) The offeror applies for and obtains the written approval of the commissioner
23 prior to making any offers in this state and pays a nonrefundable filing fee of
24 one hundred fifty dollars, which fee must accompany the application for
25 approval.
- 26 The commissioner may, as to any security or transaction or any type of security
27 or transaction, withdraw or further condition this exemption, or increase or
28 decrease the number of offerees permitted, or waive the condition in
29 paragraph 1.
- 30 b. Any offer or sale in this state of common stock, preferred stock, limited liability
31 company membership interests, or limited partnership interests of an issuer

1 during any period of twelve consecutive months if all of the following conditions
2 are met:

- 3 (1) The issuer reasonably believes that all the buyers in this state, other than
4 those designated in subsection 5, are purchasing for investment.
- 5 (2) Except with respect to offers and sales made to persons designated in
6 subsection 5, no security may be sold under this subdivision except through
7 or by a broker-dealer and agent registered in accordance with section
8 10-04-10, unless it is offered and sold through an officer, director, governor,
9 or partner of the issuer and no commission or other remuneration is paid,
10 either directly or indirectly.
- 11 (3) The issuer is both organized under the laws of this state and has its
12 principal place of business in this state.
- 13 (4) No public advertising matter or general solicitation, except tombstone
14 advertisements approved by the commissioner, is used in connection with
15 any offers or sales.
- 16 (5) An offering disclosure document in the form approved by the commissioner
17 must be delivered to each offeree prior to the sale of the security.
- 18 (6) The gross proceeds of the offering may not exceed five million dollars.
- 19 (7) The issuer must apply for and obtain the written approval of the
20 commissioner prior to making any offer or sale in this state by filing an
21 application prescribed by the commissioner, a copy of the offering
22 disclosure document, and any other information or documents the
23 commissioner may require, together with a nonrefundable filing fee of one
24 hundred fifty dollars.
- 25 (8) All funds raised in the offering are placed in an escrow account until the total
26 offering amount has been sold.

27 The commissioner may withdraw or further condition this exemption or waive the
28 conditions in paragraphs 5 and 6.

29 c. The issuer must file a report of all offers and sales made in this state pursuant to
30 subdivision a or b on a form prescribed by the commissioner within thirty days

1 after the completion of the offering or expiration of the twelve-month approval
2 period, whichever occurs first.

3 d. The exemptions provided under subdivisions a and b may not be combined.

4 e. An exemption under this subsection is not available for the securities of any
5 issuer if the issuer or any promoter, officer, director, manager, partner, or
6 underwriter of the issuer:

7 (1) Has filed a registration statement that is the subject of a currently effective
8 registration stop order entered pursuant to any federal or state securities
9 law within five years prior to the filing of the application required under this
10 exemption.

11 (2) Has been convicted within five years prior to the filing of the application
12 required under this exemption of any felony or misdemeanor in connection
13 with the offer, purchase, or sale of any security or any felony involving fraud
14 or deceit, including forgery, embezzlement, obtaining money under false
15 pretenses, larceny, or conspiracy to defraud.

16 (3) Is currently subject to any state administrative enforcement order or
17 judgment entered by any state securities administrator or the securities and
18 exchange commission within five years prior to the filing of the application
19 required under this exemption or is subject to any federal or state
20 administrative enforcement order or judgment in which fraud or deceit,
21 including making untrue statements of material facts, was found and the
22 order of judgment was entered within five years prior to the filing of the
23 application required under this exemption.

24 (4) Is subject to any federal or state administrative enforcement order or
25 judgment which prohibits, denies, or revokes the use of any exemption from
26 registration in connection with the offer, purchase, or sale of securities.

27 (5) Is currently subject to any order, judgment, or decree of any court of
28 competent jurisdiction temporarily or preliminarily restraining or enjoining, or
29 is subject to any order, judgment, or decree of any court of competent
30 jurisdiction, permanently restraining or enjoining, such part from engaging in
31 or continuing any conduct or practice in connection with the purchase or

- 1 sale of a security or involving the making of any false filing with any state or
2 with the securities and exchange commission entered within five years prior
3 to the filing of the application required under this exemption.
- 4 (6) Has been or is the subject of any order issued by the United States postal
5 service that was entered within five years prior to reliance on this exemption
6 and alleged any fraudulent or unlawful conduct.
- 7 f. Subdivision e does not apply if the commissioner determines, upon a showing of
8 good cause, that it is not necessary under the circumstances that the exemption
9 should not be denied.
- 10 10. The sale of capital stock of a corporation or membership interests of a limited liability
11 company if the corporation or limited liability company is organized under the statutes
12 of this state or the sale of memberships, including dues, in a nonprofit corporation
13 incorporated in North Dakota if the corporation or limited liability company is organized
14 and operated for the primary purpose of promoting community development.
- 15 11. Any security issued in connection with an employees' stock purchase, savings, option,
16 profit-sharing, pension, or similar employees' benefit plan, including any securities,
17 plan interests, and guarantees issued under a compensatory benefit plan or
18 compensation contract, contained in a record, established by the issuer, its parents, its
19 majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent
20 for the participation of their employees, including offers or sales of such securities to:
- 21 a. Directors; general partners; trustees, if the issuer is a business trust; officers;
22 consultants; and advisers;
- 23 b. Family members who acquire such securities from those persons through gifts or
24 domestic relations orders;
- 25 c. Former employees, directors, general partners, trustees, officers, consultants,
26 and advisers if those individuals were employed by or providing services to the
27 issuer when the securities were offered; and
- 28 d. Insurance agents who are exclusive insurance agents of the issuer, or the
29 issuer's subsidiaries or parents, or who derive more than fifty percent of their
30 annual income from those organizations.

- 1 12. The sale of a security issued by the United States, or the state of North Dakota, or any
2 political subdivision or instrumentality of the state of North Dakota; provided, that the
3 offer for sale and sale are made by an official or employee of the issuer or of the Bank
4 of North Dakota acting in an official capacity and not for personal pecuniary profit, or
5 by a bank or similar financial association or institution or an official or employee
6 thereof solely as an accommodation to customers of such association or institution
7 and without asking or receiving a commission or remuneration other than an
8 accommodation fee not to exceed one hundred dollars in connection with the
9 transaction.
- 10 13. Any offer or sale of shares of capital stock issued by a professional corporation,
11 professional limited liability company, or professional limited liability partnership which
12 is organized and operated pursuant to chapter 10-31.
- 13 14. The offer or sale of a security issued by North Dakota united dues credit trust to
14 members of North Dakota united.
- 15 15. a. An offer, but not a sale, of a security made by or on behalf of an issuer for the
16 sole purpose of soliciting an indication of interest in receiving a prospectus or
17 similar disclosure document for the security if all of the following conditions are
18 satisfied:
- 19 (1) The issuer is or will be a business entity organized under the laws of one of
20 the states or possessions of the United States or one of the provinces or
21 territories of Canada; is engaged in or proposes to engage in a business
22 other than petroleum exploration or production, mining, or other extractive
23 industries; and is not a blind pool offering or other offering for which the
24 specific business or properties cannot now be described.
- 25 (2) The issuer may solicit indications of interest in a project or business only
26 within a period of twelve months after receiving approval from the
27 commissioner and does not pay a commission or fee to any person for
28 soliciting a potential investor or prospective purchaser in this state unless
29 the person who receives the commission or fee is registered as a
30 broker-dealer or agent in this state.

- 1 (3) The issuer intends to register securities in this state, rely upon subsection 8
2 of section 10-04-05 for the issuance of a security, or receive approval for an
3 exemption under subsection 5 of section 10-04-05 or subsection 9 of this
4 section.
- 5 (4) The issuer files a solicitation of interest form and copies of any advertising
6 or marketing materials, including scripts for use in telephone, television,
7 electronic, or computer publications, for approval by the commissioner at
8 least ten business days before the issuer begins soliciting indications of
9 interest from potential purchasers and at least ten business days before
10 publishing or distributing any materials or information to any person.
- 11 (5) The issuer obtains approval of the commissioner for any amendments or
12 changes in filed forms, marketing materials, or advertisements at least ten
13 business days before distributing the amended marketing materials or
14 amended advertising information to any person.
- 15 (6) The issuer does not use any solicitation of interest form, script,
16 advertisement, or other material which the issuer has been notified by the
17 commissioner not to distribute, to solicit indications of interest.
- 18 (7) Except for scripted broadcasts and published notices, the issuer does not
19 communicate with any offeree about the contemplated offering unless the
20 offeree is provided with the most current solicitation of interest form at or
21 before the time of the communication or within five days from the
22 communication.
- 23 (8) The issuer stops all communications with prospective investors made in
24 reliance on this exemption immediately after filing an application to register
25 or qualify the securities with the commissioner or with the securities and
26 exchange commission.
- 27 (9) The issuer does not accept money or sign completed contracts for sales of
28 securities with any person while soliciting indications of interest and does
29 not complete any sales of securities until at least ten business days after
30 completing a securities registration or approval to offer and sell securities in
31 this state.

- 1 (10) The issuer does not make a sale until three days after delivery to the
2 purchaser of a prospectus or similar disclosure document.
- 3 (11) The issuer does not know, and in the exercise of reasonable care could not
4 know, that the issuer or any officer, director, manager, ten percent
5 shareholder, promoter, partner, or agent of the issuer:
- 6 (a) Has been the subject of or filed a registration statement that is the
7 subject of a stop order, administrative enforcement order, judgment,
8 injunction, or restraining order issued by any federal or state securities
9 agency, any court of competent jurisdiction, or the United States
10 postal service and which prohibits, denies, or revokes the registration
11 or use of any exemption from registration in connection with the offer,
12 sale, or purchase of a security, franchise, commodity, or other
13 financial transaction or which involves fraud, deceit, misstatements of
14 material facts, forgery, embezzlement, obtaining money under false
15 pretenses, larceny, conspiracy to defraud, or similar deceptive acts
16 within five years prior to the filing of the solicitation of interest form; or
- 17 (b) Has been convicted of any felony or misdemeanor involving the offer,
18 purchase, or sale of a security, franchise, commodity, or financial
19 transaction, or any felony or misdemeanor involving fraud, deceit,
20 forgery, embezzlement, conspiracy to defraud, or a similar financial
21 crime.

22 The prohibitions listed above shall not apply if the person subject to the
23 disqualification is duly licensed or registered to conduct securities-related
24 business in the state in which the administrative order or judgment was
25 entered against such person or if the broker-dealer employing such party is
26 licensed or registered in this state and the form B-D filed with this state
27 discloses the order, conviction, judgment, or decree relating to such person.
28 A person disqualified under this subsection may not act in a capacity other
29 than that for which the person is licensed or registered. Any disqualification
30 caused by this section is automatically waived if the agency, which created

1 the basis for disqualification, determines upon a showing of good cause that
2 it is not necessary under the circumstances that the exemption be denied.

3 b. The issuer shall comply with the requirements set forth below. Failure to comply
4 will not result in the loss of the exemption from the requirements of section
5 10-04-04, but is a violation of this chapter, is actionable by the commissioner
6 under section 10-04-16, and constitutes grounds for denying or revoking the
7 exemption as to a specific security or transaction.

8 (1) Any published notice must contain at least the identity of the chief executive
9 officer of the issuer, a brief and general description of its business and
10 products, and the following legends:

11 (a) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED
12 AND NONE WILL BE ACCEPTED;

13 (b) NO SALES OF THE SECURITIES WILL BE MADE OR
14 COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A
15 PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT THAT
16 INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND
17 THE OFFERING;

18 (c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE
19 INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF
20 ANY KIND; and

21 (d) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION
22 FROM REGISTRATION UNDER THE FEDERAL AND STATE
23 SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE
24 OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND
25 EXCHANGE COMMISSION AND IS REGISTERED OR APPROVED
26 IN THIS STATE.

27 (2) Any script for broadcast must contain at least the identity of the chief
28 executive of the issuer, a brief description of its business and products, its
29 address and telephone number, and the following legends:

- 1 (a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND INVOLVES
2 NO OBLIGATION OR COMMITMENT OF ANY KIND UPON A
3 PROSPECTIVE INVESTOR;
4 (b) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED;
5 and
6 (c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM
7 REGISTRATION UNDER FEDERAL AND STATE SECURITIES
8 LAWS.
- 9 c. Offers made on reliance of this exemption will not result in a violation of section
10 10-04-04 by virtue of being integrated with subsequent offers or sales of
11 securities unless such subsequent offers and sales would be integrated under
12 federal securities laws.
- 13 16. An offer or sale of common stock, limited liability company membership interests, or
14 limited partnership interests by a person to a person or other subscribers, not
15 exceeding ten in number, for the sole purpose of organization in this state, if the
16 securities are not acquired for the purpose of resale to others for a period of twelve
17 months, advertising has not been published or circulated in connection with the offer
18 or sale, and all sales are consummated within ten days after the date of organization.
- 19 17. Any offer or sale of a security by an issuer in a transaction provided all of the following
20 conditions are met:
- 21 a. Sales of securities may be made only to persons who are, or the issuer
22 reasonably believes are, accredited investors as defined in 17 CFR 230.501(a)
23 promulgated by the securities and exchange commission.
- 24 b. The exemption is not available to an issuer that is in the development stage that
25 either has no specific business plan or purpose or has indicated that its business
26 plan is to engage in a merger or acquisition with an unidentified company or
27 companies, or other entity or person.
- 28 c. The issuer reasonably believes that all purchasers are purchasing for investment
29 and not with the view to, or for, sale in connection with a distribution of the
30 security. Any resale of a security sold in reliance of this exemption within twelve
31 months of sale must be presumed to be with a view to distribution and not for

1 investment, except a resale pursuant to a registration statement effective under
2 section 10-04-04 or to an accredited investor pursuant to an exemption available
3 under subsection 5.

4 d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's
5 predecessors, any affiliated issuer, any of the issuer's directors, officers,
6 general partners, beneficial owners of ten percent or more of any class of its
7 equity securities, any of the issuer's promoters presently connected with the
8 issuer in any capacity, any underwriter of the securities to be offered, or any
9 partner, director, or officer of such underwriter:

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

14 (b) Within the last five years, has been convicted of any criminal offense
15 in connection with the offer, purchase, or sale of any security, or
16 involving fraud or deceit;

17 (c) Is currently subject to any state or federal administrative enforcement
18 order or judgment, entered within the last five years, finding fraud or
19 deceit in connection with the purchase or sale of any security; or

20 (d) Is currently subject to any order, judgment, or decree of any court of
21 competent jurisdiction, entered within the last five years, temporarily,
22 preliminarily, or permanently restraining or enjoining such party from
23 engaging in or continuing to engage in any conduct or practice
24 involving fraud or deceit in connection with the purchase or sale of
25 any security.

26 (2) Paragraph 1 does not apply if:

27 (a) The party subject to the disqualification is licensed or registered to
28 conduct securities-related business in the state in which the order,
29 judgment, or decree creating the disqualification was entered against
30 such party;

- 1 (b) Before the first offer under this exemption, the state securities
2 administrator, or the court or regulatory authority that entered the
3 order, judgment, or decree, waives the disqualification; or
- 4 (c) The issuer establishes that it did not know and in the exercise of
5 reasonable care, based on a factual inquiry, could not have known
6 that a disqualification existed under this subdivision.
- 7 e. (1) A general announcement of the proposed offering may be made by any
8 means.
- 9 (2) The general announcement must include only the following information,
10 unless additional information is specifically permitted by the commissioner:
- 11 (a) The name, address, and telephone number of the issuer of the
12 securities;
- 13 (b) The name, a brief description, and price, if known, of any security to
14 be issued;
- 15 (c) A brief description of the business of the issuer in twenty-five words or
16 less;
- 17 (d) The type, number, and aggregate amount of securities being offered;
- 18 (e) The name, address, and telephone number of the person to contact
19 for additional information; and
- 20 (f) A statement that:
- 21 [1] Sales will only be made to accredited investors;
- 22 [2] No money or other consideration is being solicited or will be
23 accepted by way of this general announcement; and
- 24 [3] The securities have not been registered with or approved by any
25 state securities agency or the securities and exchange
26 commission and are being offered and sold pursuant to an
27 exemption from registration.
- 28 f. The issuer, in connection with an offer, may provide information in addition to the
29 general announcement under subdivision e, if such information:
- 30 (1) Is delivered through an electronic database that is restricted to persons who
31 have been prequalified as accredited investors; or

- 1 (2) Is delivered after the issuer reasonably believes that the prospective
2 purchaser is an accredited investor.
- 3 g. Telephone solicitation is not permitted unless prior to placing the call, the issuer
4 reasonably believes that the prospective purchaser to be solicited is an
5 accredited investor.
- 6 h. Dissemination of the general announcement of the proposed offering to persons
7 who are not accredited investors does not disqualify the issuer from claiming the
8 exemption.
- 9 i. The issuer shall file with the department a notice of transaction, a consent to
10 service of process, a copy of the general announcement, and a nonrefundable
11 filing fee of one hundred dollars within fifteen days after the first sale in this state.
- 12 j. The security offered or sold under this subsection is offered or sold by a
13 broker-dealer and agent registered in accordance with section 10-04-10, or
14 offered and sold through an officer, director, governor, or partner of the issuer and
15 no commission or other remuneration is paid.
- 16 18. The offer or sale of a security issued by an organization organized under and operated
17 in compliance with chapter 10-06.1.
- 18 19. Any offer or sale of an agricultural-related cooperative security by or on behalf of an
19 agricultural producer, as defined by section 32-44-01, to a person for the purpose of
20 producing and selling agricultural products, as defined by section 32-44-01, to the
21 cooperative. Commissions or other remuneration may not be paid or given directly or
22 indirectly for soliciting any prospective buyer in this state, except to a broker-dealer or
23 agent registered in this state, to an agent of a bank or a commercial trust department,
24 to a licensed real estate agent, or to a licensed auctioneer if the sale is made at a
25 bona fide public auction.
- 26 20. A transaction in a note, bond, debenture, or other evidence of indebtedness secured
27 by a mortgage or other security agreement if:
- 28 a. The note, bond, debenture, or other evidence of indebtedness is offered and sold
29 with the mortgage or other security agreement as a unit;
- 30 b. A general solicitation or general advertisement of the transaction is not made;
- 31 and

1 c. A commission or other remuneration is not paid or given, directly or indirectly, to a
2 person not registered under this chapter as a broker-dealer or as an agent.

3 21. A nonissuer transaction by a federal covered investment adviser with investments
4 under management in excess of one hundred million dollars acting in the exercise of
5 discretionary authority in a signed record for the account of others.

6 **SECTION 4. AMENDMENT.** Section 10-04-07.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **10-04-07.1. Registration by announcement - Secondary.**

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

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

20 a. A balance sheet and an earnings statement showing statutory net earnings after
21 all dividends (returned premiums) to policyholders and after all expenses
22 including state and federal income taxes for the fiscal period ended not more
23 than twelve months prior to the filing date upon which either an unqualified or a
24 qualified opinion has been expressed by a certified public accountant; provided,
25 however, that any qualification of opinion relates only to generally accepted
26 principles of accounting which may have been modified to meet the reporting
27 requirements of the various state insurance departments.

28 b. Such balance sheet separates the surplus account into its component parts and
29 shows a positive balance in the accumulated unrestricted retained earnings
30 account, on statutory basis.

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

- 7 4. Securities registered pursuant to section ~~10-04-07~~10-04-07.2 or 10-04-08 become
8 eligible for trading in the secondary market at current market prices upon completion
9 of the original offering when said securities are outstanding and in the hands of the
10 public and remain so until the end of the registration year when renewal for secondary
11 is permissible. Notification of completion of initial offering should be sent to the
12 commissioner when the offering is completed requesting change to secondary.

13 **SECTION 5. AMENDMENT.** Section 10-04-08.1 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **10-04-08.1. Authority of commissioner.**

- 16 1. The right to sell securities in this state shall not be granted in any case when it
17 appears to the commissioner that the sale of such securities would work a fraud or
18 deception on purchasers or the public, or that the proposed disposal of the securities
19 is on unfair terms, or if the proposed plan of business of the applicant appears to be
20 unfair, unjust, or inequitable. When the commissioner deems it necessary the
21 commissioner has power, in connection with pending applications and at the expense
22 of the applicant, to require the applicant to furnish additional information, to order
23 appraisals, audits, or other examinations and reports, and, when the applicant is the
24 issuer of the securities, or the proposed sale is to be on behalf of the issuer, to make
25 an investigation of the books, records, property, business, and affairs of such issuer.
- 26 2. Upon compliance with all the provisions of this chapter relating to applications for
27 approval or registration by announcement, coordination, or qualification and the
28 requirements of the commissioner, the commissioner shall either approve or register
29 such securities or if the commissioner is of the opinion that sale of the securities would
30 be contrary to the provisions of this section, the commissioner shall deny the
31 application. The commissioner has power to place such conditions, limitations, and

1 restrictions on any approval or registration as may be necessary to carry out the
2 purposes of this chapter. Registration or approval must be by entry in the register of
3 securities, which entry must show the securities approved or registered and for whom
4 approved or registered, and the conditions, limitations, and restrictions, if any, or shall
5 make proper reference to a formal order of the commissioner on file showing such
6 conditions, limitations, and restrictions. Included among any other reasonable
7 conditions, limitations, and restrictions which the commissioner may deem necessary
8 are the following:

- 9 4. a. The commissioner may by rule, order, or directive require that any security issued
10 or to be issued to a promoter for a consideration different from the public offering
11 price, or to any person for a consideration other than cash, be deposited in
12 escrow with the commissioner or some other depository satisfactory to the
13 commissioner under an escrow agreement that the owners of such securities
14 shall not be entitled to sell or transfer such securities or to withdraw such
15 securities from escrow until all other stockholders who have paid for their stock in
16 cash shall have been paid a dividend or dividends aggregating not less than six
17 percent of the initial offering price shown to the satisfaction of the commissioner
18 to have been held actually earned on the investment in any common stock as
19 held. In case of dissolution or insolvency during the time such securities are held
20 in escrow, the owners of such securities shall not participate in the assets until
21 after the owners of all other securities have been paid in full.
- 22 2. b. The commissioner may by rule, order, or directive require that all the proceeds
23 from the sale of the approved or registered security be impounded until the issuer
24 receives a specified amount of funds, which amount shall be determined by the
25 commissioner.
- 26 3. c. The commissioner may refuse to allow the granting of any stock options to any
27 person, but if such an option is allowed, the commissioner may prescribe that the
28 price at which the option can be exercised shall be increased each year in which
29 it is not exercised in an amount to be determined by the commissioner and that
30 the option shall lapse altogether after a specified period to be set by the
31 commissioner.

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

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

2 **SECTION 6. AMENDMENT.** Section 10-04-08.3 of the North Dakota Century Code is
3 amended and reenacted as follows:

4 **10-04-08.3. Unlawful representations concerning registration or exemption.**

5 1. Neither the fact that an application for approval under section 10-04-05 or 10-04-06 or
6 registration under section 10-04-07.1, 10-04-07.2, 10-04-08, or 10-04-10 or a notice
7 filing under section 10-04-08.4 has been filed nor the fact that a security or person is
8 effectively approved or registered constitutes a finding by the commissioner that any
9 document filed under this chapter is true, complete, and not misleading. Neither any
10 such fact nor the fact that an exemption or exception is available for a security or a
11 transaction means that the commissioner has passed in any way upon the merits or
12 qualifications of, or recommended or given approval to, any security, transaction, or
13 person.

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

16 **SECTION 7. AMENDMENT.** Section 10-04-08.4 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **10-04-08.4. Federal covered security.**

19 A federal covered security may be offered and sold in this state without registration, subject
20 to the following:

21 1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act of
22 1933, as amended, may be offered and sold upon the electronic filing of:

23 a. A copy of the issuer's registration statement or a notice of intent ~~in writing or~~
24 ~~electronically~~ for an indefinite or definite dollar amount for each security or class
25 of security on a form prescribed by the commissioner.

26 b. A unit investment trust may file an initial notice filing for a definite dollar amount
27 or an indefinite dollar amount. At the time of the initial notice filing for a definite
28 dollar amount, the issuer shall pay a filing fee of one-tenth of one percent of the
29 first seven hundred fifty thousand dollars and one-twentieth of one percent of any
30 amount in excess of seven hundred fifty thousand dollars of the aggregate
31 offering price of each security or class of security. In no event, however, may

- 1 such filing fee be less than one hundred twenty-five dollars for each security or
2 class of security.
- 3 c. An investment company or unit investment trust may file an initial notice filing for
4 an indefinite dollar amount and pay a filing fee of four hundred dollars for each
5 security or class of security.
- 6 d. A notice filing for a definite dollar amount may be increased before the expiration
7 date on the certificate of effectiveness at the same reduced fee, which must be
8 calculated as provided in subdivision b as a separate fee for each additional
9 amount.
- 10 e. A notice filing for a definite dollar amount may be renewed for additional periods
11 of one year by filing, at least fifteen days prior to its expiration, a renewal and
12 sales report notice with a fee of one hundred dollars to renew the unsold balance.
- 13 f. A notice filing for an indefinite dollar amount may be renewed by filing, within
14 sixty days following the issuer's fiscal year, a renewal and sales report notice with
15 a fee of one hundred twenty-five dollars.
- 16 g. A notice filing may be terminated by the issuer upon providing the commissioner
17 a notice of such termination.
- 18 h. The provision for each security or class of security in this subsection is effective
19 when the federal registration statement becomes effective with the securities and
20 exchange commission or the date the notice of intent is received by the
21 commissioner, whichever is later. A filing notice for a definite dollar amount is
22 effective for a period of eighteen months from the date of effectiveness.
- 23 i. A copy of any document filed with the securities and exchange commission as
24 the commissioner may require.
- 25 2. a. Any federal covered security that is subject to section 18(b)(4)(D) of the
26 Securities Act of 1933, as amended, may be offered and sold under the following
27 conditions:
- 28 a. (1) A notice of intent is filed ~~in writing or electronically on SEC form D or other-~~
29 ~~prescribed form~~ with a consent to service of process and a nonrefundable
30 filing fee of one hundred dollars within fifteen calendar days after the first
31 sale in this state.

- 1 (b) The initial notice filing is effective for twelve months from the date of
2 the filing with this state.
- 3 (2) An issuer may increase the amount of securities offered in this state by
4 submitting electronically a uniform notice filing of regulation A - tier 2 offering
5 form marked "amendment".
- 6 (3) An issuer conducting an offering under this subsection may renew the
7 offering for an additional period of twelve months by electronically filing a
8 uniform notice filing of regulation A - tier 2 offering form marked "renewal"
9 and payment of the renewal filing fee of one hundred dollars.
- 10 b. A security may not be offered or sold under this subsection, except through or by a
11 broker-dealer and agent registered in accordance with section 10-04-10, unless the
12 security is offered and sold through an officer, director, governor, or partner of the
13 issuer and no commission or other remuneration is paid, either directly or indirectly.
- 14 5. a. The following provisions apply to offerings made under federal Regulation
15 Crowdfunding [17 CFR 227] and sections 4(a)(6) and 18(b)(4)(C) of the
16 Securities Act of 1933: [15 U.S.C. 77d(a)(b) and 15 U.S.C. 77r(b)(4)(C)]
- 17 (1) (a) An issuer that offers and sells securities in this state in an offering
18 exempt under federal Regulation Crowdfunding [17 CFR 227], and
19 that either has the issuer's principal place of business in this state or
20 sells fifty percent or greater of the aggregate amount of the offering to
21 residents of this state, shall file electronically the following with the
22 commissioner:
- 23 [1] A completed uniform notice of federal crowdfunding offering
24 form;
- 25 [2] A copy of any document filed with the securities and exchange
26 commission, as the commissioner may require; and
- 27 [3] A filing fee of one hundred fifty dollars.
- 28 (b) If the issuer has the issuer's principal place of business in this state,
29 the filing required under this subsection must be filed with the
30 commissioner when the issuer makes its initial form C filing
31 concerning the offering with the securities and exchange commission.

1 If the issuer does not have the issuer's principal place of business in
2 this state but residents of this state have purchased fifty percent or
3 greater of the aggregate amount of the offering, the filing required
4 under this subsection must be filed when the issuer becomes aware
5 that such purchases have met this threshold and in no event later
6 than thirty days from the date of completion of the offering. The initial
7 notice filing is effective for twelve months from the date of the filing
8 with this state.

9 (2) An issuer conducting an offering under this subsection may renew the
10 offering for an additional period of twelve months by electronically filing the
11 uniform notice of federal crowdfunding offering form marked "renewal" and
12 payment of the renewal filing fee of one hundred dollars.

13 b. A security may not be offered or sold under this subsection, except through or by
14 a broker-dealer and agent registered in accordance with section 10-04-10, unless
15 the security is offered and sold through an officer, director, governor, or partner of
16 the issuer and no commission or other remuneration is paid, either directly or
17 indirectly.

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

22 **SECTION 8. AMENDMENT.** Subsection 2 of section 10-04-10 of the North Dakota Century
23 Code is amended and reenacted as follows:

24 2. a. Agent. It is unlawful for an individual to transact business in this state as an agent
25 unless the individual is registered under this chapter as an agent or is exempt
26 from registration. The following individuals are exempt from the registration
27 requirements:

28 a. (1) An individual who represents a broker-dealer in effecting transactions in this
29 state limited to those in section 15(h)(2) of the Securities Exchange Act of
30 1934;

1 shall specifically state the particular security or securities the agent proposes to
2 sell in this state in the application, and if said security or securities are exempt
3 under section 10-04-05 or 10-04-06, or have been registered by announcement
4 under section 10-04-07.1, or have been registered by coordination under section
5 10-04-7.2, or have been registered by qualification under section 10-04-08, then
6 the commissioner may require that said self-employed agent file an indemnity
7 bond running to the state of North Dakota conditioned for the faithful compliance
8 by said self-employed agent with all the applicable provisions of this chapter and
9 for the faithful performance and payment of all obligations hereunder. The bond
10 must be in a form approved and in the amount required by the commissioner.
11 e. When an applicant has fully complied with the provisions of this subsection, the
12 commissioner may register such applicant as an agent unless the commissioner
13 finds that such applicant is not of good business reputation, or that the
14 broker-dealer named on the application is not a registered broker-dealer. When
15 the commissioner has registered an applicant as an agent, the commissioner
16 shall immediately notify the broker-dealer of such registration.
17 f. Every registered broker-dealer or issuer ~~shall~~ promptly shall notify the
18 department of the termination of the employment by the broker-dealer or issuer of
19 a registered agent.