

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1085
(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

AN ACT to amend and reenact subsection 3 of section 10-04-02, sections 10-04-05, 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 10-04-10 of the North Dakota Century Code, relating to the definition of broker-dealer, registration by coordination, federal covered securities, and qualifications of registered agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

3. "Broker-dealer" means a person 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. The term does not include:
 - a. An agent; or
 - b. A bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities Exchange Act of 1934 or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934; or
 - c. An issuer, including an officer, director, employee, or trustee of, or member or manager of, or partner in, or a general partner of, an issuer, that sells, offers for sale, or does any act in furtherance of the sale of a security that represents an economic interest in that issuer, provided no commission, fee, or other similar remuneration is paid to or received by the issuer for the sale.

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

1. A security, including a revenue obligation or a separate security as defined in rule 131 adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States, by a state, by a political subdivision of a state, by a public authority, agency, or instrumentality of one or more states, by a political subdivision of one or more states, or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress, or a certificate of deposit for any of the foregoing, except that this exemption does not include a municipal security with respect to the offer or sale in this state if the security is payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise, unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration or the issuer first files a notice in a record specifying the terms of the proposed offer or sale and pays a nonrefundable filing fee of one hundred dollars.

2. Securities issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by a banking institution organized under the laws of the United States, a member bank of the federal reserve system, or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to section 1 of Public Law 87-722 or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member.
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 annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. Securities issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is regulated in respect to its rates and charges by the United States or a state, regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory, or a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that Act.
5. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes; 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. 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. At least thirty days prior to the expiration date, there must be filed an application, offering disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

6. 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 has at the time of issuance a definite maturity 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.
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.
8. Securities, including patronage dividends or refunds, issued by any cooperative organized under the statutes of this state.

9. An equipment trust certificate with respect to equipment leased or conditionally sold to, a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933.
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 9, 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.
11. The execution of orders for purchase of securities by a registered broker-dealer provided such broker-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 broker-dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered broker-dealer.
12. Any security issued, insured, or guaranteed by a foreign government with which the United States currently maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.
13.
 - a. A federal covered security specified in section 18(b)(1) of the Securities Act of 1933 or by rule adopted under that provision or a security listed or approved for listing on:
 - (1) The New York stock exchange;
 - (2) The American stock exchange;
 - (3) The national association of securities dealers automated quotation national market system;
 - (4) Tier I of the Philadelphia stock exchange, incorporated;
 - (5) Tier I of the Pacific exchange, incorporated;
 - (6) Chicago board options exchange, incorporated; or
 - (7) Any other stock exchange or automated quotation system which the securities and exchange commission approves by rule.
 - b. A put or call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the Securities Exchange Act of 1934.
14. Securities issued by North Dakota united dues credit trust to members of North Dakota united.
15. A security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system.

SECTION 3. AMENDMENT. Section 10-04-06 of 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, 10-04-07.1, 10-04-07.2, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following transactions:

1. A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, guardian, conservator, or trustee in 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.
3. An 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, broker-dealer, or 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 broker-dealer or agent participating in an isolated sale from registering in accordance with section 10-04-10.
4. A transaction by an issuer for:
 - a. Securities dividends or other distributions by a corporation, cooperative, limited partnership, limited liability limited partnership, or limited liability company out of its earnings or surplus; or
 - b. The sale or distribution of additional capital stock of a corporation or cooperative, interest of a partnership, or membership interest of a limited liability company to or among its own stockholders, partners, or members.
5. A sale or offer to sell to:
 - a. An institutional investor;
 - b. A federal covered investment adviser; or
 - c. Any other person exempted by rule adopted or order issued by the commissioner.
6. Any transaction incident to a vote by stockholders, partners, or members pursuant to the articles of incorporation, bylaws, partnership agreement, articles of organization, member-control agreement, or the applicable corporation, partnership, or limited liability company statute on a merger, consolidation, exchange of securities, or sale of corporate, partnership, or limited liability company assets in consideration of the issuance of securities of another corporation, partnership, or limited liability company, other reorganization to which the issuer, or its parent or subsidiary and the other person or its parent or subsidiary, are parties, 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, or the solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the Securities Act of 1933.
7. A transaction under an offer to existing securityholders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a securityholder in this state.
8. A nonissuer transaction by or through a broker-dealer and agent, both of which are registered or exempt from registration under this chapter, or a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class

that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:

- a. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
 - b. Such securities are sold at prices reasonably related to the current market price;
 - c. Such securities do not constitute the whole or part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
 - d. Such securities are listed in Mergent's Industrial Manual, Mergent's Bank and Finance Manual, Mergent's Transportation Manual, Mergent's Public Utility Manual, or Fitch investor service, incorporated, are on the OTCQX or OTCQB markets operated by OTC Markets Group Incorporated, or are filed under section 13 or 15(d) of the Securities Exchange Act of 1934 [ch. 404, title I, sec. 1; 48 Stat. 881; 15 U.S.C. 78 et seq.]; and
 - e. Any one of the following requirements is met:
 - (1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system;
 - (2) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
 - (3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or
 - (4) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than 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) Except for offers or sales with respect to persons designated in subsection 5, no security may be offered or sold under this subdivision except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.
 - (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.

The commissioner may, 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 condition in paragraph 1.

- 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) Except with respect to offers and sales made to persons designated in subsection 5, no security may be sold under this subdivision except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.
 - (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, except tombstone advertisements approved by the commissioner, is used in connection with any offers or sales.
 - (5) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree prior to the sale of the security.
 - (6) The gross proceeds of the offering may not exceed five million dollars.
 - (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.
 - (8) All funds raised in the offering are placed in an escrow account until the total offering amount has been sold.

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

- c. 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 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 if the corporation or limited liability company is organized under the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated in North Dakota 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, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:
 - a. Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;
 - b. Family members who acquire such securities from those persons through gifts or domestic relations orders;
 - c. Former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and
 - d. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations.

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 one hundred dollars in connection with the transaction.
13. Any offer or sale of shares of capital stock issued by a professional corporation, professional limited liability company, or professional limited liability partnership which is organized and operated pursuant to chapter 10-31.
14. The offer or sale of a security issued by North Dakota united dues credit trust to members of North Dakota united.
15. a. An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus or similar disclosure document for the security if all of the following conditions are satisfied:
 - (1) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada; is engaged in or proposes to engage in a business other than petroleum exploration or production, mining, or other extractive industries; and is not a blind pool offering or other offering for which the specific business or properties cannot now be described.
 - (2) The issuer may solicit indications of 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 unless the person who receives the commission or fee is registered as a broker-dealer or agent in this state.
 - (3) The issuer intends to register securities in this state, rely upon subsection 8 of section 10-04-05 for the issuance of a security, or receive approval for an exemption under subsection 5 of section 10-04-05 or subsection 9 of this section.
 - (4) The issuer 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.
 - (5) The issuer 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.
 - (6) The issuer does not use any solicitation of interest form, script, advertisement, or other material which the issuer has been notified by the commissioner not to distribute, to solicit indications of interest.
 - (7) Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days from the communication.

- (8) The issuer 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.
- (9) The issuer 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 or approval to offer and sell securities in this state.
- (10) The issuer does not make a sale until three days after delivery to the purchaser of a prospectus or similar disclosure document.
- (11) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer or any officer, director, manager, ten percent shareholder, promoter, partner, or agent of the issuer:
 - (a) Has 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 or use of any exemption from registration in connection with the 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 within five years prior to the filing of the solicitation of interest form; or
 - (b) Has 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, conspiracy to defraud, or a similar financial crime.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. A person disqualified under this subsection may not act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency, which created the basis for disqualification, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

- b. The issuer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section 10-04-04, but is a violation of this chapter, is actionable by the commissioner under section 10-04-16, and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.
 - (1) Any published notice must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:
 - (a) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

- (b) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;
 - (c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and
 - (d) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED OR APPROVED IN THIS STATE.
- (2) Any script for broadcast must contain at least the identity of the chief executive of the issuer, a brief description of its business and products, its address and telephone number, and the following legends:
- (a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND UPON A PROSPECTIVE INVESTOR;
 - (b) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED; and
 - (c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS.
- c. Offers made on reliance of this exemption will not result in a violation of section 10-04-04 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.
16. 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.
17. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:
- a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
 - b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
 - c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.

- d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:
- (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;
 - (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
- (2) Paragraph 1 does not apply if:
- (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
 - (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.
- e. (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:
- (a) The name, address, and telephone number of the issuer of the securities;
 - (b) The name, a brief description, and price, if known, of any security to be issued;
 - (c) A brief description of the business of the issuer in twenty-five words or less;
 - (d) The type, number, and aggregate amount of securities being offered;
 - (e) The name, address, and telephone number of the person to contact for additional information; and
 - (f) A statement that:
 - [1] Sales will only be made to accredited investors;

- [2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and
 - [3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.
- f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
 - (1) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or
 - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
 - g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
 - h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
 - i. The issuer shall file with the department a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.
 - j. The security offered or sold under this subsection is offered or sold by a broker-dealer and agent registered in accordance with section 10-04-10, or offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid.
18. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.
19. Any offer or sale of an agricultural-related cooperative security by or on behalf of an agricultural producer, as defined by section 32-44-01, to a person for the purpose of producing and selling agricultural products, as defined by section 32-44-01, to the cooperative. Commissions or other remuneration may not be paid or given directly or indirectly for soliciting any prospective buyer in this state, except to a broker-dealer or agent registered in this state, to an agent of a bank or a commercial trust department, to a licensed real estate agent, or to a licensed auctioneer if the sale is made at a bona fide public auction.
20. A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
- a. The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
 - b. A general solicitation or general advertisement of the transaction is not made; and
 - c. A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent.
21. A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars acting in the exercise of discretionary authority in a signed record for the account of others.

SECTION 4. 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 broker-dealer registered with the department as provided for in section 10-04-10 by filing with the department a written announcement of intention to trade in the securities 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 balance sheet not more than twelve months old.
 - 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 with the department constitutes the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such broker-dealer shall pay to the commissioner a filing fee of twenty-five dollars. Upon registration, such securities may be sold in this state for a period of one year from date of registration by registered broker-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 by the commissioner by description, coordination 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. Securities registered pursuant to section ~~10-04-07~~10-04-07.2 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 5. 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.

1. The right to sell securities in this state shall not be granted in any case when 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, when 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.
2. Upon compliance with all the provisions of this chapter relating to applications for approval or registration by announcement, coordination, or 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:
 4. a. 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. b. 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. c. 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. d. 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. e. 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. f. 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. g. 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. h. 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, order, or directive.
 9. i. 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. j. 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.
3. The provisions of this section do not apply to a federal covered security.

SECTION 6. 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 section 10-04-05 or 10-04-06 or registration under section 10-04-07.1, 10-04-07.2, 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 7. AMENDMENT. Section 10-04-08.4 of the North Dakota Century Code is amended and reenacted 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 electronic 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.
 - b. A unit investment trust may file an initial notice filing for a definite dollar amount or an indefinite dollar amount. At the time of the initial notice filing for a definite dollar amount, the issuer shall pay a 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 twenty-five dollars for each security or class of security.
 - c. An investment company or unit investment trust may file an initial notice filing for an indefinite dollar amount and pay a filing fee of four hundred dollars for each security or class of security.
 - d. A notice filing for a definite dollar amount may be increased before the expiration date on 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 hundred twenty-five 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 eighteen months from the date of effectiveness.

- i. A copy of any document filed with the securities and exchange commission as the commissioner may require.
2. a. Any federal covered security that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended, may be offered and sold under the following conditions:
 - a- (1) A notice of intent is filed ~~in writing or~~ electronically on SEC form D ~~or other prescribed form~~ with a consent to service of process and a nonrefundable filing fee of one hundred dollars within fifteen calendar days after the first sale in this state.
 - b- (2) A copy of any document filed with the securities and exchange commission is provided, as the commissioner may require.
 - e- (3) The notice filing is effective for a period of one year from the date the filing is received by the commissioner.
 - d- (4) The filing fee shall be two hundred fifty dollars in the event the filing is not made within the time period specified in subdivision a.
 - (5) An issuer conducting an offering under this subsection may renew the offering for an additional period of twelve months by electronically filing SEC form D marked "renewal" and payment of the renewal filing fee of one hundred dollars. The renewal filing fee is two hundred fifty dollars if the filing is made after the expiration date of the current notice filing.
 - b. No security may be offered or sold under this subsection, except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.
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. a. The following provisions apply to offerings made under tier 2 of federal Regulation A and section 18(b)(3) of the Securities Act of 1933 [15 U.S.C. 77r(b)(3)]:
 - (1) (a) An issuer planning to offer and sell securities in this state in an offering exempt under tier 2 of federal Regulation A shall submit electronically the following at least twenty-one calendar days before the initial sale in this state:
 - [1] A completed uniform notice filing of regulation A - tier 2 offering form;
 - [2] A copy of any document filed with the securities and exchange commission, as the commissioner may require; and
 - [3] A filing fee of five hundred dollars.
 - (b) The initial notice filing is effective for twelve months from the date of the filing with this state.
 - (2) An issuer may increase the amount of securities offered in this state by submitting electronically a uniform notice filing of regulation A - tier 2 offering form marked "amendment".

- (3) An issuer conducting an offering under this subsection may renew the offering for an additional period of twelve months by electronically filing a uniform notice filing of regulation A - tier 2 offering form marked "renewal" and payment of the renewal filing fee of one hundred dollars.
- b. A security may not be offered or sold under this subsection, except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless the security is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.
5. a. The following provisions apply to offerings made under federal Regulation Crowdfunding [17 CFR 227] and sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933: [15 U.S.C. 77d(a)(b) and 15 U.S.C. 77r(b)(4)(C)]
- (1) (a) An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding [17 CFR 227], and that either has the issuer's principal place of business in this state or sells fifty percent or greater of the aggregate amount of the offering to residents of this state, shall file electronically the following with the commissioner:
- [1] A completed uniform notice of federal crowdfunding offering form;
- [2] A copy of any document filed with the securities and exchange commission, as the commissioner may require; and
- [3] A filing fee of one hundred fifty dollars.
- (b) If the issuer has the issuer's principal place of business in this state, the filing required under this subsection must be filed with the commissioner when the issuer makes its initial form C filing concerning the offering with the securities and exchange commission. If the issuer does not have the issuer's principal place of business in this state but residents of this state have purchased fifty percent or greater of the aggregate amount of the offering, the filing required under this subsection must be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than thirty days from the date of completion of the offering. The initial notice filing is effective for twelve months from the date of the filing with this state.
- (2) An issuer conducting an offering under this subsection may renew the offering for an additional period of twelve months by electronically filing the uniform notice of federal crowdfunding offering form marked "renewal" and payment of the renewal filing fee of one hundred dollars.
- b. A security may not be offered or sold under this subsection, except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless the security is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.
6. 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 8. AMENDMENT. Subsection 2 of section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

2.
 - a. Agent. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration. The following individuals are exempt from the registration requirements:
 - a- (1) An individual who represents a broker-dealer in effecting transactions in this state limited to those in section 15(h)(2) of the Securities Exchange Act of 1934;
 - b- (2) An individual who represents a broker-dealer that is exempt under subsection 1;
 - e- (3) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; or
 - d- (4) An individual who represents a broker-dealer registered in this state or exempt from registration in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.
 - b. Application for registration as an agent must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered broker-dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.
 - c. The commissioner shall require as a condition of registration that the applicant 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 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 three years as such agent for this or any other issuer without passing the written examination.~~
 - d. 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 an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05 or 10-04-06, or have been registered by announcement under section 10-04-07.1, or have been registered by coordination under section 10-04-07.2, or have been registered by qualification under section 10-04-08, then the commissioner may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed 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.
 - e. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the broker-dealer named on the application is not a registered broker-dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the broker-dealer of such registration.

- f. Every registered broker-dealer or issuer ~~shall~~ promptly shall notify the department of the termination of the employment by the broker-dealer or issuer of a registered agent.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1085.

House Vote: Yeas 89 Nays 0 Absent 5

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State