

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 8 of section 10-04-06, subsection 1 of
2 section 10-04-08.4, and subsection 8 of section 10-04-10 of the North Dakota Century Code,
3 relating to the manual exemption from registration of securities, and refund of filing and
4 registration fees.

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

6 **SECTION 1. AMENDMENT.** Subsection 8 of section 10-04-06 of the North Dakota Century
7 Code is amended and reenacted as follows:

- 8 8. A nonissuer transaction by or through a broker-dealer and agent, both of which are
9 registered or exempt from registration under this chapter, or a resale transaction by a
10 sponsor of a unit investment trust registered under the Investment Company Act of
11 1940, in a security of a class that has been outstanding in the hands of the public for
12 at least ninety days, if, at the date of the transaction:
- 13 a. The issuer of the security is engaged in business, the issuer is not in the
14 organizational stage or in bankruptcy or receivership, and the issuer is not a
15 blank check, blind pool, or shell company that has no specific business plan or
16 purpose or has indicated that its primary business plan is to engage in a merger
17 or combination of the business with, or an acquisition of, an unidentified person;
 - 18 b. Such securities are sold at prices reasonably related to the current market price;
 - 19 c. Such securities do not constitute the whole or part of an unsold allotment to, or
20 subscription or participation by, the broker-dealer as an underwriter of the
21 security or a redistribution;
 - 22 d. Such securities are listed in ~~Standard and Poor's~~, Mergent's Industrial Manual,
23 Mergent's Bank and Finance Manual, Mergent's Transportation Manual,
24 Mergent's Public Utility Manual, or Fitch investor service, incorporated, are on the

1 OTCQX or OTCQB markets operated by OTC Markets Group Incorporated, or
2 are filed under section 13 or 15(d) of the Securities Exchange Act of 1934
3 [ch. 404, title I, sec. 1; 48 Stat. 881; 15 U.S.C. 78 et seq.]; and

4 e. ~~Such securities are limited to issuers organized under the laws of any state,~~
5 ~~territory, or insular possession of the United States; and~~

6 f. Any one of the following requirements is met:

7 (1) The issuer of the security has a class of equity securities listed on a national
8 securities exchange registered under section 6 of the Securities Exchange
9 Act of 1934 or designated for trading on the national association of
10 securities dealers automated quotation system;

11 (2) The issuer of the security is a unit investment trust registered under the
12 Investment Company Act of 1940;

13 (3) The issuer of the security, including its predecessors, has been engaged in
14 continuous business for at least three years; or

15 (4) The issuer of the security has total assets of at least two million dollars
16 based on an audited balance sheet as of a date within eighteen months
17 before the date of the transaction or, in the case of a reorganization or
18 merger when the parties to the reorganization or merger each had the
19 audited balance sheet, a pro forma balance sheet for the combined
20 organization.

21 **SECTION 2. AMENDMENT.** Subsection 1 of section 10-04-08.4 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act of
24 1933, as amended, may be offered and sold upon the filing of:

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

28 b. A unit investment trust may file an initial notice filing for a definite dollar amount
29 or an indefinite dollar amount. At the time of the initial notice filing for a definite
30 dollar amount, the issuer shall pay a ~~nonrefundable~~ filing fee of one-tenth of one
31 percent of the first seven hundred fifty thousand dollars and one-twentieth of one

- 1 percent of any amount in excess of seven hundred fifty thousand dollars of the
2 aggregate offering price of each security or class of security. In no event,
3 however, may such filing fee be less than one hundred twenty-five dollars for
4 each security or class of security.
- 5 c. An investment company or unit investment trust may file an initial notice filing for
6 an indefinite dollar amount and pay a ~~nonrefundable~~ filing fee of four hundred
7 dollars for each security or class of security.
- 8 d. A notice filing for a definite dollar amount may be increased before the expiration
9 date on the certificate of effectiveness at the same reduced fee, which must be
10 calculated as provided in subdivision b as a separate fee for each additional
11 amount.
- 12 e. A notice filing for a definite dollar amount may be renewed for additional periods
13 of one year by filing, at least fifteen days prior to its expiration, a renewal and
14 sales report notice with a fee of one hundred dollars to renew the unsold balance.
- 15 f. A notice filing for an indefinite dollar amount may be renewed by filing, within
16 sixty days following the issuer's fiscal year, a renewal and sales report notice with
17 a fee of one hundred twenty-five dollars.
- 18 g. A notice filing may be terminated by the issuer upon providing the commissioner
19 a notice of such termination.
- 20 h. The provision for each security or class of security in this subsection is effective
21 when the federal registration statement becomes effective with the securities and
22 exchange commission or the date the notice of intent is received by the
23 commissioner, whichever is later. A filing notice for a definite dollar amount is
24 effective for a period of eighteen months from the date of effectiveness.
- 25 i. A copy of any document filed with the securities and exchange commission as
26 the commissioner may require.

27 **SECTION 3. AMENDMENT.** Subsection 8 of section 10-04-10 of the North Dakota Century
28 Code is amended and reenacted as follows:

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

- 31 a. For each broker-dealer \$200.00

Sixty-sixth
Legislative Assembly

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| 1 | b. | For each agent | \$60.00 |
| 2 | c. | For each investment adviser or federal covered adviser | \$100.00 |
| 3 | d. | For each investment adviser representative | \$50.00 |
- 4 An application to register as a broker-dealer, agent, investment adviser, or investment adviser
5 representative may, with the consent of the commissioner, be withdrawn upon written
6 application, ~~but in no event may any registration fees be returned.~~