

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH10103-LGz-48 (02/25)

Short Title: Technical Corrections Act.

(Public)

Sponsors: Representative Culpepper.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING
CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE
GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-17 reads as rewritten:

"§ 78A-17. Exempt transactions.

Except as otherwise provided in this Chapter, the following transactions are
exempted from G.S. 78A-24 and G.S. 78A-49(d):

- (1) Any isolated nonissuer transaction, whether effected through a dealer
or ~~not~~not.
- (2) Any nonissuer distribution other than by a controlling person of an
outstanding security if
 - a. A recognized securities manual contains the names of the
issuer's officers and directors, a balance sheet of the issuer as of
a date within 18 months, and a profit and loss statement for
either the fiscal year preceding that date or the most recent year
of operations, or
 - b. A registered dealer files with the Administrator such
information relating to the issuer as the Administrator may by
rule or order require, or
 - c. The security has a fixed maturity or a fixed interest or dividend
provision and there has been no default during the current fiscal
year or within the three preceding fiscal years, or during the
existence of the issuer and any predecessors if less than three
years, in the payment of principal, interest, or dividends on the
~~security~~security.

- 1 (3) Any nonissuer transaction effected by or through a registered dealer
2 pursuant to an unsolicited order or offer to buy; but the Administrator
3 may by rule require that the customer acknowledge upon a specified
4 form that the sale was unsolicited, and that a signed copy of each such
5 form be preserved by the dealer for a specified ~~period~~period.
- 6 (4) Any transaction between the issuer or other person on whose behalf
7 the offering is made and an underwriter, or among
8 ~~underwriters~~underwriters.
- 9 (5) Any transaction in a bond or other evidence of indebtedness secured
10 by a lien or security interest in real or personal property, or by an
11 agreement for the sale of real estate or chattels, if the entire security
12 interest or agreement, together with all the bonds or other evidences of
13 indebtedness secured thereby, is offered and sold as a ~~unit~~unit.
- 14 (6) Any transaction by an executor, administrator, sheriff, marshal,
15 receiver, trustee in bankruptcy, guardian, or ~~conservator~~conservator.
- 16 (7) Any transaction executed by a person holding a bona fide security
17 interest without any purpose of evading this ~~Chapter~~Chapter.
- 18 (8) Any offer or sale to an entity which has a net worth in excess of one
19 million dollars (\$1,000,000) as determined by generally accepted
20 accounting principles, bank, savings institution, trust company,
21 insurance company, investment company as defined in the Investment
22 Company Act of 1940, pension or profit-sharing trust, or other
23 financial institution or institutional buyer, or to a dealer, whether the
24 purchaser is acting for itself or in some fiduciary ~~capacity~~capacity.
- 25 (9) Any transaction pursuant to an offer directed by the offeror to not
26 more than 25 persons, other than those persons designated in
27 subdivision (8), in this State during any period of 12 consecutive
28 months, whether or not the offeror or any of the offerees is then
29 present in this State, if the seller reasonably believes that all the buyers
30 in this State are purchasing for investment. The Administrator may by
31 rule or order withdraw, amend, or further condition this exemption for
32 any security or security transaction. There is established a fee of one
33 hundred fifty dollars (\$150.00) to recover costs for any filing required.
- 34 (10) Any offer or sale of a preorganizational certificate or subscription if:
35 (i) no commission or other remuneration is paid or given directly or
36 indirectly for soliciting any prospective subscriber; (ii) no public
37 advertising or solicitation is used in connection with the offer or sale;
38 (iii) the number of subscribers does not exceed 10 and the number of
39 offerees does not exceed 25; and (iv) no payment is made by any
40 subscriber.
- 41 (11) Any transaction pursuant to an offer to existing security holders of the
42 issuer, including persons who at the time of the transaction are holders
43 of convertible securities, nontransferable warrants, or transferable
44 warrants exercisable within not more than 90 days of their issuance, if

1 (i) no commission or other remuneration (other than a standby
2 commission) is paid or given directly or indirectly for soliciting any
3 security holder in this State, or (ii) the issuer first files a notice
4 specifying the terms of the offer and the Administrator does not by
5 order disallow the exemption within the next 10 full business
6 ~~days;~~days.

7 (12) Any offer (but not a sale) of a security for which registration
8 statements have been filed under both this Chapter and the Securities
9 Act of 1933 if no stop order or refusal order is in effect and no public
10 proceeding or examination looking toward such an order is pending
11 under either ~~act;~~act.

12 (13) Any offer or sale by a domestic entity of its own securities if (i) the
13 entity was organized for the purpose of promoting community,
14 agricultural or industrial development of the area in which the
15 principal office is located, (ii) the offer or sale has been approved by
16 resolution of the county commissioners of the county in which its
17 principal office is located, and, if located in a municipality or within
18 two miles of the boundaries thereof, by resolution of the governing
19 body of such municipality, (iii) no commission or other remuneration
20 is paid or given directly or indirectly for soliciting any prospective
21 buyer in this State, and (iv) the ~~corporation~~entity is both organized
22 and operated principally to promote some community, industrial, or
23 agricultural development that confers a public benefit rather than
24 organized and operated principally to generate a pecuniary
25 ~~profit;~~profit.

26 (14) Any offer, sale or issuance of securities pursuant to an employees'
27 stock or equity purchase, option, savings, pension, profit-sharing, or
28 other similar benefit plan that is exempt under the provisions of G.S.
29 ~~78A-16(11);~~78A-16(11).

30 (15) Any offer or sale of limited partnership interests in a partnership
31 organized under the North Carolina Uniform Limited Partnership Act
32 for the sole purpose of constructing, owning and operating a low and
33 moderate income rental housing project located in North Carolina if
34 the total amount of the offering and the total number of limited
35 partners, both within and without this State for each such partnership,
36 does not exceed five hundred thousand dollars (\$500,000) and 100
37 respectively. This exemption shall be allowed without limitation as to
38 (i) the number, either in total or within any time period, of separate
39 partnerships which may be formed by the same general partner or
40 partners, sponsors or individuals in which partnership interests are
41 offered; (ii) the period over which such offerings can be made; (iii) the
42 amount of each limited partner's investment; or (iv) the period over
43 which such investment is payable to the partnership. For purposes of

1 this subdivision (15), the term "low and moderate rental housing
2 project" means:

3 a. Any housing project with respect to which a mortgage is
4 insured or guaranteed under section 221(d)(3) or 221(d)(4) or
5 236 of the National Housing Act, or any housing project
6 financed or assisted by direct loan, mortgage insurance or
7 guaranty, or tax abatement under similar provisions of federal,
8 State or local laws, whether now existing or hereafter enacted;
9 or

10 b. Any housing project, some or all of the units of which are
11 available for occupancy by families or individuals eligible to
12 receive subsidies under section 8 of the United States Housing
13 Act of 1937, as amended, or under the provisions of other
14 federal, State or local law authorizing similar levels of subsidy
15 for lower income families, whether now existing or hereafter
16 enacted; or

17 c. Any housing project with respect to which a loan is made,
18 insured or guaranteed under Title V, section 515, of the
19 Housing Act of 1949, or under similar provisions of other
20 federal, State or local laws, whether now existing or hereafter
21 enacted.

22 (16) Any offer to purchase or to sell or any sale or issuance of a security,
23 other than a security covered under federal law, pursuant to a plan
24 approved by the Administrator after a hearing conducted pursuant to
25 the provisions of G.S. 78A-30 or any transaction incident to any other
26 judicially or governmentally approved reorganization in which a
27 security is issued in exchange for one or more outstanding securities,
28 claims or property interests, or partly in such exchange and partly cash.

29 (17) Any transaction that is exempt pursuant to rules established by the
30 Administrator creating limited offering transactional exemptions that
31 are consistent with the objectives of compatibility with federal limited
32 offering exemptions and uniformity among the states. There is
33 established a fee of one hundred fifty dollars (\$150.00) to recover
34 costs for any filing required by such rules.

35 (18) Any transaction incident to a class vote by security holders, pursuant
36 to the articles of incorporation or similar organizational document or
37 the applicable statute governing the internal affairs of the entity, on a
38 merger, conversion, consolidation, share exchange, reclassification of
39 securities, or sale of an entity's assets in consideration of the issuance
40 of securities of entity.

41 (19) Any offer or sale of any viatical settlement contract or any
42 fractionalized or pooled interest therein by the issuer in a transaction
43 that meets all of the following criteria:

- 1 a. The underlying viatical settlement transaction with the viator
2 was not in violation of any applicable state or federal law; and
3 b. The offer and sale of such contract or interest therein is
4 conducted in accordance with such conditions as the
5 Administrator requires by rule or order, including conditions
6 governing advertising, suitability standards, financial
7 statements, the investor's right of rescission, and the disclosure
8 of information to offerees and purchasers.

9 The Administrator may establish a fee to recover costs for any filing
10 required by such rules, not to exceed five hundred dollars (\$500.00)."

11 **SECTION 2.** This act is effective when it becomes law.