

under a surety bond as required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02, in the amount of \$380,000. The bond is identified as number 141552626 with Western Surety Company, PO Box 5077, Sioux Falls, South Dakota, 57117-5077, as surety.

On October 10, 2012, the commission received a letter with attachments from Monty Fast, Turtle Lake, North Dakota, alleging that he has not been fully paid for grain he sold to Falkirk Farmers Elevator Co.

On November 9, 2012, Falkirk Farmers Elevator Co. filed an electronic copy of a letter requesting that the commission apply to district court to take action necessary to secure and act as trustee for the benefit of receipt holders. By the same letter, Falkirk Farmers Elevator Co. waives the right to notice of hearing on the Commission's application to the McLean County District Court, and consents to summary action by the court to appoint the commission as trustee.

The commission was informed and has reason to believe that there are outstanding obligations for grain sold to Falkirk Farmers Elevator Co. as a public warehouseman under North Dakota Century Code chapter 60-02. Under the provisions of North Dakota Century Code section 60-02-09, bond protection is available for the benefit of all persons storing or selling grain by such warehouseman. Under the provisions of North Dakota Century Code section 60-10-04 a person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if the licensed public warehouse to which the person sold grain to becomes insolvent.

On October 15, 2012, the commission sent Grain Warehouse Inspector Timothy Erdmann to Falkirk. The grain warehouse inspector confirmed that there were

approximately 8,000 gross hundredweight of pinto beans in the Falkirk warehouse. On October 18, 2012, the commission sent Grain Warehouse Inspector Michael McNamee to an unlicensed facility in Cummings, North Dakota, owned by Cummings Ag of Buxton, North Dakota. The grain warehouse inspector confirmed that there were approximately 1,700 gross hundredweight of sample grade pinto beans stored in the Cummings facility on behalf of Falkirk Farmers Elevator Co. The Commission is concerned that if the beans are not sold or redelivered as quickly as possible the value of the beans could deteriorate which could compromise the trust fund that is established under North Dakota Century Code section 60-04-03.1.

North Dakota Century Code section 60-04-03 provides that the court may issue *ex parte* a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application. The commission requests that Falkirk Farmers Elevator Co. be required to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1 and that the commission be authorized to immediately take any action deemed necessary to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1.

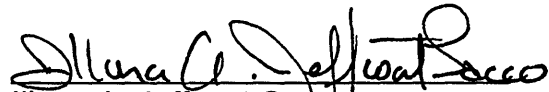
It is in the best interest of all claimants that the court declare Falkirk Farmers Elevator Co. insolvent and establish the date of insolvency as October 10, 2012, the date the first claim for collection of outstanding funds owed was filed with commission, and that the court appoint the commission trustee with all powers available to the trustee under North Dakota Century Code chapters 60-04 and 60-10, so that all claimants will be treated fairly.

Further, it is in the best interest of the potential claimants that the court issue *ex parte* a temporary order to preserve and protect the trust assets. The commission requests that Falkirk Farmers Elevator Co. be required to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1 and that the commission be authorized to immediately take any action deemed necessary to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1.

The Court has jurisdiction under North Dakota Century Code section 60-04-03, which provides for the filing of this action in the District Court, South Central Judicial District.

Bismarck, North Dakota, this th 30 day of November, 2012.

Respectfully submitted,



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