HOUSE BILL NO. 14

INTRODUCED BY PECK BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

	IN THE HOUSE
DECEMBER 27, 1990	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
JANUARY 7, 1991	FIRST READING.
JANUARY 11, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 14, 1991	PRINTING REPORT.
JANUARY 15, 1991	SECOND READING, DO PASS.
JANUARY 16, 1991	ENGROSSING REPORT.
JANUARY 17, 1991	THIRD READING, PASSED. AYES, 100; NOES, 0.
	TRANSMITTED TO SENATE.
	IN THE SENATE
JANUARY 18, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 12, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 14, 1991	SECOND READING, CONCURRED IN.
FEBRUARY 15, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.
	IN THE HOUSE
FEBRUARY 16, 1991	RECEIVED FROM SENATE.

REPORTED CORRECTLY ENROLLED.

INTRODUCED BILL HB 14

2	INTRODUCED BY PECK
3	BY REQUEST OF THE STATE AUDITOR
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SECURITIES
6	REGULATION LAWS TO REQUIRE THAT QUANTITIES OF PRECIOUS
7	METALS PURCHASED AND DELIVERED TO A DEPOSITORY INSTITUTION
8	BE PHYSICALLY LOCATED WITHIN THE STATE AT ALL TIMES AFTER
9	DELIVERY; AND AMENDING SECTION 30-10-105, MCA."
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11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12	Section 1. Section 30-10-105, MCA, is amended to read:
13	"30-10-105. Exempt transactions. Except as inthis
14	section expressly provided in this section, 30-10-201
15	through 30-10-207 shall do not apply to any of the following
16	transactions:
17	(1) any \underline{a} nonissuer isolated transaction, whether
18	effected through a broker-dealer or not. A transaction is
19	presumed to be isolated if it is one of not more than three
20	transactions during the prior 12-month period.
21	(2) (a) any a nonissuer distribution of an outstanding
22	security by a broker-dealer registered pursuant to 30-10-201
23	if:
24	(i) quotations for the securities to be offered or sold
25	(or the securities issuable upon exercise of any warrant or

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1	right to purchase or subscribe to such $\underline{\text{the}}$ securities) are
2	reported by the automated quotations system operated by the
3	national association of securities dealers, inc., (NASDAQ)
4	or by any other quotation system approved by the
5	commissioner by rule; or
6	(ii) the security has a fixed maturity or a fixed
7	interest or dividend provision and there has been no default
8	during the current fiscal year or within the 3 preceding
9	fiscal years, or during-the-existence-of $\underline{i}\underline{f}$ the issuer and
10	any predecessors if have been in existence for less than 3
11	years, and there has been no default in the payment of
12	principal, interest, or dividends on the security.
13	(b) The commissioner may by order deny or revoke the
14	exemption specified in subsection (2)(a) with respect to a
15	specific security. Upon the entry of such an order, the
16	commissioner shall promptly notify all registered
17	broker-dealers that it has been entered and of give the
18	reasons therefor and shall notify them that within 15 days
19	of the receipt of a written request the matter will be set
20	down for hearing. If no hearing is requested and none is
21	ordered by the commissioner, the order willremain remains
22	in effect until it is modified or vacated by the
23	commissioner. If a hearing is requested or ordered, the
24	commissioner, after notice of and opportunity for hearing to
25	all interested persons, may modify or vacate the order or

extend it until fimal determination. No An order under this subsection may not operate retroactively. No A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

- (3) any <u>a</u> nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;
- (4) any <u>a</u> transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among between underwriters;
- (5) any <u>a</u> transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;
- (6) any <u>a</u> transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;
- 24 (7) any an offer or sale to a bank, savings 25 institution, trust company, insurance company, investment

- company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial
- 3 institution or institutional buyer, or to a broker-dealer,
- 4 whether the purchaser is acting for itself or in some
- fiduciary capacity;

- (8) (a) any a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:
- (i) the seller reasonably believes that all the buyers are purchasing for investment; and
- (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any a prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) For the purpose of the exemption provided for in

subsection (B)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

- (9) any an offer or sale of a preorganization certificate or subscription if:
- (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
 - (b) the number of subscribers does not exceed 10; and
- (c) no payment is made by any subscriber;

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- (10) any a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:
- (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
- (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or (b)-of-this-subsection the notice specifying the terms of the offer;
- (11) any an offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and no public proceeding or examination

- looking toward such an order is pending under either law;
- 2 (12) any an offer (but not a sale) of a security for 3 which a registration statement has been filed under parts 1 4 through 3 of this chapter and the commissioner in his
- 5 discretion does not disallow the offer in writing within 10
- 6 days of such the filing;
- 7 (13) the issuance of any \underline{a} stock dividend, whether the corporation distributing the dividend is the issuer of the
 - stock or not, if nothing of value is given by stockholders
- 10 for the distribution other than the surrender of a right to
- 11 a cash dividend where the stockholder can elect to take a
- 12 dividend in cash or stock;
- 13 (14) any a transaction incident to a right of conversion
 - or a statutory or judicially approved reclassification,
- 15 recapitalization, reorganization, quasi-reorganization,
- 16 stock split, reverse stock split, merger, consolidation, or
- 17 sale of assets:

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- 18 (15) any \underline{a} transaction in compliance with such rules as
- 19 that the commissioner in his discretion may adopt to serve
- 20 the purposes of 30-10-102. The commissioner may in his
- 21 discretion require that 30-10-201 through 30-10-207 apply to
- 22 any or all transactional exemptions adopted by rule.
- 23 (16) any a transaction by a certified Montana capital
- 24 company as defined in 90-8-104, provided that such the
- 25 company first files all disclosure documents, along with a

- consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing. 2
- (17) the sale of a commodity investment contract traded 3 on a commodities exchange recognized by the commissioner at the time of sale:
- (18) a transaction within the exclusive jurisdiction of 6 7 the commodity futures trading commission as granted under 8 the Commodity Exchange Act;
- (19) a transaction that: 9

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- (a) involves the purchase of one or more precious 10 metals; and 11
 - (b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:
 - (i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);
- (B) is a depository the warehouse receipts of which are 25

- recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission: or
- (C) is a storage facility licensed by the United States or any agency of the United States; and
- (ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been
- delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all 10
- 11 liens and encumbrances other than:
- 12 (A) liens of the purchaser;
- 13 (B) tax liens:

- 14 (C) liens agreed to by the purchaser; or
- 15 (D) liens of the depository for fees and expenses that 16 previously have been disclosed to the purchaser.
- 17 (c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as 18
- 19 provided in subsections (19)(b)(i) and (19)(b)(ii), to be
- 20 physically located within Montana at all times after the
- 21 7-day delivery period provided in subsection (19)(b), and
- 22 the precious metals are in fact physically located within
- 23 Montana at all times after that delivery period.
- 24 (20) a transaction involving a commodity investment
- 25 contract solely between persons engaged in producing,

processing, using commercially, or handling as merchants
each commodity subject to the contract or any byproduct of
the commodity; or

(21) any an offer or sale of a security to an employee
of the issuer, pursuant to an employee stock ownership plan
qualified under section 401 of the Internal Revenue Code of
1986."

-End-

APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

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SECOND READING

extend it until final determination. No An order under this subsection may not operate retroactively. No A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

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- (4) any a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among between underwriters;
- (5) any <u>a</u> transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;
- (6) any a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;
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 - (b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from
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- (11) any <u>an</u> offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and no public proceeding or examination

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 - (13) the issuance of any a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;
- (14) any <u>a</u> transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
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 commission; or
 - (C) is a storage facility licensed by the United States or any agency of the United States; and
- 6 (ii) issues, and the purchaser receives, a certificate,
 7 document of title, confirmation, or other instrument
 8 evidencing that such quantity of precious metals has been
 9 delivered to the depository and is being and will continue
 10 to be held on the purchaser's behalf, free and clear of all
 11 liens and encumbrances other than:
- 12 (A) liens of the purchaser;
- 13 (B) tax liens;

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- (C) liens agreed to by the purchaser; or
- 15 (D) liens of the depository for fees and expenses that
 16 previously have been disclosed to the purchaser: AND

(c) requires the quantity of precious metals purchased

- and delivered into the possession of a depository, as provided in subsections SUBSECTION (19)(b)(t)---and (19)(b)(t), to be physically located within Montana at all
- 21 times after the 7-day delivery period provided in subsection
- (19)(b), and the precious metals are in fact physically
 located within Montana at all times after that delivery
- 24 period.
- 25 (20) a transaction involving a commodity investment

1 contract solely between persons engaged in producing, 2

processing, using commercially, or handling as merchants

each commodity subject to the contract or any byproduct of

the commodity; or

5 (21) any an offer or sale of a security to an employee 6 of the issuer, pursuant to an employee stock ownership plan

qualified under section 401 of the Internal Revenue Code of 7

8 1986."

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-End-

1	HOUSE BILL	NO. 14
2	INTRODUCED	BY PECK
3	BY REQUEST OF THE	STATE AUDITOR
4:		

6 REGULATION LAWS TO REQUIRE THAT QUANTITIES OF PRECIOUS
7 METALS PURCHASED AND DELIVERED TO A DEPOSITORY INSTITUTION
8 BE PHYSICALLY LOCATED WITHIN THE STATE AT ALL TIMES AFTER

DELIVERY: AND AMENDING SECTION 30-10-105, MCA."

DELIVERY; AND AMENDING SECTION 30-10-105, MCA."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SECURITIES

12 Section 1. Section 30-10-105, MCA, is amended to read:

*30-10-105. Exempt transactions. Except as in-this section expressly provided in this section, 30-10-201 through 30-10-207 shall do not apply to any of the following transactions:

- (1) any <u>a</u> nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.
- (2) (a) eny <u>a</u> πonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:
- (i) quotations for the securities to be offered or sold(or the securities issuable upon exercise of any warrant or

during the current fiscal years fiscal years or during the loany predecessors if have been any predecessors if have been principal, interest, or divide the loans of the commissioner may exemption specified in substitute to the loans of the

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right to purchase or subscribe to such the securities) are
reported by the automated quotations system operated by the
national association of securities dealers, inc., (NASDAQ)
or by any other quotation system approved by the
commissioner by rule; or

(ii) 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 3 preceding fiscal years; or during-the-existence-of if the issuer and any predecessors if have been in existence for less than 3 years; and there has been no default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of give the reasons therefor and shall notify them that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will-remain remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or THIRD READING

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- extend it until final determination. No An order under this subsection may not operate retroactively. No A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order. 7
 - (3) any a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;
 - (4) any a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among between underwriters;
- 17 (5) any a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, quardian, 18 19 or conservator in the performance of his official duties as 20 such;
- 21 (6) any a transaction executed by a bona fide pledgee 22 without any purpose of evading parts 1 through 3 of this 23 chapter;
- 24 (7) any an offer or sale to a bank, savings 25 institution, trust company, insurance company, investment

- company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
 - (8) (a) any a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:
 - (i) the seller reasonably believes that all the buyers are purchasing for investment; and
 - (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any a prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.
 - (b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

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- (9) any an offer or sale of a preorganization 1 2 certificate or subscription if:
- (a) no commission or other remuneration is paid or 3 given directly or indirectly for soliciting any prospective 5 subscriber:
 - (b) the number of subscribers does not exceed 10; and
- (c) no payment is made by any subscriber; 7

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- (10) any a transaction pursuant to an offer to existing 8 security holders of the issuer, including persons who at the 9 10 time of the transaction are holders of convertible securities, nontransferable warrants, or transferable 11 warrants exercisable within not more than 90 days of their 12 13 issuance, if:
 - (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
 - (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or tby-of-this-subsection the notice specifying the terms of the offer;
- 21 (11) any an offer (but not a sale) of a security for 22 which registration statements have been filed under both 23 parts 1 through 3 of this chapter and the Securities Act of 24 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and no public proceeding or examination

- looking toward such an order is pending under either law;
- 2 (12) any an offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such the filing;
- (13) the issuance of any a stock dividend, whether the corporation distributing the dividend is the issuer of the 9 stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to 10 a cash dividend where the stockholder can elect to take a 11 12 dividend in cash or stock;
- 13 (14) any a transaction incident to a right of conversion or a statutory or judicially approved reclassification, 14 15 recapitalization, reorganization, quasi-reorganization, 16 stock split, reverse stock split, merger, consolidation, or 17 sale of assets:
- 18 (15) any a transaction in compliance with such rules as 19 that the commissioner in his discretion may adopt to serve the purposes of 30-10-102. The commissioner may in his 20 21 discretion require that 30-10-201 through 30-10-207 apply to any or all transactional exemptions adopted by rule. 22
- (16) any a transaction by a certified Montana capital 23 company as defined in 90-8-104, provided that such the 24 company first files all disclosure documents, along with a 25

- consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.
- 3 (17) the sale of a commodity investment contract traded
 4 on a commodities exchange recognized by the commissioner at
 5 the time of sale;
 - (18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;
 - (19) a transaction that:

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- 10 (a) involves the purchase of one or more precious
 11 metals; and
 - (b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:
 - (i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);
 - (B) is a depository the warehouse receipts of which are

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- recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or
- (C) is a storage facility licensed by the United States or any agency of the United States; and
- 6 (ii) issues, and the purchaser receives, a certificate,
 7 document of title, confirmation, or other instrument
 8 evidencing that such quantity of precious metals has been
 9 delivered to the depository and is being and will continue
 10 to be held on the purchaser's behalf, free and clear of all
 11 liens and encumbrances other than:
 - (A) liens of the purchaser;
 - (B) tax liens;
- 14 (C) liens agreed to by the purchaser; or
- 15 (D) liens of the depository for fees and expenses that
 16 previously have been disclosed to the purchaser; AND
- 17 (c) requires the quantity of precious metals purchased
 18 and delivered into the possession of a depository, as
 19 provided in subsections SUBSECTION (19)(b)fi?---and
 20 fi9)fb)fii, to be physically located within Montana at all
 21 times after the 7-day delivery period provided in subsection
 22 (19)(b), and the precious metals are in fact physically
- 22 (19)(b), and the precious metals are in fact physically
- 23 located within Montana at all times after that delivery
- 24 period.

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25 (20) a transaction involving a commodity investment

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contract solely between persons engaged in producing,
processing, using commercially, or handling as merchants
a each commodity subject to the contract or any byproduct of

4 the commodity; or

(21) any an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code of 1986."

-End-

1	HOUSE BILL NO. 14
2	INTRODUCED BY PECK
3	BY REQUEST OF THE STATE AUDITOR
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SECURITIES
6	REGULATION LAWS TO REQUIRE THAT QUANTITIES OF PRECIOUS
7	METALS PURCHASED AND DELIVERED TO A DEPOSITORY INSTITUTION
8	BE PHYSICALLY LOCATED WITHIN THE STATE AT ALL TIMES AFTER
9	DELIVERY; AND AMENDING SECTION 30-10-105, MCA."
.0	•
.1	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2	Section 1. Section 30-10-105, MCA, is amended to read:
.3	"30-10-105. Exempt transactions. Except as inthis
.3	*30-10-105. Exempt transactions. Except as inthis section expressly provided in this section, 30-10-201
_	section expressly provided in this section, 30-10-201
.4	-
.4	section expressly provided <u>in this section</u> , 30-10-201 through 30-10-207 shall <u>do</u> not apply to any of the following
14 15 16	section expressly provided in this section, 30-10-201 through 30-10-207 shall do not apply to any of the following transactions: (1) any a nonissuer isolated transaction, whether
.4 .5 .6	through 30-10-207 shall do not apply to any of the following transactions: (1) any a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is
.4 .5 .6 .7	through 30-10-207 shall do not apply to any of the following transactions: (1) any a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three
14 15 16 17 18	through 30-10-207 shall do not apply to any of the following transactions: (1) any a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.
14 15 16 17 18 19	through 30-10-207 shall do not apply to any of the following transactions: (1) any a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period. (2) (a) any a nonissuer distribution of an outstanding
14 15 16 17 18 19 20	through 30-10-207 shall do not apply to any of the following transactions: (1) any a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.
14 15 16 17 18 19 20 21	through 30-10-207 shall do not apply to any of the following transactions: (1) any a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period. (2) (a) any a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201

(or the securities issuable upon exercise of any warrant or

reported by the automated quotations system operated by the
national association of securities dealers, inc., (NASDAQ)
or by any other quotation system approved by the
commissioner by rule; or
(ii) 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 3 preceding
fiscal years; or during-the-existence-of if the issuer and
any predecessors if have been in existence for less than
years; and there has been no default in the payment of
principal, interest, or dividends on the security.
(b) The commissioner may by order deny or revoke the
exemption specified in subsection (2)(a) with respect to a
specific security. Upon the entry of such an order, the
commissioner shall promptly notify all registered
broker-dealers that it has been entered and of give the
reasons therefor and shall notify them that within 15 days
of the receipt of a written request the matter will be se
down for hearing. If no hearing is requested and none is
ordered by the commissioner, the order willremain remain:
in effect until it is modified or vacated by the
commissioner. If a hearing is requested or ordered, the
commissioner, after notice of and opportunity for hearing to
all interested persons, may modify or vacate the order of

right to purchase or subscribe to such the securities) are

REFERENCE BILL

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extend it until final determination. No An order under this subsection may not operate retroactively. No A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

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- (3) any <u>a</u> nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;
- (4) any <u>a</u> transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among between underwriters;
- (5) any a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;
- 21 (6) any <u>a</u> transaction executed by a bona fide pledgee 22 without any purpose of evading parts 1 through 3 of this 23 chapter;
- 24 (7) any an offer or sale to a bank, savings
 25 institution, trust company, insurance company, investment

- company as defined in the Investment Company Act of 1940,
 pension or profit-sharing trust, or other financial
 institution or institutional buyer, or to a broker-dealer,
 whether the purchaser is acting for itself or in some
 fiduciary capacity;
 - (8) (a) any <u>a</u> transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:
 - (i) the seller reasonably believes that all the buyers are purchasing for investment; and
 - (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any a prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.
 - (b) For the purpose of the exemption provided for in subsection (B)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

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- (9) any an offer or sale of a preorganization certificate or subscription if:
- (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
 - (b) the number of subscribers does not exceed 10; and
 - (c) no payment is made by any subscriber;

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- (10) any <u>a</u> transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:
- (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
- (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either <u>subsection (10)(a)</u> or (b)-of-this-subsection the notice specifying the terms of the offer;
- (11) any <u>an</u> offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and no public proceeding or examination

looking toward such an order is pending under either law;

2 (12) any an offer (but not a sale) of a security for
3 which a registration statement has been filed under parts 1
4 through 3 of this chapter and the commissioner in his
5 discretion does not disallow the offer in writing within 10
6 days of such the filing;

(13) the issuance of any a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) any a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

18 (15) any a transaction in compliance with such rules as

19 that the commissioner in his discretion may adopt to serve

20 the purposes of 30-10-102. The commissioner may in his

21 discretion require that 30-10-201 through 30-10-207 apply to

22 any or all transactional exemptions adopted by rule.

(16) any <u>a</u> transaction by a certified Montana capital company as defined in 90-8-104, provided that such <u>the</u> company first files all disclosure documents, along with a

- consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.
 - (17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;
 - (18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;
 - (19) a transaction that:

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- (a) involves the purchase of one or more precious
 metals; and
 - (b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:
 - (i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);
 - (B) is a depository the warehouse receipts of which are

- recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission: or
 - (C) is a storage facility licensed by the United States or any agency of the United States; and
 - (ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:
- 12 (A) liens of the purchaser;
- 13 (B) tax liens;

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- (C) liens agreed to by the purchaser; or
- 15 (D) liens of the depository for fees and expenses that
 16 previously have been disclosed to the purchaser; AND

(c) requires the quantity of precious metals purchased

- and delivered into the possession of a depository, as provided in subsections SUBSECTION (19)(b)(i)---and (19)(b)(ii), to be physically located with montana at all times after the 7-day delivery period provided in subsection
- 22 (19)(b), and the precious metals are in fact physically
- 23 located within Montana at all times after that delivery
- 24 period.
- 25 (20) a transaction involving a commodity investment

contract solely between persons engaged in producing, ì processing, using commercially, or handling as merchants 2 3 each commodity subject to the contract or any byproduct of the commodity; or (21) any an offer or sale of a security to an employee 5 6

of the issuer, pursuant to an employee stock ownership plan

7 qualified under section 401 of the Internal Revenue Code of

1986."

-End-