

HOUSE BILL NO. 14

INTRODUCED BY PECK
BY REQUEST OF THE STATE AUDITOR

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.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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."
 10

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 ~~in this~~
 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~~ 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

1 right to purchase or subscribe to ~~such 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~~ if 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 ~~will remain~~ 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

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

8 (3) any a nonissuer transaction effected by or through
 9 a registered broker-dealer pursuant to an unsolicited order
 10 or offer to buy, but the commissioner may require that the
 11 customer acknowledge upon a specified form that the sale was
 12 unsolicited and that a signed copy of each form be preserved
 13 by the broker-dealer for a specified period;

14 (4) any a transaction between the issuer or other
 15 person on whose behalf the offering is made and an
 16 underwriter or among between underwriters;

17 (5) any a transaction by an executor, administrator,
 18 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
 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

1 company as defined in the Investment Company Act of 1940,
 2 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
 5 fiduciary capacity;

6 (8) (a) any a transaction pursuant to an offer made in
 7 this state directed by the offeror to not more than 10
 8 persons (other than those designated in subsection (7))
 9 during any period of 12 consecutive months, if:

10 (i) the seller reasonably believes that all the buyers
 11 are purchasing for investment; and

12 (ii) no commission or other remuneration is paid or
 13 given directly or indirectly for soliciting any a
 14 prospective buyer; provided, however, that a commission may
 15 be paid to a registered broker-dealer if the securities
 16 involved are registered with the United States securities
 17 and exchange commission under the federal Securities Act of
 18 1933, as amended.

19 (b) For the purpose of the exemption provided for in
 20 subsection (8)(a), an offer to sell is made in this state,
 21 whether or not the offeror or any of the offerees is then
 22 present in this state, if the offer either originates from
 23 this state or is directed by the offeror to this state and
 24 received at the place to which it is directed (or at any
 25 post office in this state in the case of a mailed offer).

1 (9) any an offer or sale of a preorganization
2 certificate or subscription if:

3 (a) no commission or other remuneration is paid or
4 given directly or indirectly for soliciting any prospective
5 subscriber;

6 (b) the number of subscribers does not exceed 10; and

7 (c) no payment is made by any subscriber;

8 (10) any a transaction pursuant to an offer to existing
9 security holders of the issuer, including persons who at the
10 time of the transaction are holders of convertible
11 securities, nontransferable warrants, or transferable
12 warrants exercisable within not more than 90 days of their
13 issuance, if:

14 (a) no commission or other remuneration (other than a
15 standby commission) is paid or given directly or indirectly
16 for soliciting any security holder in this state; or

17 (b) the issuer first files a notice specifying the
18 terms of the offer and the commissioner does not by order
19 disallow either subsection (10)(a) or ~~(b)-of-this-subsection~~
20 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
25 order is in effect and no public proceeding or examination

1 locking 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 a stock dividend, whether the
8 corporation distributing the dividend is the issuer of the
9 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
14 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;

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.

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

1 consent to service of process, with the commissioner. The
2 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;

6 (18) a transaction within the exclusive jurisdiction of
7 the commodity futures trading commission as granted under
8 the Commodity Exchange Act;

9 (19) a transaction that:

10 (a) involves the purchase of one or more precious
11 metals; and

12 (b) requires, and under which the purchaser receives
13 within 7 calendar days after payment in good funds of any
14 portion of the purchase price, physical delivery of the
15 quantity of the precious metals purchased. For the purposes
16 of this subsection, physical delivery is considered to have
17 occurred if, within the 7-day period, the quantity of
18 precious metals, whether in specifically segregated or
19 fungible bulk, purchased by such payment is delivered into
20 the possession of a depository (other than the seller) that:

21 (i) (A) is a financial institution (meaning a bank,
22 savings institution, or trust company organized under or
23 supervised pursuant to the laws of the United States or of
24 this state);

25 (B) is a depository the warehouse receipts of which are

1 recognized for delivery purposes for any commodity on a
2 contract market designated by the commodity futures trading
3 commission; or

4 (C) is a storage facility licensed by the United States
5 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;

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
18 and delivered into the possession of a depository, as
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,

HB 0014/01

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

4 (21) ~~any~~ an offer or sale of a security to an employee
5 of the issuer, pursuant to an employee stock ownership plan
6 qualified under section 401 of the Internal Revenue Code of
7 1986."

-End-

APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 14

INTRODUCED BY PECK

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SECURITIES REGULATION LAWS TO REQUIRE THAT QUANTITIES OF PRECIOUS METALS PURCHASED AND DELIVERED TO A DEPOSITORY INSTITUTION BE PHYSICALLY LOCATED WITHIN THE STATE AT ALL TIMES AFTER DELIVERY; AND AMENDING SECTION 30-10-105, MCA."

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

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 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 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or

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

SECOND READING



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

8 (3) any a nonissuer transaction effected by or through
 9 a registered broker-dealer pursuant to an unsolicited order
 10 or offer to buy, but the commissioner may require that the
 11 customer acknowledge upon a specified form that the sale was
 12 unsolicited and that a signed copy of each form be preserved
 13 by the broker-dealer for a specified period;

14 (4) any a transaction between the issuer or other
 15 person on whose behalf the offering is made and an
 16 underwriter or among between underwriters;

17 (5) any a transaction by an executor, administrator,
 18 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
 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

1 company as defined in the Investment Company Act of 1940,
 2 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
 5 fiduciary capacity;

6 (8) (a) any a transaction pursuant to an offer made in
 7 this state directed by the offeror to not more than 10
 8 persons (other than those designated in subsection (7))
 9 during any period of 12 consecutive months, if:

10 (i) the seller reasonably believes that all the buyers
 11 are purchasing for investment; and

12 (ii) no commission or other remuneration is paid or
 13 given directly or indirectly for soliciting any a
 14 prospective buyer; provided, however, that a commission may
 15 be paid to a registered broker-dealer if the securities
 16 involved are registered with the United States securities
 17 and exchange commission under the federal Securities Act of
 18 1933, as amended.

19 (b) For the purpose of the exemption provided for in
 20 subsection (8)(a), an offer to sell is made in this state,
 21 whether or not the offeror or any of the offerees is then
 22 present in this state, if the offer either originates from
 23 this state or is directed by the offeror to this state and
 24 received at the place to which it is directed (or at any
 25 post office in this state in the case of a mailed offer).

1 (9) any an offer or sale of a preorganization
2 certificate or subscription if:

3 (a) no commission or other remuneration is paid or
4 given directly or indirectly for soliciting any prospective
5 subscriber;

6 (b) the number of subscribers does not exceed 10; and

7 (c) no payment is made by any subscriber;

8 (10) any a transaction pursuant to an offer to existing
9 security holders of the issuer, including persons who at the
10 time of the transaction are holders of convertible
11 securities, nontransferable warrants, or transferable
12 warrants exercisable within not more than 90 days of their
13 issuance, if:

14 (a) no commission or other remuneration (other than a
15 standby commission) is paid or given directly or indirectly
16 for soliciting any security holder in this state; or

17 (b) the issuer first files a notice specifying the
18 terms of the offer and the commissioner does not by order
19 disallow either subsection (10)(a) or ~~{b}-of-this-subsection~~
20 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
25 order is in effect and no public proceeding or examination

1 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 a stock dividend, whether the
8 corporation distributing the dividend is the issuer of the
9 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
14 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;

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.

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

1 consent to service of process, with the commissioner. The
2 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;

6 (18) a transaction within the exclusive jurisdiction of
7 the commodity futures trading commission as granted under
8 the Commodity Exchange Act;

9 (19) a transaction that:

10 (a) involves the purchase of one or more precious
11 metals; and

12 (b) requires, and under which the purchaser receives
13 within 7 calendar days after payment in good funds of any
14 portion of the purchase price, physical delivery of the
15 quantity of the precious metals purchased. For the purposes
16 of this subsection, physical delivery is considered to have
17 occurred if, within the 7-day period, the quantity of
18 precious metals, whether in specifically segregated or
19 fungible bulk, purchased by such payment is delivered into
20 the possession of a depository (other than the seller) that:

21 (i) (A) is a financial institution (meaning a bank,
22 savings institution, or trust company organized under or
23 supervised pursuant to the laws of the United States or of
24 this state);

25 (B) is a depository the warehouse receipts of which are

1 recognized for delivery purposes for any commodity on a
2 contract market designated by the commodity futures trading
3 commission; or

4 (C) is a storage facility licensed by the United States
5 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;

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)(i)---and
20 (19)(b)(ii), 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
23 located within Montana at all times after that delivery
24 period.

25 (20) a transaction involving a commodity investment

HB 0014/02

1 contract solely between persons engaged in producing,
2 processing, using commercially, or handling as merchants
3 each commodity subject to the contract or any byproduct of
4 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
7 qualified under section 401 of the Internal Revenue Code of
8 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."

10
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 in--this
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 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

1 right to purchase or subscribe to such 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~~ if 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 ~~will--remain~~ 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

THIRD READING

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

8 (3) any a nonissuer transaction effected by or through
 9 a registered broker-dealer pursuant to an unsolicited order
 10 or offer to buy, but the commissioner may require that the
 11 customer acknowledge upon a specified form that the sale was
 12 unsolicited and that a signed copy of each form be preserved
 13 by the broker-dealer for a specified period;

14 (4) any a transaction between the issuer or other
 15 person on whose behalf the offering is made and an
 16 underwriter or among between underwriters;

17 (5) any a transaction by an executor, administrator,
 18 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
 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

1 company as defined in the Investment Company Act of 1940,
 2 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
 5 fiduciary capacity;

6 (8) (a) any a transaction pursuant to an offer made in
 7 this state directed by the offeror to not more than 10
 8 persons (other than those designated in subsection (7))
 9 during any period of 12 consecutive months, if:

10 (i) the seller reasonably believes that all the buyers
 11 are purchasing for investment; and

12 (ii) no commission or other remuneration is paid or
 13 given directly or indirectly for soliciting any a
 14 prospective buyer; provided, however, that a commission may
 15 be paid to a registered broker-dealer if the securities
 16 involved are registered with the United States securities
 17 and exchange commission under the federal Securities Act of
 18 1933, as amended.

19 (b) For the purpose of the exemption provided for in
 20 subsection (8)(a), an offer to sell is made in this state,
 21 whether or not the offeror or any of the offerees is then
 22 present in this state, if the offer either originates from
 23 this state or is directed by the offeror to this state and
 24 received at the place to which it is directed (or at any
 25 post office in this state in the case of a mailed offer).

1 (9) any an offer or sale of a preorganization
2 certificate or subscription if:

3 (a) no commission or other remuneration is paid or
4 given directly or indirectly for soliciting any prospective
5 subscriber;

6 (b) the number of subscribers does not exceed 10; and

7 (c) no payment is made by any subscriber;

8 (10) any a transaction pursuant to an offer to existing
9 security holders of the issuer, including persons who at the
10 time of the transaction are holders of convertible
11 securities, nontransferable warrants, or transferable
12 warrants exercisable within not more than 90 days of their
13 issuance, if:

14 (a) no commission or other remuneration (other than a
15 standby commission) is paid or given directly or indirectly
16 for soliciting any security holder in this state; or

17 (b) the issuer first files a notice specifying the
18 terms of the offer and the commissioner does not by order
19 disallow either subsection (10)(a) or ~~(b)-of-this-subsection~~
20 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
25 order is in effect and no public proceeding or examination

1 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 a stock dividend, whether the
8 corporation distributing the dividend is the issuer of the
9 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
14 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;

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.

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

1 consent to service of process, with the commissioner. The
 2 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;

6 (18) a transaction within the exclusive jurisdiction of
 7 the commodity futures trading commission as granted under
 8 the Commodity Exchange Act;

9 (19) a transaction that:

10 (a) involves the purchase of one or more precious
 11 metals; and

12 (b) requires, and under which the purchaser receives
 13 within 7 calendar days after payment in good funds of any
 14 portion of the purchase price, physical delivery of the
 15 quantity of the precious metals purchased. For the purposes
 16 of this subsection, physical delivery is considered to have
 17 occurred if, within the 7-day period, the quantity of
 18 precious metals, whether in specifically segregated or
 19 fungible bulk, purchased by such payment is delivered into
 20 the possession of a depository (other than the seller) that:

21 (i) (A) is a financial institution (meaning a bank,
 22 savings institution, or trust company organized under or
 23 supervised pursuant to the laws of the United States or of
 24 this state);

25 (B) is a depository the warehouse receipts of which are

1 recognized for delivery purposes for any commodity on a
 2 contract market designated by the commodity futures trading
 3 commission; or

4 (C) is a storage facility licensed by the United States
 5 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;
- 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){i}---and
 20 {i9}{b}{i+i}, 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
 23 located within Montana at all times after that delivery
 24 period.

25 (20) a transaction involving a commodity investment

HB 0014/02

1 contract solely between persons engaged in producing,
2 processing, using commercially, or handling as merchants
3 each commodity subject to the contract or any byproduct of
4 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
7 qualified under section 401 of the Internal Revenue Code of
8 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."

10
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 in--this
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 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

1 right to purchase or subscribe to such 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~~ if 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~~ 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 ~~will--remain~~ 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

REFERENCE BILL

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

8 (3) any a nonissuer transaction effected by or through
 9 a registered broker-dealer pursuant to an unsolicited order
 10 or offer to buy, but the commissioner may require that the
 11 customer acknowledge upon a specified form that the sale was
 12 unsolicited and that a signed copy of each form be preserved
 13 by the broker-dealer for a specified period;

14 (4) any a transaction between the issuer or other
 15 person on whose behalf the offering is made and an
 16 underwriter or among between underwriters;

17 (5) any a transaction by an executor, administrator,
 18 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
 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

1 company as defined in the Investment Company Act of 1940,
 2 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
 5 fiduciary capacity;

6 (8) (a) any a transaction pursuant to an offer made in
 7 this state directed by the offeror to not more than 10
 8 persons (other than those designated in subsection (7))
 9 during any period of 12 consecutive months, if:

10 (i) the seller reasonably believes that all the buyers
 11 are purchasing for investment; and

12 (ii) no commission or other remuneration is paid or
 13 given directly or indirectly for soliciting any a
 14 prospective buyer; provided, however, that a commission may
 15 be paid to a registered broker-dealer if the securities
 16 involved are registered with the United States securities
 17 and exchange commission under the Federal Securities Act of
 18 1933, as amended.

19 (b) For the purpose of the exemption provided for in
 20 subsection (8)(a), an offer to sell is made in this state,
 21 whether or not the offeror or any of the offerees is then
 22 present in this state, if the offer either originates from
 23 this state or is directed by the offeror to this state and
 24 received at the place to which it is directed (or at any
 25 post office in this state in the case of a mailed offer).

1 (9) any an offer or sale of a preorganization
2 certificate or subscription if:

3 (a) no commission or other remuneration is paid or
4 given directly or indirectly for soliciting any prospective
5 subscriber;

6 (b) the number of subscribers does not exceed 10; and

7 (c) no payment is made by any subscriber;

8 (10) any a transaction pursuant to an offer to existing
9 security holders of the issuer, including persons who at the
10 time of the transaction are holders of convertible
11 securities, nontransferable warrants, or transferable
12 warrants exercisable within not more than 90 days of their
13 issuance, if:

14 (a) no commission or other remuneration (other than a
15 standby commission) is paid or given directly or indirectly
16 for soliciting any security holder in this state; or

17 (b) the issuer first files a notice specifying the
18 terms of the offer and the commissioner does not by order
19 disallow either subsection (10)(a) or ~~{b}-of-this-subsection~~
20 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
25 order is in effect and no public proceeding or examination

1 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 a stock dividend, whether the
8 corporation distributing the dividend is the issuer of the
9 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
14 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;

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.

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

1 consent to service of process, with the commissioner. The
 2 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;

6 (18) a transaction within the exclusive jurisdiction of
 7 the commodity futures trading commission as granted under
 8 the Commodity Exchange Act;

9 (19) a transaction that:

10 (a) involves the purchase of one or more precious
 11 metals; and

12 (b) requires, and under which the purchaser receives
 13 within 7 calendar days after payment in good funds of any
 14 portion of the purchase price, physical delivery of the
 15 quantity of the precious metals purchased. For the purposes
 16 of this subsection, physical delivery is considered to have
 17 occurred if, within the 7-day period, the quantity of
 18 precious metals, whether in specifically segregated or
 19 fungible bulk, purchased by such payment is delivered into
 20 the possession of a depository (other than the seller) that:

21 (i) (A) is a financial institution (meaning a bank,
 22 savings institution, or trust company organized under or
 23 supervised pursuant to the laws of the United States or of
 24 this state);

25 (B) is a depository the warehouse receipts of which are

1 recognized for delivery purposes for any commodity on a
 2 contract market designated by the commodity futures trading
 3 commission; or

4 (C) is a storage facility licensed by the United States
 5 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;

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)(i)---and
 20 (19)(b)(ii), 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
 23 located within Montana at all times after that delivery
 24 period.

25 (20) a transaction involving a commodity investment

HB 0014/02

1 contract solely between persons engaged in producing,
2 processing, using commercially, or handling as merchants
3 each commodity subject to the contract or any byproduct of
4 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
7 qualified under section 401 of the Internal Revenue Code of
8 1986."

-End-