

SENATE BILL NO. 5

INTRODUCED BY B. BROWN

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS; CLARIFYING PHYSICAL DELIVERY OF COMMODITIES; EXPANDING THE DEFINITION OF SECURITY; MODIFYING THE REQUIREMENTS FOR FILING REGISTRATION STATEMENTS; AMENDING SECTIONS 30-10-103, 30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who

represents an issuer in:

(a) effecting a transaction in a security exempted by subsections subsection (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105 except when registration as a salesman, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other



1 financial institutions or institutional buyers, whether
2 acting for themselves or as trustee.

3 (4) "Registered broker-dealer" means a broker-dealer
4 registered pursuant to 30-10-201.

5 (5) (a) "Commodity" means:

6 (i) any agricultural, grain, or livestock product or
7 byproduct;

8 (ii) any metal or mineral, including a precious metal,
9 or any gem or gem stone, whether characterized as precious,
10 semiprecious, or otherwise;

11 (iii) any fuel, whether liquid, gaseous, or otherwise;

12 (iv) foreign currency; and

13 (v) all other goods, articles, products, or items of
14 any kind.

15 (b) Commodity does not include:

16 (i) a numismatic coin with a fair market value at least
17 15% higher than the value of the metal it contains;

18 (ii) real property or any timber, agricultural, or
19 livestock product grown or raised on real property and
20 offered and sold by the owner or lessee of such real
21 property; or

22 (iii) any work of art offered or sold by an art dealer
23 at public auction or offered or sold through a private sale
24 by the owner.

25 (6) "Commodity Exchange Act" means the federal statute

1 of that name as amended on the effective date of this
2 subsection.

3 (7) "Commodity futures trading commission" means the
4 independent regulatory agency established by congress to
5 administer the Commodity Exchange Act.

6 (8) (a) "Commodity investment contract" means any
7 account, agreement, or contract for the purchase or sale,
8 primarily for speculation or investment purposes and not for
9 use or consumption by the offeree or purchaser, of one or
10 more commodities, whether for immediate or subsequent
11 delivery or whether delivery is intended by the parties, and
12 whether characterized as a cash contract, deferred shipment
13 or deferred delivery contract, forward contract, futures
14 contract, installment or margin contract, leverage contract,
15 or otherwise. Any commodity investment contract offered or
16 sold, in the absence of evidence to the contrary, is
17 presumed to be offered or sold for speculation or investment
18 purposes.

19 (b) A commodity investment contract does not include a
20 contract or agreement that requires, and under which the
21 purchaser receives, within 28 calendar days after the
22 payment in good funds of any portion of the purchase price,
23 physical delivery of the total amount of each commodity to
24 be purchased under the contract or agreement. The purchaser
25 is not considered to have received physical delivery of the

1 total amount of each commodity to be purchased under the
 2 contract or agreement when the commodity or commodities are
 3 held as collateral for a loan or are subject to a lien of
 4 any person when the loan or lien arises in connection with
 5 the purchase of each commodity or commodities.

6 (9) (a) "Commodity option" means any account,
 7 agreement, or contract giving a party to the account,
 8 agreement, or contract the right but not the obligation to
 9 purchase or sell one or more commodities or one or more
 10 commodity contracts, whether characterized as an option,
 11 privilege, indemnity, bid, offer, put, call, advance
 12 guaranty, decline guaranty, or otherwise.

13 (b) The term does not include an option traded on a
 14 national securities exchange registered with the U.S.
 15 securities and exchange commission.

16 (10) "Guaranteed" means guaranteed as to payment of
 17 principal, interest, or dividends.

18 (11) (a) "Investment adviser" means any person who, for
 19 compensation, engages in the business of advising others,
 20 either directly or through publications or writings, as to
 21 the value of securities or as to the advisability of
 22 investing in, purchasing, or selling securities or who, for
 23 compensation and as a part of a regular business, issues or
 24 promulgates analyses or reports concerning securities.

25 (b) The term includes a financial planner or other

1 person who:

2 (i) as an integral component of other financially
 3 related services, provides the investment advisory services
 4 described in subsection (11)(a) to others for compensation,
 5 as part of a business; or

6 (ii) represents himself as providing the investment
 7 advisory services described in subsection (11)(a) to others
 8 for compensation.

9 (c) Investment adviser does not include:

10 (i) an investment adviser representative;

11 (ii) a bank, savings institution, trust company, or
 12 insurance company;

13 (iii) a lawyer, accountant, engineer, or teacher whose
 14 performance of these services is solely incidental to the
 15 practice of his profession;

16 (iv) a registered broker-dealer;

17 (v) a publisher of any newspaper, news column,
 18 newsletter, news magazine, or business or financial
 19 publication or service, whether communicated in hard copy
 20 form or by electronic means or otherwise, that does not
 21 consist of the rendering of advice on the basis of the
 22 specific investment situation of each client;

23 (vi) a person whose advice, analyses, or reports relate
 24 only to securities exempted by 30-10-104(1); or

25 (vii) such other persons not within the intent of this

1 subsection (11) as the commissioner may by rule or order
2 designate.

3 (12) (a) "Investment adviser representative" means any
4 partner of, officer of, director of, or a person occupying a
5 similar status or performing similar functions, or other
6 individual employed by or associated with an investment
7 adviser, except clerical or ministerial personnel, who:

8 (i) makes any recommendation or otherwise renders
9 advice regarding securities to clients;

10 (ii) manages accounts or portfolios of clients;

11 (iii) solicits, offers, or negotiates for the sale or
12 sells investment advisory services; or

13 (iv) supervises employees who perform any of the
14 foregoing.

15 (b) Investment adviser representative does not include
16 an individual registered as a salesman pursuant to
17 30-10-201.

18 (13) "Issuer" means any person who issues or proposes to
19 issue any security, except that with respect to certificates
20 of deposit, voting-trust certificates, or collateral-trust
21 certificates or with respect to certificates of interest or
22 shares in an unincorporated investment trust not having a
23 board of directors (or persons performing similar functions)
24 or of the fixed, restricted management, or unit type, the
25 term "issuer" means the person or persons performing the

1 acts and assuming the duties of depositor or manager
2 pursuant to the provisions of the trust or other agreement
3 or instrument under which the security is issued.

4 (14) "Nonissuer" means not directly or indirectly for
5 the benefit of the issuer.

6 (15) "Person", for the purpose of parts 1 through 3 of
7 this chapter, means an individual, a corporation, a
8 partnership, an association, a joint-stock company, a trust
9 where the interests of the beneficiaries are evidenced by a
10 security, an unincorporated organization, a government, or a
11 political subdivision of a government.

12 (16) "Precious metal" means the following, in coin,
13 bullion, or other form:

14 (a) silver;

15 (b) gold;

16 (c) platinum;

17 (d) palladium;

18 (e) copper; and

19 (f) such other items as the commissioner may by rule or
20 order specify.

21 (17) (a) "Sale" or "sell" includes every contract of
22 sale of, contract to sell, or disposition of a security or
23 interest in a security for value.

24 (b) "Offer" or "offer to sell" includes every attempt
25 or offer to dispose of or solicitation of an offer to buy a

1 security or interest in a security for value.

2 (c) Any security given or delivered with or as a bonus
3 on account of any purchase of securities or any other thing
4 is considered to constitute part of the subject of the
5 purchase and to have been offered and sold for value. A
6 purported gift of assessable stock is considered to involve
7 an offer and sale. Every sale or offer of a warrant or right
8 to purchase or subscribe to another security of the same or
9 another issuer, as well as every sale or offer of a security
10 which gives the holder a present or future right or
11 privilege to convert into another security of the same or
12 another issuer, is considered to include an offer of the
13 other security.

14 (18) "Securities Act of 1933", "Securities Exchange Act
15 of 1934", "Public Utility Holding Company Act of 1935",
16 "Investment Advisors Act of 1940", and "Investment Company
17 Act of 1940" mean the federal statutes of those names as
18 amended before or after July 1, 1961.

19 (19) "Security" means any note; stock; treasury stock;
20 bond; commodity investment contract; commodity option;
21 debenture; evidence of indebtedness; certificate of interest
22 or participation in any profit-sharing agreement;
23 collateral-trust certificate; preorganization certificate or
24 subscription; transferable shares; investment contract;
25 voting-trust certificate; certificate of deposit for a

1 security; certificate of interest or participation in an
2 oil, gas, or mining title or lease or in payments out of
3 production under such a title or lease; or, in general, any
4 interest or instrument commonly known as a security, any
5 put, call, straddle, option, or privilege on any security,
6 certificate of deposit, or group or index of securities,
7 including any interest in a security or based on the value
8 of a security, or any certificate of interest or
9 participation in, temporary or interim certificate for,
10 receipt for, guarantee of, or warrant or right to subscribe
11 to or purchase any of the foregoing. "Security" does not
12 include any insurance or endowment policy or annuity
13 contract under which an insurance company promises to pay a
14 sum of money either in a lump sum or periodically for life
15 or some other specified period.

16 (20) "State" means any state, territory, or possession
17 of the United States, as well as the District of Columbia
18 and Puerto Rico.

19 (21) "Transact", "transact business", or "transaction"
20 includes the meanings of the terms "sale", "sell", and
21 "offer".

22 **Section 2.** Section 30-10-201, MCA, is amended to read:

23 "30-10-201. Registration of broker-dealers, salesmen,
24 investment advisers, and investment adviser representatives.

25 (1) It is unlawful for a person to transact business in this

1 state as a broker-dealer or salesman, except as provided in
2 30-10-105, unless he is registered under parts 1 through 3
3 of this chapter.

4 (2) It is unlawful for a broker-dealer or issuer to
5 employ a salesman to represent him in this state, except in
6 transactions exempt under 30-10-105, unless the salesman is
7 registered under parts 1 through 3 of this chapter.

8 (3) It is unlawful for any person to transact business
9 in this state as an investment adviser or as an investment
10 adviser representative unless:

11 (a) he is so registered under parts 1 through 3 of this
12 chapter;

13 (b) he is registered as a broker-dealer under parts 1
14 through 3 of this chapter;

15 (c) his only clients in this state are:

16 (i) investment companies, as defined in the Investment
17 Company Act of 1940, or insurance companies;

18 (ii) other investment advisers;

19 (iii) broker-dealers;

20 (iv) banks;

21 (v) trust companies;

22 (vi) savings and loan associations;

23 (vii) employee benefit plans with assets of not less
24 than \$1 million;

25 (viii) governmental agencies or instrumentalities,

1 whether acting for themselves or as trustees with investment
2 control; or

3 (ix) other institutional investors as are designated by
4 rule or order of the commissioner; or

5 (d) he has no place of business in this state and
6 during any 12 consecutive months does not direct business
7 communications in this state in any manner to more than five
8 present or prospective clients, other than those specified
9 in subsection (3)(c), whether or not he or any of the
10 persons to whom the communications are directed are then
11 present in this state.

12 (4) A broker-dealer or a salesman, acting as an agent
13 for an issuer or as an agent for a broker-dealer in the
14 offer or sale of securities for an issuer, or an investment
15 adviser or investment adviser representative may apply for
16 registration by filing an application in such form as the
17 commissioner prescribes and payment of the fee prescribed in
18 30-10-209. A salesman acting as agent for an issuer or
19 broker-dealer who is not currently in compliance with the
20 financial responsibility requirements prescribed by the
21 Securities Exchange Act of 1934 and by regulations adopted
22 under it, may, in the discretion of the commissioner, be
23 required to file with the commissioner a bond of a surety
24 company duly authorized to transact business in this state.
25 The bond shall be in an amount determined by the

1 commissioner, payable to the state of Montana and
2 conditioned upon the faithful compliance with the provisions
3 of parts 1 through 3 of this chapter, and provide that upon
4 failure to so comply, the salesman shall be liable to any
5 and all persons who may suffer loss by reason thereof.

6 (5) The application shall contain whatever information
7 the commissioner requires. No registration application of a
8 broker-dealer, salesman, investment adviser, or investment
9 adviser representative may be withdrawn before the
10 commissioner approves or denies such registration, without
11 the express written consent of the commissioner.

12 (6) When the registration requirements are met, the
13 commissioner shall make the registration effective. No
14 effective registration of a broker-dealer, salesman,
15 investment adviser, or investment adviser representative may
16 be withdrawn or terminated without the express written
17 consent of the commissioner.

18 (7) Except as provided in subsection (6), registration
19 of a broker-dealer, salesman, investment adviser, or
20 investment adviser representative:

21 (a) is effective until December 31 following such
22 registration or such other time as the commissioner may by
23 rule adopt; and

24 (b) may be renewed.

25 (8) The registration of a salesman is not effective

1 during any period when he is not associated with an issuer
2 or a registered broker-dealer specified in his application.
3 When a salesman begins or terminates a connection with an
4 issuer or registered broker-dealer, the salesman and the
5 issuer or broker-dealer shall promptly notify the
6 commissioner.

7 (9) The registration of an investment adviser
8 representative is not effective during any period when he is
9 not associated with an investment adviser registered under
10 this act and specified in the application. When an
11 investment adviser representative begins or terminates a
12 connection with an investment adviser, the investment
13 adviser shall promptly notify the commissioner.

14 (10) Registration of a broker-dealer, salesman,
15 investment adviser, or investment adviser representative may
16 be renewed by filing, prior to the expiration thereof, an
17 application containing such information as the commissioner
18 may require to indicate any material change in the
19 information contained in the original application or any
20 renewal application for registration as a broker-dealer,
21 salesman, investment adviser, or investment adviser
22 representative filed by the applicant, payment of the
23 prescribed fee, and, in the case of a broker-dealer who is
24 not a member of NASD, inc., by filing a financial statement
25 showing the financial condition of such broker-dealer as of

1 a date within 90 days. A registered broker-dealer or
 2 investment adviser may file an application for registration
 3 of a successor, to become effective upon approval of the
 4 commissioner.

5 (11) Every registered broker-dealer and investment
 6 adviser shall make and keep such accounts and other records,
 7 except with respect to securities exempt under 30-10-104(1),
 8 as may be prescribed by the commissioner. All records so
 9 required shall be preserved for 3 years unless the
 10 commissioner prescribes otherwise for particular types of
 11 records. All the records of a registered broker-dealer or
 12 investment adviser are subject at any time or from time to
 13 time to such reasonable periodic, special, or other
 14 examinations, within or without this state, by
 15 representatives of the commissioner, as the commissioner
 16 considers necessary or appropriate in the public interest or
 17 for the protection of investors.

18 (12) The commissioner may by order deny, suspend, or
 19 revoke registration of any broker-dealer, salesman,
 20 investment adviser, or investment adviser representative if
 21 he finds that the order is in the public interest and that
 22 the applicant or registrant or, in the case of a
 23 broker-dealer or investment adviser, any partner, officer,
 24 director, person occupying a similar status or performing
 25 similar functions, or person directly or indirectly

1 controlling the broker-dealer or investment adviser:

2 (a) has filed an application for registration under
 3 this section which, as of its effective date or as of any
 4 date after filing in the case of an order denying
 5 effectiveness, was incomplete in any material respect or
 6 contained any statement which was, in the light of the
 7 circumstances under which it was made, false or misleading
 8 with respect to any material fact;

9 (b) has willfully violated or willfully failed to
 10 comply with any provision of parts 1 through 3 of this
 11 chapter or a predecessor law or any rule or order under
 12 parts 1 through 3 of this chapter or a predecessor law;

13 (c) has been convicted of any misdemeanor involving a
 14 security or any aspect of the securities business or any
 15 felony;

16 (d) is permanently or temporarily enjoined by any court
 17 of competent jurisdiction from engaging in or continuing any
 18 conduct or practice involving any aspect of the securities
 19 business;

20 (e) is the subject of an order of the commissioner
 21 denying, suspending, or revoking registration as a
 22 broker-dealer, salesman, investment adviser, or investment
 23 adviser representative;

24 (f) is the subject of an adjudication or determination,
 25 within the past 5 years, by a securities or commodities

1 agency or administrator of another state or a court of
 2 competent jurisdiction, that the person has violated the
 3 Securities Act of 1933, the Securities Exchange Act of 1934,
 4 the Investment Advisors Act of 1940, the Investment Company
 5 Act of 1940, or the Commodity Exchange Act or the securities
 6 or commodities law of any other state;

7 (g) has engaged in dishonest or unethical practices in
 8 the securities business;

9 (h) is insolvent, either in the sense that his
 10 liabilities exceed his assets or in the sense that he cannot
 11 meet his obligations as they mature, but the commissioner
 12 may not enter an order against a broker-dealer or investment
 13 adviser under this subsection (h) without a finding of
 14 insolvency as to the broker-dealer or investment adviser;

15 (i) has not complied with a condition imposed by the
 16 commissioner under this section or is not qualified on the
 17 basis of such factors as training, experience, or knowledge
 18 of the securities business;

19 (j) has failed to pay the proper filing fee, but the
 20 commissioner may enter only a denial order under this
 21 subsection (j), and he shall vacate any such order when the
 22 deficiency has been corrected; or

23 (k) has failed to reasonably supervise his salesmen or
 24 employees, ~~if he is a broker-dealer,~~ or his investment
 25 adviser representatives or employees, ~~if he is an investment~~

1 ~~adviser,~~ to assure their compliance with this act.

2 (13) The commissioner may not institute a suspension or
 3 revocation proceeding on the basis of a fact or transaction
 4 known to him when registration became effective unless the
 5 proceeding is instituted within 30 days after the date on
 6 which the registration became effective.

7 (14) The commissioner may by order summarily postpone or
 8 suspend registration pending final determination of any
 9 proceeding under this section.

10 (15) Upon the entry of the order under subsection (12)
 11 of this section, the commissioner shall promptly notify the
 12 applicant or registrant, as well as the employer or
 13 prospective employer if the applicant or registrant is a
 14 salesman or investment adviser representative, that it has
 15 been entered and of the reasons therefor and that if
 16 requested by the applicant or registrant within 15 days
 17 after the receipt of the commissioner's notification the
 18 matter will be promptly set down for hearing. If no hearing
 19 is requested within 15 days and none is ordered by the
 20 commissioner, the order will remain in effect until it is
 21 modified or vacated by the commissioner. If a hearing is
 22 requested or ordered, the commissioner, after notice of and
 23 opportunity for hearing, may modify or vacate the order or
 24 extend it until final determination.

25 (16) If the commissioner finds that any registrant or

1 applicant for registration is no longer in existence or has
 2 ceased to do business as a broker-dealer, salesman,
 3 investment adviser, or investment adviser representative or
 4 is subject to an adjudication of mental incompetence or to
 5 the control of a committee, conservator, or guardian or
 6 cannot be located after reasonable search, the commissioner
 7 may by order cancel the registration or application.

8 (17) The commissioner may, after suspending or revoking
 9 registration of any broker-dealer, salesman, investment
 10 adviser, or investment adviser representative, impose a fine
 11 not to exceed \$5,000 upon such broker-dealer, salesman,
 12 investment adviser, or investment adviser representative.
 13 The fine is in addition to all other penalties imposed by
 14 the laws of this state and must be collected by the
 15 commissioner in the name of the state of Montana and
 16 deposited in the general fund. Imposition of any fine under
 17 this subsection is an order from which an appeal may be
 18 taken pursuant to 30-10-308. If any broker-dealer, salesman,
 19 investment adviser, or investment adviser representative
 20 fails to pay a fine referred to in this subsection, the
 21 amount of the fine is a lien upon all of the assets and
 22 property of such broker-dealer, salesman, investment
 23 adviser, or investment adviser representative in this state
 24 and may be recovered by suit by the commissioner and
 25 deposited in the general fund. Failure of a broker-dealer,

1 salesman, investment adviser, or investment adviser
 2 representative to pay a fine also constitutes a forfeiture
 3 of his right to do business in this state under parts 1
 4 through 3 of this chapter."

5 **Section 3.** Section 30-10-206, MCA, is amended to read:
 6 **"30-10-206. General provisions regarding registration**
 7 **of securities.** (1) A registration statement may be filed by
 8 the issuer, any other person on whose behalf the offering is
 9 to be made, or a registered broker-dealer. ~~Any document~~
 10 ~~filed under parts 1 through 3 of this chapter or a~~
 11 ~~predecessor law within 3 years preceding the filing of a~~
 12 ~~registration statement may be incorporated by reference in~~
 13 ~~the registration statement to the extent that the document~~
 14 ~~is currently accurate.~~ The commissioner may by rule or
 15 otherwise permit the omission of any item of information or
 16 document from any registration statement.

17 (2) (a) The commissioner may require as a condition of
 18 registration by qualification or coordination:

19 (i) that the following securities be deposited in
 20 escrow:

21 (A) any security issued within the past 3 years or to
 22 be issued to:

23 (I) a promoter for a consideration substantially
 24 different from the public offering price; or

25 (II) any person for a consideration other than cash; and

1 (B) any security issued or to be issued to a promoter
 2 while a corporation is still in a promotional or
 3 developmental stage; however, if shares were issued by a
 4 corporation while it was in a promotional or developmental
 5 stage and it no longer is in such stage, then this condition
 6 does not apply; and

7 (ii) that the proceeds from the sale of the registered
 8 security in this state be impounded until the issuer
 9 receives a specified amount from the sale of the security
 10 either in this state or elsewhere.

11 (b) The commissioner may determine the conditions of
 12 any escrow or impounding required hereunder, but he may not
 13 reject a depository solely because of location in another
 14 state.

15 (3) When securities are registered by notification,
 16 coordination, or qualification, they may be offered and sold
 17 by the issuer, any other person on whose behalf they are
 18 registered, or by any registered broker-dealer. Every
 19 registration shall remain effective for a period of 1 year
 20 unless it is revoked by the commissioner, terminated upon
 21 request of the registrant with the consent of the
 22 commissioner, or renewed under 30-10-209(1)(b); however,
 23 said registration shall be automatically suspended upon a
 24 stop order or suspension proceedings being instituted by the
 25 securities and exchange commission relative to said

1 securities and shall continue suspended so long as such
 2 proceedings are pending and until the registration or filing
 3 with the securities and exchange commission is effective.
 4 All outstanding securities of the same class as a currently
 5 registered security are considered to be registered for the
 6 purpose of any nonissuer transaction. A registration
 7 statement which has become effective may not be withdrawn
 8 for 1 year from its effective date if any securities of the
 9 same class are outstanding. Subject to the provisions of
 10 30-10-104 and 30-10-105, a salesman who offers or sells
 11 registered securities must be registered pursuant to
 12 30-10-201.

13 (4) The commissioner may require the person who filed
 14 the registration statement to file reports to keep
 15 reasonably current the information contained in the
 16 registration statement and to disclose the progress of the
 17 offering with respect to registered securities which:

18 (a) are issued by a face-amount certificate company or
 19 a redeemable security issued by an open-end management
 20 company or unit investment trust as those terms are defined
 21 in the Investment Company Act of 1940; or

22 (b) are being offered and sold directly by or for the
 23 account of the issuer.

24 (5) No securities registration statement may be
 25 withdrawn, whether or not such statement has become

1 effective, without the express written consent of the
2 commissioner."

3 **Section 4.** Section 30-10-208, MCA, is amended to read:

4 "30-10-208. Consent to service of process -- manner of
5 service. (1) Every applicant for registration as a
6 broker-dealer, or investment adviser, or salesman, or
7 investment adviser representative under parts 1 through 3 of
8 this chapter and every issuer which proposes to register and
9 offer a security in this state through any person acting on
10 an agency basis in the common-law sense shall file with the
11 commissioner, in such form as he prescribes, an irrevocable
12 consent appointing the commissioner and his successors in
13 office to be the attorney of the applicant to receive
14 service of any lawful process in any noncriminal suit,
15 action, or proceeding against the applicant or its or his
16 successor, executor, or administrator which arises under
17 parts 1 through 3 of this chapter or any rule or order
18 hereunder after the consent has been filed, with the same
19 force and validity as if served personally on the person
20 filing the consent. ~~A person who has filed such a consent in~~
21 ~~connection with a previous registration need not file~~
22 ~~another.~~

23 (2) Service may be made by leaving a copy of the
24 process in the office of the commissioner, but it is not
25 effective unless:

1 (a) the plaintiff, who may be the commissioner, in a
2 suit, action, or proceeding instituted by him, forthwith
3 sends notice of the service and a copy of the process by
4 certified or registered mail to the defendant or respondent
5 at its or his last address on file with the commissioner;
6 and

7 (b) the plaintiff's affidavit of compliance with this
8 section is filed in the case on or before the return day of
9 the process, if any, or within such further time as the
10 court allows."

11 **Section 5.** Section 30-10-209, MCA, is amended to read:

12 "30-10-209. Fees. The following fees shall be paid in
13 advance under the provisions of parts 1 through 3 of this
14 chapter:

15 (1) (a) For the registration of securities by
16 notification, coordination, or qualification, there shall be
17 paid to the commissioner for the first year of registration
18 a registration fee of \$200 for the first \$100,000 of initial
19 issue or portion thereof in this state, based on offering
20 price, plus 1/10 of 1% for any excess over \$100,000, with a
21 maximum of \$1,000.

22 (b) Each year thereafter, a registration of securities
23 may be renewed, prior to its termination date, for an
24 additional year upon consent of the commissioner and payment
25 of an additional registration fee to be computed at 1/10 of

1 1% of the aggregate offering price of such securities which
 2 are to be offered in this state during that year, even
 3 though the maximum fee was paid the preceding year. In no
 4 event shall the additional registration fee be less than
 5 \$200 or more than \$1,000. The registration statement for
 6 such securities may be amended to increase the amount of
 7 securities to be offered.

8 (c) If a registrant sells securities in excess of the
 9 aggregate amount registered for sale in this state, the
 10 registrant may file an amendment to the registration
 11 statement to include the excess sales. If the registrant
 12 fails to file an amendment before the expiration date of the
 13 registration order, he shall pay a filing fee for the excess
 14 sales of three times the amount calculated in the manner
 15 specified in subsection (1)(b). Registration of the excess
 16 securities is effective retroactively to the date of the
 17 existing registration.

18 (2) (a) For registration of a broker-dealer or
 19 investment adviser, the fee shall be \$200 for original
 20 registration and \$200 for each annual renewal.

21 (b) For registration of a salesman or investment
 22 adviser representative, the fee shall be \$50 for original
 23 registration with each employer, \$50 for each annual
 24 renewal, and \$50 for each transfer.

25 (3) For certified or uncertified copies of any

1 documents filed with the commissioner, the fee shall be the
 2 cost to the department.

3 (4) For a request for an exemption under 30-10-105(15),
 4 the fee shall be established by the commissioner by rule.
 5 For a request for any other exemption or an exception to the
 6 provisions of parts 1 through 3 of this chapter, the fee
 7 shall be \$50.

8 (5) All fees are considered fully earned when received.
 9 In the event of overpayment, only those amounts in excess of
 10 \$10 may be refunded.

11 (6) All fees, examination charges, miscellaneous
 12 charges, fines, and penalties collected by the commissioner
 13 pursuant to parts 1 through 3 of this chapter and the rules
 14 adopted hereunder must be deposited in the general fund."

15 NEW SECTION. **Section 6.** Effective date. [This act] is
 16 effective on passage and approval.

-End-

APPROVED BY COMM. ON BUSINESS & INDUSTRY

SENATE BILL NO. 5

INTRODUCED BY B. BROWN

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS; CLARIFYING PHYSICAL DELIVERY OF COMMODITIES; EXPANDING THE DEFINITION OF SECURITY; MODIFYING THE REQUIREMENTS FOR FILING REGISTRATION STATEMENTS; AMENDING SECTIONS 30-10-103, 30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 30-10-103, MCA, is amended to read:

30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who

represents an issuer in:

(a) effecting a transaction in a security exempted by subsections subsection (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105 except when registration as a salesman, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

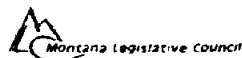
(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other

SECOND READING

SB 5



1 financial institutions or institutional buyers, whether
2 acting for themselves or as trustee.

3 (4) "Registered broker-dealer" means a broker-dealer
4 registered pursuant to 30-10-201.

5 (5) (a) "Commodity" means:

6 (i) any agricultural, grain, or livestock product or
7 byproduct;

8 (ii) any metal or mineral, including a precious metal,
9 or any gem or gem stone, whether characterized as precious,
10 semiprecious, or otherwise;

11 (iii) any fuel, whether liquid, gaseous, or otherwise;

12 (iv) foreign currency; and

13 (v) all other goods, articles, products, or items of
14 any kind.

15 (b) Commodity does not include:

16 (i) a numismatic coin with a fair market value at least
17 15% higher than the value of the metal it contains;

18 (ii) real property or any timber, agricultural, or
19 livestock product grown or raised on real property and
20 offered and sold by the owner or lessee of such real
21 property; or

22 (iii) any work of art offered or sold by an art dealer
23 at public auction or offered or sold through a private sale
24 by the owner.

25 (6) "Commodity Exchange Act" means the federal statute

1 of that name as amended on the effective date of this
2 subsection.

3 (7) "Commodity futures trading commission" means the
4 independent regulatory agency established by congress to
5 administer the Commodity Exchange Act.

6 (8) (a) "Commodity investment contract" means any
7 account, agreement, or contract for the purchase or sale,
8 primarily for speculation or investment purposes and not for
9 use or consumption by the offeree or purchaser, of one or
10 more commodities, whether for immediate or subsequent
11 delivery or whether delivery is intended by the parties, and
12 whether characterized as a cash contract, deferred shipment
13 or deferred delivery contract, forward contract, futures
14 contract, installment or margin contract, leverage contract,
15 or otherwise. Any commodity investment contract offered or
16 sold, in the absence of evidence to the contrary, is
17 presumed to be offered or sold for speculation or investment
18 purposes.

19 (b) A commodity investment contract does not include a
20 contract or agreement that requires, and under which the
21 purchaser receives, within 28 calendar days after the
22 payment in good funds of any portion of the purchase price,
23 physical delivery of the total amount of each commodity to
24 be purchased under the contract or agreement. The purchaser
25 is not considered to have received physical delivery of the

1 total amount of each commodity to be purchased under the
 2 contract or agreement when the commodity or commodities are
 3 held as collateral for a loan or are subject to a lien of
 4 any person when the loan or lien arises in connection with
 5 the purchase of each commodity or commodities.

6 (9) (a) "Commodity option" means any account,
 7 agreement, or contract giving a party to the account,
 8 agreement, or contract the right but not the obligation to
 9 purchase or sell one or more commodities or one or more
 10 commodity contracts, whether characterized as an option,
 11 privilege, indemnity, bid, offer, put, call, advance
 12 guaranty, decline guaranty, or otherwise.

13 (b) The term does not include an option traded on a
 14 national securities exchange registered with the U.S.
 15 securities and exchange commission.

16 (10) "Guaranteed" means guaranteed as to payment of
 17 principal, interest, or dividends.

18 (11) (a) "Investment adviser" means any person who, for
 19 compensation, engages in the business of advising others,
 20 either directly or through publications or writings, as to
 21 the value of securities or as to the advisability of
 22 investing in, purchasing, or selling securities or who, for
 23 compensation and as a part of a regular business, issues or
 24 promulgates analyses or reports concerning securities.

25 (b) The term includes a financial planner or other

1 person who:

2 (i) as an integral component of other financially
 3 related services, provides the investment advisory services
 4 described in subsection (11)(a) to others for compensation,
 5 as part of a business; or

6 (ii) represents himself as providing the investment
 7 advisory services described in subsection (11)(a) to others
 8 for compensation.

9 (c) Investment adviser does not include:

10 (i) an investment adviser representative;

11 (ii) a bank, savings institution, trust company, or
 12 insurance company;

13 (iii) a lawyer, accountant, engineer, or teacher whose
 14 performance of these services is solely incidental to the
 15 practice of his profession;

16 (iv) a registered broker-dealer;

17 (v) a publisher of any newspaper, news column,
 18 newsletter, news magazine, or business or financial
 19 publication or service, whether communicated in hard copy
 20 form or by electronic means or otherwise, that does not
 21 consist of the rendering of advice on the basis of the
 22 specific investment situation of each client;

23 (vi) a person whose advice, analyses, or reports relate
 24 only to securities exempted by 30-10-104(1); or

25 (vii) such other persons not within the intent of this

1 subsection (11) as the commissioner may by rule or order
2 designate.

3 (12) (a) "Investment adviser representative" means any
4 partner of, officer of, director of, or a person occupying a
5 similar status or performing similar functions, or other
6 individual employed by or associated with an investment
7 adviser, except clerical or ministerial personnel, who:

8 (i) makes any recommendation or otherwise renders
9 advice regarding securities to clients;

10 (ii) manages accounts or portfolios of clients;

11 (iii) solicits, offers, or negotiates for the sale or
12 sells investment advisory services; or

13 (iv) supervises employees who perform any of the
14 foregoing.

15 (b) Investment adviser representative does not include
16 an individual registered as a salesman pursuant to
17 30-10-201.

18 (13) "Issuer" means any person who issues or proposes to
19 issue any security, except that with respect to certificates
20 of deposit, voting-trust certificates, or collateral-trust
21 certificates or with respect to certificates of interest or
22 shares in an unincorporated investment trust not having a
23 board of directors (or persons performing similar functions)
24 or of the fixed, restricted management, or unit type, the
25 term "issuer" means the person or persons performing the

1 acts and assuming the duties of depositor or manager
2 pursuant to the provisions of the trust or other agreement
3 or instrument under which the security is issued.

4 (14) "Nonissuer" means not directly or indirectly for
5 the benefit of the issuer.

6 (15) "Person", for the purpose of parts 1 through 3 of
7 this chapter, means an individual, a corporation, a
8 partnership, an association, a joint-stock company, a trust
9 where the interests of the beneficiaries are evidenced by a
10 security, an unincorporated organization, a government, or a
11 political subdivision of a government.

12 (16) "Precious metal" means the following, in coin,
13 bullion, or other form:

14 (a) silver;

15 (b) gold;

16 (c) platinum;

17 (d) palladium;

18 (e) copper; and

19 (f) such other items as the commissioner may by rule or
20 order specify.

21 (17) (a) "Sale" or "sell" includes every contract of
22 sale of, contract to sell, or disposition of a security or
23 interest in a security for value.

24 (b) "Offer" or "offer to sell" includes every attempt
25 or offer to dispose of or solicitation of an offer to buy a

1 security or interest in a security for value.

2 (c) Any security given or delivered with or as a bonus
3 on account of any purchase of securities or any other thing
4 is considered to constitute part of the subject of the
5 purchase and to have been offered and sold for value. A
6 purported gift of assessable stock is considered to involve
7 an offer and sale. Every sale or offer of a warrant or right
8 to purchase or subscribe to another security of the same or
9 another issuer, as well as every sale or offer of a security
10 which gives the holder a present or future right or
11 privilege to convert into another security of the same or
12 another issuer, is considered to include an offer of the
13 other security.

14 (18) "Securities Act of 1933", "Securities Exchange Act
15 of 1934", "Public Utility Holding Company Act of 1935",
16 "Investment Advisors Act of 1940", and "Investment Company
17 Act of 1940" mean the federal statutes of those names as
18 amended before or after July 1, 1961.

19 (19) "Security" means any note; stock; treasury stock;
20 bond; commodity investment contract; commodity option;
21 debenture; evidence of indebtedness; certificate of interest
22 or participation in any profit-sharing agreement;
23 collateral-trust certificate; preorganization certificate or
24 subscription; transferable shares; investment contract;
25 voting-trust certificate; certificate of deposit for a

1 security; certificate of interest or participation in an
2 oil, gas, or mining title or lease or in payments out of
3 production under such a title or lease; or, in general, any
4 interest or instrument commonly known as a security, any
5 put, call, straddle, option, or privilege on any security,
6 certificate of deposit, or group or index of securities,
7 including any interest in a security or based on the value
8 of a security, or any certificate of interest or
9 participation in, temporary or interim certificate for,
10 receipt for, guarantee of, or warrant or right to subscribe
11 to or purchase any of the foregoing. "Security" does not
12 include any insurance or endowment policy or annuity
13 contract under which an insurance company promises to pay a
14 sum of money either in a lump sum or periodically for life
15 or some other specified period.

16 (20) "State" means any state, territory, or possession
17 of the United States, as well as the District of Columbia
18 and Puerto Rico.

19 (21) "Transact", "transact business", or "transaction"
20 includes the meanings of the terms "sale", "sell", and
21 "offer".

22 **Section 2.** Section 30-10-201, MCA, is amended to read:
23 "30-10-201. Registration of broker-dealers, salesmen,
24 investment advisers, and investment adviser representatives.
25 (1) It is unlawful for a person to transact business in this

1 state as a broker-dealer or salesman, except as provided in
2 30-10-105, unless he is registered under parts 1 through 3
3 of this chapter.

4 (2) It is unlawful for a broker-dealer or issuer to
5 employ a salesman to represent him in this state, except in
6 transactions exempt under 30-10-105, unless the salesman is
7 registered under parts 1 through 3 of this chapter.

8 (3) It is unlawful for any person to transact business
9 in this state as an investment adviser or as an investment
10 adviser representative unless:

11 (a) he is so registered under parts 1 through 3 of this
12 chapter;

13 (b) he is registered as a broker-dealer under parts 1
14 through 3 of this chapter;

15 (c) his only clients in this state are:

16 (i) investment companies, as defined in the Investment
17 Company Act of 1940, or insurance companies;

18 (ii) other investment advisers;

19 (iii) broker-dealers;

20 (iv) banks;

21 (v) trust companies;

22 (vi) savings and loan associations;

23 (vii) employee benefit plans with assets of not less
24 than \$1 million;

25 (viii) governmental agencies or instrumentalities,

1 whether acting for themselves or as trustees with investment
2 control; or

3 (ix) other institutional investors as are designated by
4 rule or order of the commissioner; or

5 (d) he has no place of business in this state and
6 during any 12 consecutive months does not direct business
7 communications in this state in any manner to more than five
8 present or prospective clients, other than those specified
9 in subsection (3)(c), whether or not he or any of the
10 persons to whom the communications are directed are then
11 present in this state.

12 (4) A broker-dealer or a salesman, acting as an agent
13 for an issuer or as an agent for a broker-dealer in the
14 offer or sale of securities for an issuer, or an investment
15 adviser or investment adviser representative may apply for
16 registration by filing an application in such form as the
17 commissioner prescribes and payment of the fee prescribed in
18 30-10-209. A salesman acting as agent for an issuer or
19 broker-dealer who is not currently in compliance with the
20 financial responsibility requirements prescribed by the
21 Securities Exchange Act of 1934 and by regulations adopted
22 under it, may, in the discretion of the commissioner, be
23 required to file with the commissioner a bond of a surety
24 company duly authorized to transact business in this state.
25 The bond shall be in an amount determined by the

1 commissioner, payable to the state of Montana and
 2 conditioned upon the faithful compliance with the provisions
 3 of parts 1 through 3 of this chapter, and provide that upon
 4 failure to so comply, the salesman shall be liable to any
 5 and all persons who may suffer loss by reason thereof.

6 (5) The application shall contain whatever information
 7 the commissioner requires. No registration application of a
 8 broker-dealer, salesman, investment adviser, or investment
 9 adviser representative may be withdrawn before the
 10 commissioner approves or denies such registration, without
 11 the express written consent of the commissioner.

12 (6) When the registration requirements are met, the
 13 commissioner shall make the registration effective. No
 14 effective registration of a broker-dealer, salesman,
 15 investment adviser, or investment adviser representative may
 16 be withdrawn or terminated without the express written
 17 consent of the commissioner.

18 (7) Except as provided in subsection (6), registration
 19 of a broker-dealer, salesman, investment adviser, or
 20 investment adviser representative:

21 (a) is effective until December 31 following such
 22 registration or such other time as the commissioner may by
 23 rule adopt; and

24 (b) may be renewed.

25 (8) The registration of a salesman is not effective

1 during any period when he is not associated with an issuer
 2 or a registered broker-dealer specified in his application.
 3 When a salesman begins or terminates a connection with an
 4 issuer or registered broker-dealer, the salesman and the
 5 issuer or broker-dealer shall promptly notify the
 6 commissioner.

7 (9) The registration of an investment adviser
 8 representative is not effective during any period when he is
 9 not associated with an investment adviser registered under
 10 this act and specified in the application. When an
 11 investment adviser representative begins or terminates a
 12 connection with an investment adviser, the investment
 13 adviser shall promptly notify the commissioner.

14 (10) Registration of a broker-dealer, salesman,
 15 investment adviser, or investment adviser representative may
 16 be renewed by filing, prior to the expiration thereof, an
 17 application containing such information as the commissioner
 18 may require to indicate any material change in the
 19 information contained in the original application or any
 20 renewal application for registration as a broker-dealer,
 21 salesman, investment adviser, or investment adviser
 22 representative filed by the applicant, payment of the
 23 prescribed fee, and, in the case of a broker-dealer who is
 24 not a member of NASD, inc., by filing a financial statement
 25 showing the financial condition of such broker-dealer as of

1 a date within 90 days. A registered broker-dealer or
2 investment adviser may file an application for registration
3 of a successor, to become effective upon approval of the
4 commissioner.

5 (11) Every registered broker-dealer and investment
6 adviser shall make and keep such accounts and other records,
7 except with respect to securities exempt under 30-10-104(1),
8 as may be prescribed by the commissioner. All records so
9 required shall be preserved for 3 years unless the
10 commissioner prescribes otherwise for particular types of
11 records. All the records of a registered broker-dealer or
12 investment adviser are subject at any time or from time to
13 time to such reasonable periodic, special, or other
14 examinations, within or without this state, by
15 representatives of the commissioner, as the commissioner
16 considers necessary or appropriate in the public interest or
17 for the protection of investors.

18 (12) The commissioner may by order deny, suspend, or
19 revoke registration of any broker-dealer, salesman,
20 investment adviser, or investment adviser representative if
21 he finds that the order is in the public interest and that
22 the applicant or registrant or, in the case of a
23 broker-dealer or investment adviser, any partner, officer,
24 director, person occupying a similar status or performing
25 similar functions, or person directly or indirectly

1 controlling the broker-dealer or investment adviser:

2 (a) has filed an application for registration under
3 this section which, as of its effective date or as of any
4 date after filing in the case of an order denying
5 effectiveness, was incomplete in any material respect or
6 contained any statement which was, in the light of the
7 circumstances under which it was made, false or misleading
8 with respect to any material fact;

9 (b) has willfully violated or willfully failed to
10 comply with any provision of parts 1 through 3 of this
11 chapter or a predecessor law or any rule or order under
12 parts 1 through 3 of this chapter or a predecessor law;

13 (c) has been convicted of any misdemeanor involving a
14 security or any aspect of the securities business or any
15 felony;

16 (d) is permanently or temporarily enjoined by any court
17 of competent jurisdiction from engaging in or continuing any
18 conduct or practice involving any aspect of the securities
19 business;

20 (e) is the subject of an order of the commissioner
21 denying, suspending, or revoking registration as a
22 broker-dealer, salesman, investment adviser, or investment
23 adviser representative;

24 (f) is the subject of an adjudication or determination,
25 within the past 5 years, by a securities or commodities

1 agency or administrator of another state or a court of
2 competent jurisdiction, that the person has violated the
3 Securities Act of 1933, the Securities Exchange Act of 1934,
4 the Investment Advisors Act of 1940, the Investment Company
5 Act of 1940, or the Commodity Exchange Act or the securities
6 or commodities law of any other state;

7 (g) has engaged in dishonest or unethical practices in
8 the securities business;

9 (h) is insolvent, either in the sense that his
10 liabilities exceed his assets or in the sense that he cannot
11 meet his obligations as they mature, but the commissioner
12 may not enter an order against a broker-dealer or investment
13 adviser under this subsection (h) without a finding of
14 insolvency as to the broker-dealer or investment adviser;

15 (i) has not complied with a condition imposed by the
16 commissioner under this section or is not qualified on the
17 basis of such factors as training, experience, or knowledge
18 of the securities business;

19 (j) has failed to pay the proper filing fee, but the
20 commissioner may enter only a denial order under this
21 subsection (j), and he shall vacate any such order when the
22 deficiency has been corrected; or

23 (k) has failed to reasonably supervise his salesmen or
24 employees, ~~if he is a broker-dealer~~, or his investment
25 adviser representatives or employees, ~~if he is an investment~~

1 adviser, to assure their compliance with this act.

2 (13) The commissioner may not institute a suspension or
3 revocation proceeding on the basis of a fact or transaction
4 known to him when registration became effective unless the
5 proceeding is instituted within 30 days after the date on
6 which the registration became effective.

7 (14) The commissioner may by order summarily postpone or
8 suspend registration pending final determination of any
9 proceeding under this section.

10 (15) Upon the entry of the order under subsection (12)
11 of this section, the commissioner shall promptly notify the
12 applicant or registrant, as well as the employer or
13 prospective employer if the applicant or registrant is a
14 salesman or investment adviser representative, that it has
15 been entered and of the reasons therefor and that if
16 requested by the applicant or registrant within 15 days
17 after the receipt of the commissioner's notification the
18 matter will be promptly set down for hearing. If no hearing
19 is requested within 15 days and none is ordered by the
20 commissioner, the order will remain in effect until it is
21 modified or vacated by the commissioner. If a hearing is
22 requested or ordered, the commissioner, after notice of and
23 opportunity for hearing, may modify or vacate the order or
24 extend it until final determination.

25 (16) If the commissioner finds that any registrant or

1 applicant for registration is no longer in existence or has
 2 ceased to do business as a broker-dealer, salesman,
 3 investment adviser, or investment adviser representative or
 4 is subject to an adjudication of mental incompetence or to
 5 the control of a committee, conservator, or guardian or
 6 cannot be located after reasonable search, the commissioner
 7 may by order cancel the registration or application.

8 (17) The commissioner may, after suspending or revoking
 9 registration of any broker-dealer, salesman, investment
 10 adviser, or investment adviser representative, impose a fine
 11 not to exceed \$5,000 upon such broker-dealer, salesman,
 12 investment adviser, or investment adviser representative.
 13 The fine is in addition to all other penalties imposed by
 14 the laws of this state and must be collected by the
 15 commissioner in the name of the state of Montana and
 16 deposited in the general fund. Imposition of any fine under
 17 this subsection is an order from which an appeal may be
 18 taken pursuant to 30-10-308. If any broker-dealer, salesman,
 19 investment adviser, or investment adviser representative
 20 fails to pay a fine referred to in this subsection, the
 21 amount of the fine is a lien upon all of the assets and
 22 property of such broker-dealer, salesman, investment
 23 adviser, or investment adviser representative in this state
 24 and may be recovered by suit by the commissioner and
 25 deposited in the general fund. Failure of a broker-dealer,

1 salesman, investment adviser, or investment adviser
 2 representative to pay a fine also constitutes a forfeiture
 3 of his right to do business in this state under parts 1
 4 through 3 of this chapter."

5 **Section 3.** Section 30-10-206, MCA, is amended to read:

6 "30-10-206. General provisions regarding registration
 7 of securities. (1) A registration statement may be filed by
 8 the issuer, any other person on whose behalf the offering is
 9 to be made, or a registered broker-dealer. ~~Any document~~
 10 ~~filed under parts 1 through 3 of this chapter or a~~
 11 ~~predecessor law within 3 years preceding the filing of a~~
 12 ~~registration statement may be incorporated by reference in~~
 13 ~~the registration statement to the extent that the document~~
 14 ~~is currently accurate.~~ The commissioner may by rule or
 15 otherwise permit the omission of any item of information or
 16 document from any registration statement.

17 (2) (a) The commissioner may require as a condition of
 18 registration by qualification or coordination:

19 (i) that the following securities be deposited in
 20 escrow:

21 (A) any security issued within the past 3 years or to
 22 be issued to:

23 (I) a promoter for a consideration substantially
 24 different from the public offering price; or

25 (II) any person for a consideration other than cash; and

1 (B) any security issued or to be issued to a promoter
 2 while a corporation is still in a promotional or
 3 developmental stage; however, if shares were issued by a
 4 corporation while it was in a promotional or developmental
 5 stage and it no longer is in such stage, then this condition
 6 does not apply; and

7 (ii) that the proceeds from the sale of the registered
 8 security in this state be impounded until the issuer
 9 receives a specified amount from the sale of the security
 10 either in this state or elsewhere.

11 (b) The commissioner may determine the conditions of
 12 any escrow or impounding required hereunder, but he may not
 13 reject a depository solely because of location in another
 14 state.

15 (3) When securities are registered by notification,
 16 coordination, or qualification, they may be offered and sold
 17 by the issuer, any other person on whose behalf they are
 18 registered, or by any registered broker-dealer. Every
 19 registration shall remain effective for a period of 1 year
 20 unless it is revoked by the commissioner, terminated upon
 21 request of the registrant with the consent of the
 22 commissioner, or renewed under 30-10-209(1)(b); however,
 23 said registration shall be automatically suspended upon a
 24 stop order or suspension proceedings being instituted by the
 25 securities and exchange commission relative to said

1 securities and shall continue suspended so long as such
 2 proceedings are pending and until the registration or filing
 3 with the securities and exchange commission is effective.
 4 All outstanding securities of the same class as a currently
 5 registered security are considered to be registered for the
 6 purpose of any nonissuer transaction. A registration
 7 statement which has become effective may not be withdrawn
 8 for 1 year from its effective date if any securities of the
 9 same class are outstanding. Subject to the provisions of
 10 30-10-104 and 30-10-105, a salesman who offers or sells
 11 registered securities must be registered pursuant to
 12 30-10-201.

13 (4) The commissioner may require the person who filed
 14 the registration statement to file reports to keep
 15 reasonably current the information contained in the
 16 registration statement and to disclose the progress of the
 17 offering with respect to registered securities which:

18 (a) are issued by a face-amount certificate company or
 19 a redeemable security issued by an open-end management
 20 company or unit investment trust as those terms are defined
 21 in the Investment Company Act of 1940; or

22 (b) are being offered and sold directly by or for the
 23 account of the issuer.

24 (5) No securities registration statement may be
 25 withdrawn, whether or not such statement has become

1 effective, without the express written consent of the
2 commissioner."

3 **Section 4.** Section 30-10-208, MCA, is amended to read:

4 **"30-10-208. Consent to service of process -- manner of**
5 **service.** (1) Every applicant for registration as a
6 broker-dealer, or investment adviser, or salesman, or
7 investment adviser representative under parts 1 through 3 of
8 this chapter and every issuer which proposes to register and
9 offer a security in this state through any person acting on
10 an agency basis in the common-law sense shall file with the
11 commissioner, in such form as he prescribes, an irrevocable
12 consent appointing the commissioner and his successors in
13 office to be the attorney of the applicant to receive
14 service of any lawful process in any noncriminal suit,
15 action, or proceeding against the applicant or its or his
16 successor, executor, or administrator which arises under
17 parts 1 through 3 of this chapter or any rule or order
18 hereunder after the consent has been filed, with the same
19 force and validity as if served personally on the person
20 filing the consent. ~~A person who has filed such a consent in~~
21 ~~connection--with--a--previous--registration--need--not--file~~
22 ~~another.~~

23 (2) Service may be made by leaving a copy of the
24 process in the office of the commissioner, but it is not
25 effective unless:

1 (a) the plaintiff, who may be the commissioner, in a
2 suit, action, or proceeding instituted by him, forthwith
3 sends notice of the service and a copy of the process by
4 certified or registered mail to the defendant or respondent
5 at its or his last address on file with the commissioner;
6 and

7 (b) the plaintiff's affidavit of compliance with this
8 section is filed in the case on or before the return day of
9 the process, if any, or within such further time as the
10 court allows."

11 **Section 5.** Section 30-10-209, MCA, is amended to read:

12 **"30-10-209. Fees.** The following fees shall be paid in
13 advance under the provisions of parts 1 through 3 of this
14 chapter:

15 (1) (a) For the registration of securities by
16 notification, coordination, or qualification, there shall be
17 paid to the commissioner for the first year of registration
18 a registration fee of \$200 for the first \$100,000 of initial
19 issue or portion thereof in this state, based on offering
20 price, plus 1/10 of 1% for any excess over \$100,000, with a
21 maximum of \$1,000.

22 (b) Each year thereafter, a registration of securities
23 may be renewed, prior to its termination date, for an
24 additional year upon consent of the commissioner and payment
25 of an additional registration fee to be computed at 1/10 of

1 1% of the aggregate offering price of such securities which
 2 are to be offered in this state during that year, even
 3 though the maximum fee was paid the preceding year. In no
 4 event shall the additional registration fee be less than
 5 \$200 or more than \$1,000. The registration statement for
 6 such securities may be amended to increase the amount of
 7 securities to be offered.

8 (c) If a registrant sells securities in excess of the
 9 aggregate amount registered for sale in this state, the
 10 registrant may file an amendment to the registration
 11 statement to include the excess sales. If the registrant
 12 fails to file an amendment before the expiration date of the
 13 registration order, he shall pay a filing fee for the excess
 14 sales of three times the amount calculated in the manner
 15 specified in subsection (1)(b). Registration of the excess
 16 securities is effective retroactively to the date of the
 17 existing registration.

18 (2) (a) For registration of a broker-dealer or
 19 investment adviser, the fee shall be \$200 for original
 20 registration and \$200 for each annual renewal.

21 (b) For registration of a salesman or investment
 22 adviser representative, the fee shall be \$50 for original
 23 registration with each employer, \$50 for each annual
 24 renewal, and \$50 for each transfer.

25 (3) For certified or uncertified copies of any

1 documents filed with the commissioner, the fee shall be the
 2 cost to the department.

3 (4) For a request for an exemption under 30-10-105(15),
 4 the fee shall be established by the commissioner by rule.
 5 For a request for any other exemption or an exception to the
 6 provisions of parts 1 through 3 of this chapter, the fee
 7 shall be \$50.

8 (5) All fees are considered fully earned when received.
 9 In the event of overpayment, only those amounts in excess of
 10 \$10 may be refunded.

11 (6) All fees, examination charges, miscellaneous
 12 charges, fines, and penalties collected by the commissioner
 13 pursuant to parts 1 through 3 of this chapter and the rules
 14 adopted hereunder must be deposited in the general fund."

15 NEW SECTION. **Section 6.** Effective date. [This act] is
 16 effective on passage and approval.

-End-

1 SENATE BILL NO. 5

2 INTRODUCED BY B. BROWN

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS;
7 CLARIFYING PHYSICAL DELIVERY OF COMMODITIES; EXPANDING THE
8 DEFINITION OF SECURITY; MODIFYING THE REQUIREMENTS FOR
9 FILING REGISTRATION STATEMENTS; AMENDING SECTIONS 30-10-103,
10 30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 30-10-103, MCA, is amended to read:15 **"30-10-103. Definitions.** When used in parts 1 through 3
16 of this chapter, unless the context requires otherwise, the
17 following definitions apply:18 (1) "Commissioner" means securities commissioner of
19 this state.20 (2) "Salesman" means any individual other than a
21 broker-dealer who represents a broker-dealer or issuer in
22 effecting or attempting to effect sales of securities. A
23 partner, officer, or director of a broker-dealer or issuer
24 is a salesman only if he otherwise comes within this
25 definition. "Salesman" does not include an individual who

1 represents an issuer in:

2 (a) effecting a transaction in a security exempted by
3 subsections subsection (1), (2), (3), (8), (9), (10), or
4 (11) of 30-10-104;5 (b) effecting transactions exempted by 30-10-105 except
6 when registration as a salesman, pursuant to 30-10-201, is
7 required by 30-10-105 or by any rule promulgated under
8 30-10-105; or9 (c) effecting transactions with existing employees,
10 partners, or directors of the issuer if no commission or
11 other remuneration is paid or given directly or indirectly
12 for soliciting any person in this state.13 (3) "Broker-dealer" means any person engaged in the
14 business of effecting transactions in securities for the
15 account of others or for his own account. "Broker-dealer"
16 does not include:17 (a) a salesman, issuer, bank, savings institution,
18 trust company, or insurance company; or19 (b) a person who has no place of business in this state
20 if he effects transactions in this state exclusively with or
21 through the issuers of the securities involved in the
22 transactions, other broker-dealers, or banks, savings
23 institutions, trust companies, insurance companies,
24 investment companies as defined in the Investment Company
25 Act of 1940, pension or profit-sharing trusts, or other

1 financial institutions or institutional buyers, whether
2 acting for themselves or as trustee.

3 (4) "Registered broker-dealer" means a broker-dealer
4 registered pursuant to 30-10-201.

5 (5) (a) "Commodity" means:

6 (i) any agricultural, grain, or livestock product or
7 byproduct;

8 (ii) any metal or mineral, including a precious metal,
9 or any gem or gem stone, whether characterized as precious,
10 semiprecious, or otherwise;

11 (iii) any fuel, whether liquid, gaseous, or otherwise;

12 (iv) foreign currency; and

13 (v) all other goods, articles, products, or items of
14 any kind.

15 (b) Commodity does not include:

16 (i) a numismatic coin with a fair market value at least
17 15% higher than the value of the metal it contains;

18 (ii) real property or any timber, agricultural, or
19 livestock product grown or raised on real property and
20 offered and sold by the owner or lessee of such real
21 property; or

22 (iii) any work of art offered or sold by an art dealer
23 at public auction or offered or sold through a private sale
24 by the owner.

25 (6) "Commodity Exchange Act" means the federal statute

1 of that name as amended on the effective date of this
2 subsection.

3 (7) "Commodity futures trading commission" means the
4 independent regulatory agency established by congress to
5 administer the Commodity Exchange Act.

6 (8) (a) "Commodity investment contract" means any
7 account, agreement, or contract for the purchase or sale,
8 primarily for speculation or investment purposes and not for
9 use or consumption by the offeree or purchaser, of one or
10 more commodities, whether for immediate or subsequent
11 delivery or whether delivery is intended by the parties, and
12 whether characterized as a cash contract, deferred shipment
13 or deferred delivery contract, forward contract, futures
14 contract, installment or margin contract, leverage contract,
15 or otherwise. Any commodity investment contract offered or
16 sold, in the absence of evidence to the contrary, is
17 presumed to be offered or sold for speculation or investment
18 purposes.

19 (b) A commodity investment contract does not include a
20 contract or agreement that requires, and under which the
21 purchaser receives, within 28 calendar days after the
22 payment in good funds of any portion of the purchase price,
23 physical delivery of the total amount of each commodity to
24 be purchased under the contract or agreement. The purchaser
25 is not considered to have received physical delivery of the

1 total amount of each commodity to be purchased under the
 2 contract or agreement when the commodity or commodities are
 3 held as collateral for a loan or are subject to a lien of
 4 any person when the loan or lien arises in connection with
 5 the purchase of each commodity or commodities.

6 (9) (a) "Commodity option" means any account,
 7 agreement, or contract giving a party to the account,
 8 agreement, or contract the right but not the obligation to
 9 purchase or sell one or more commodities or one or more
 10 commodity contracts, whether characterized as an option,
 11 privilege, indemnity, bid, offer, put, call, advance
 12 guaranty, decline guaranty, or otherwise.

13 (b) The term does not include an option traded on a
 14 national securities exchange registered with the U.S.
 15 securities and exchange commission.

16 (10) "Guaranteed" means guaranteed as to payment of
 17 principal, interest, or dividends.

18 (11) (a) "Investment adviser" means any person who, for
 19 compensation, engages in the business of advising others,
 20 either directly or through publications or writings, as to
 21 the value of securities or as to the advisability of
 22 investing in, purchasing, or selling securities or who, for
 23 compensation and as a part of a regular business, issues or
 24 promulgates analyses or reports concerning securities.

25 (b) The term includes a financial planner or other

1 person who:

2 (i) as an integral component of other financially
 3 related services, provides the investment advisory services
 4 described in subsection (11)(a) to others for compensation,
 5 as part of a business; or

6 (ii) represents himself as providing the investment
 7 advisory services described in subsection (11)(a) to others
 8 for compensation.

9 (c) Investment adviser does not include:

10 (i) an investment adviser representative;

11 (ii) a bank, savings institution, trust company, or
 12 insurance company;

13 (iii) a lawyer, accountant, engineer, or teacher whose
 14 performance of these services is solely incidental to the
 15 practice of his profession;

16 (iv) a registered broker-dealer;

17 (v) a publisher of any newspaper, news column,
 18 newsletter, news magazine, or business or financial
 19 publication or service, whether communicated in hard copy
 20 form or by electronic means or otherwise, that does not
 21 consist of the rendering of advice on the basis of the
 22 specific investment situation of each client;

23 (vi) a person whose advice, analyses, or reports relate
 24 only to securities exempted by 30-10-104(1); or

25 (vii) such other persons not within the intent of this

1 subsection (11) as the commissioner may by rule or order
2 designate.

3 (12) (a) "Investment adviser representative" means any
4 partner of, officer of, director of, or a person occupying a
5 similar status or performing similar functions, or other
6 individual employed by or associated with an investment
7 adviser, except clerical or ministerial personnel, who:

8 (i) makes any recommendation or otherwise renders
9 advice regarding securities to clients;

10 (ii) manages accounts or portfolios of clients;

11 (iii) solicits, offers, or negotiates for the sale or
12 sells investment advisory services; or

13 (iv) supervises employees who perform any of the
14 foregoing.

15 (b) Investment adviser representative does not include
16 an individual registered as a salesman pursuant to
17 30-10-201.

18 (13) "Issuer" means any person who issues or proposes to
19 issue any security, except that with respect to certificates
20 of deposit, voting-trust certificates, or collateral-trust
21 certificates or with respect to certificates of interest or
22 shares in an unincorporated investment trust not having a
23 board of directors (or persons performing similar functions)
24 or of the fixed, restricted management, or unit type, the
25 term "issuer" means the person or persons performing the

1 acts and assuming the duties of depositor or manager
2 pursuant to the provisions of the trust or other agreement
3 or instrument under which the security is issued.

4 (14) "Nonissuer" means not directly or indirectly for
5 the benefit of the issuer.

6 (15) "Person", for the purpose of parts 1 through 3 of
7 this chapter, means an individual, a corporation, a
8 partnership, an association, a joint-stock company, a trust
9 where the interests of the beneficiaries are evidenced by a
10 security, an unincorporated organization, a government, or a
11 political subdivision of a government.

12 (16) "Precious metal" means the following, in coin,
13 bullion, or other form:

14 (a) silver;

15 (b) gold;

16 (c) platinum;

17 (d) palladium;

18 (e) copper; and

19 (f) such other items as the commissioner may by rule or
20 order specify.

21 (17) (a) "Sale" or "sell" includes every contract of
22 sale of, contract to sell, or disposition of a security or
23 interest in a security for value.

24 (b) "Offer" or "offer to sell" includes every attempt
25 or offer to dispose of or solicitation of an offer to buy a

1 security or interest in a security for value.

2 (c) Any security given or delivered with or as a bonus
3 on account of any purchase of securities or any other thing
4 is considered to constitute part of the subject of the
5 purchase and to have been offered and sold for value. A
6 purported gift of assessable stock is considered to involve
7 an offer and sale. Every sale or offer of a warrant or right
8 to purchase or subscribe to another security of the same or
9 another issuer, as well as every sale or offer of a security
10 which gives the holder a present or future right or
11 privilege to convert into another security of the same or
12 another issuer, is considered to include an offer of the
13 other security.

14 (18) "Securities Act of 1933", "Securities Exchange Act
15 of 1934", "Public Utility Holding Company Act of 1935",
16 "Investment Advisors Act of 1940", and "Investment Company
17 Act of 1940" mean the federal statutes of those names as
18 amended before or after July 1, 1961.

19 (19) "Security" means any note; stock; treasury stock;
20 bond; commodity investment contract; commodity option;
21 debenture; evidence of indebtedness; certificate of interest
22 or participation in any profit-sharing agreement;
23 collateral-trust certificate; preorganization certificate or
24 subscription; transferable shares; investment contract;
25 voting-trust certificate; certificate of deposit for a

1 security; certificate of interest or participation in an
2 oil, gas, or mining title or lease or in payments out of
3 production under such a title or lease; or, in general, any
4 interest or instrument commonly known as a security, any
5 put, call, straddle, option, or privilege on any security,
6 certificate of deposit, or group or index of securities,
7 including any interest in a security or based on the value
8 of a security, or any certificate of interest or
9 participation in, temporary or interim certificate for,
10 receipt for, guarantee of, or warrant or right to subscribe
11 to or purchase any of the foregoing. "Security" does not
12 include any insurance or endowment policy or annuity
13 contract under which an insurance company promises to pay a
14 sum of money either in a lump sum or periodically for life
15 or some other specified period.

16 (20) "State" means any state, territory, or possession
17 of the United States, as well as the District of Columbia
18 and Puerto Rico.

19 (21) "Transact", "transact business", or "transaction"
20 includes the meanings of the terms "sale", "sell", and
21 "offer".

22 **Section 2.** Section 30-10-201, MCA, is amended to read:
23 "30-10-201. Registration of broker-dealers, salesmen,
24 investment advisers, and investment adviser representatives.
25 (1) It is unlawful for a person to transact business in this

1 state as a broker-dealer or salesman, except as provided in
 2 30-10-105, unless he is registered under parts 1 through 3
 3 of this chapter.

4 (2) It is unlawful for a broker-dealer or issuer to
 5 employ a salesman to represent him in this state, except in
 6 transactions exempt under 30-10-105, unless the salesman is
 7 registered under parts 1 through 3 of this chapter.

8 (3) It is unlawful for any person to transact business
 9 in this state as an investment adviser or as an investment
 10 adviser representative unless:

11 (a) he is so registered under parts 1 through 3 of this
 12 chapter;

13 (b) he is registered as a broker-dealer under parts 1
 14 through 3 of this chapter;

15 (c) his only clients in this state are:

16 (i) investment companies, as defined in the Investment
 17 Company Act of 1940, or insurance companies;

18 (ii) other investment advisers;

19 (iii) broker-dealers;

20 (iv) banks;

21 (v) trust companies;

22 (vi) savings and loan associations;

23 (vii) employee benefit plans with assets of not less
 24 than \$1 million;

25 (viii) governmental agencies or instrumentalities,

1 whether acting for themselves or as trustees with investment
 2 control; or

3 (ix) other institutional investors as are designated by
 4 rule or order of the commissioner; or

5 (d) he has no place of business in this state and
 6 during any 12 consecutive months does not direct business
 7 communications in this state in any manner to more than five
 8 present or prospective clients, other than those specified
 9 in subsection (3)(c), whether or not he or any of the
 10 persons to whom the communications are directed are then
 11 present in this state.

12 (4) A broker-dealer or a salesman, acting as an agent
 13 for an issuer or as an agent for a broker-dealer in the
 14 offer or sale of securities for an issuer, or an investment
 15 adviser or investment adviser representative may apply for
 16 registration by filing an application in such form as the
 17 commissioner prescribes and payment of the fee prescribed in
 18 30-10-209. A salesman acting as agent for an issuer or
 19 broker-dealer who is not currently in compliance with the
 20 financial responsibility requirements prescribed by the
 21 Securities Exchange Act of 1934 and by regulations adopted
 22 under it, may, in the discretion of the commissioner, be
 23 required to file with the commissioner a bond of a surety
 24 company duly authorized to transact business in this state.
 25 The bond shall be in an amount determined by the

1 commissioner, payable to the state of Montana and
 2 conditioned upon the faithful compliance with the provisions
 3 of parts 1 through 3 of this chapter, and provide that upon
 4 failure to so comply, the salesman shall be liable to any
 5 and all persons who may suffer loss by reason thereof.

6 (5) The application shall contain whatever information
 7 the commissioner requires. No registration application of a
 8 broker-dealer, salesman, investment adviser, or investment
 9 adviser representative may be withdrawn before the
 10 commissioner approves or denies such registration, without
 11 the express written consent of the commissioner.

12 (6) When the registration requirements are met, the
 13 commissioner shall make the registration effective. No
 14 effective registration of a broker-dealer, salesman,
 15 investment adviser, or investment adviser representative may
 16 be withdrawn or terminated without the express written
 17 consent of the commissioner.

18 (7) Except as provided in subsection (6), registration
 19 of a broker-dealer, salesman, investment adviser, or
 20 investment adviser representative:

21 (a) is effective until December 31 following such
 22 registration or such other time as the commissioner may by
 23 rule adopt; and

24 (b) may be renewed.

25 (8) The registration of a salesman is not effective

1 during any period when he is not associated with an issuer
 2 or a registered broker-dealer specified in his application.
 3 When a salesman begins or terminates a connection with an
 4 issuer or registered broker-dealer, the salesman and the
 5 issuer or broker-dealer shall promptly notify the
 6 commissioner.

7 (9) The registration of an investment adviser
 8 representative is not effective during any period when he is
 9 not associated with an investment adviser registered under
 10 this act and specified in the application. When an
 11 investment adviser representative begins or terminates a
 12 connection with an investment adviser, the investment
 13 adviser shall promptly notify the commissioner.

14 (10) Registration of a broker-dealer, salesman,
 15 investment adviser, or investment adviser representative may
 16 be renewed by filing, prior to the expiration thereof, an
 17 application containing such information as the commissioner
 18 may require to indicate any material change in the
 19 information contained in the original application or any
 20 renewal application for registration as a broker-dealer,
 21 salesman, investment adviser, or investment adviser
 22 representative filed by the applicant, payment of the
 23 prescribed fee, and, in the case of a broker-dealer who is
 24 not a member of NASD, inc., by filing a financial statement
 25 showing the financial condition of such broker-dealer as of

1 a date within 90 days. A registered broker-dealer or
 2 investment adviser may file an application for registration
 3 of a successor, to become effective upon approval of the
 4 commissioner.

5 (11) Every registered broker-dealer and investment
 6 adviser shall make and keep such accounts and other records,
 7 except with respect to securities exempt under 30-10-104(1),
 8 as may be prescribed by the commissioner. All records so
 9 required shall be preserved for 3 years unless the
 10 commissioner prescribes otherwise for particular types of
 11 records. All the records of a registered broker-dealer or
 12 investment adviser are subject at any time or from time to
 13 time to such reasonable periodic, special, or other
 14 examinations, within or without this state, by
 15 representatives of the commissioner, as the commissioner
 16 considers necessary or appropriate in the public interest or
 17 for the protection of investors.

18 (12) The commissioner may by order deny, suspend, or
 19 revoke registration of any broker-dealer, salesman,
 20 investment adviser, or investment adviser representative if
 21 he finds that the order is in the public interest and that
 22 the applicant or registrant or, in the case of a
 23 broker-dealer or investment adviser, any partner, officer,
 24 director, person occupying a similar status or performing
 25 similar functions, or person directly or indirectly

1 controlling the broker-dealer or investment adviser:

2 (a) has filed an application for registration under
 3 this section which, as of its effective date or as of any
 4 date after filing in the case of an order denying
 5 effectiveness, was incomplete in any material respect or
 6 contained any statement which was, in the light of the
 7 circumstances under which it was made, false or misleading
 8 with respect to any material fact;

9 (b) has willfully violated or willfully failed to
 10 comply with any provision of parts 1 through 3 of this
 11 chapter or a predecessor law or any rule or order under
 12 parts 1 through 3 of this chapter or a predecessor law;

13 (c) has been convicted of any misdemeanor involving a
 14 security or any aspect of the securities business or any
 15 felony;

16 (d) is permanently or temporarily enjoined by any court
 17 of competent jurisdiction from engaging in or continuing any
 18 conduct or practice involving any aspect of the securities
 19 business;

20 (e) is the subject of an order of the commissioner
 21 denying, suspending, or revoking registration as a
 22 broker-dealer, salesman, investment adviser, or investment
 23 adviser representative;

24 (f) is the subject of an adjudication or determination,
 25 within the past 5 years, by a securities or commodities

1 agency or administrator of another state or a court of
2 competent jurisdiction, that the person has violated the
3 Securities Act of 1933, the Securities Exchange Act of 1934,
4 the Investment Advisors Act of 1940, the Investment Company
5 Act of 1940, or the Commodity Exchange Act or the securities
6 or commodities law of any other state;

7 (g) has engaged in dishonest or unethical practices in
8 the securities business;

9 (h) is insolvent, either in the sense that his
10 liabilities exceed his assets or in the sense that he cannot
11 meet his obligations as they mature, but the commissioner
12 may not enter an order against a broker-dealer or investment
13 adviser under this subsection (h) without a finding of
14 insolvency as to the broker-dealer or investment adviser;

15 (i) has not complied with a condition imposed by the
16 commissioner under this section or is not qualified on the
17 basis of such factors as training, experience, or knowledge
18 of the securities business;

19 (j) has failed to pay the proper filing fee, but the
20 commissioner may enter only a denial order under this
21 subsection (j), and he shall vacate any such order when the
22 deficiency has been corrected; or

23 (k) has failed to reasonably supervise his salesmen or
24 employees~~7-if-he-is-a-broker-dealer7~~ or his investment
25 adviser representatives or employees~~7-if-he-is-an-investment~~

1 adviser~~7~~ to assure their compliance with this act.

2 (13) The commissioner may not institute a suspension or
3 revocation proceeding on the basis of a fact or transaction
4 known to him when registration became effective unless the
5 proceeding is instituted within 30 days after the date on
6 which the registration became effective.

7 (14) The commissioner may by order summarily postpone or
8 suspend registration pending final determination of any
9 proceeding under this section.

10 (15) Upon the entry of the order under subsection (12)
11 of this section, the commissioner shall promptly notify the
12 applicant or registrant, as well as the employer or
13 prospective employer if the applicant or registrant is a
14 salesman or investment adviser representative, that it has
15 been entered and of the reasons therefor and that if
16 requested by the applicant or registrant within 15 days
17 after the receipt of the commissioner's notification the
18 matter will be promptly set down for hearing. If no hearing
19 is requested within 15 days and none is ordered by the
20 commissioner, the order will remain in effect until it is
21 modified or vacated by the commissioner. If a hearing is
22 requested or ordered, the commissioner, after notice of and
23 opportunity for hearing, may modify or vacate the order or
24 extend it until final determination.

25 (16) If the commissioner finds that any registrant or

1 applicant for registration is no longer in existence or has
 2 ceased to do business as a broker-dealer, salesman,
 3 investment adviser, or investment adviser representative or
 4 is subject to an adjudication of mental incompetence or to
 5 the control of a committee, conservator, or guardian or
 6 cannot be located after reasonable search, the commissioner
 7 may by order cancel the registration or application.

8 (17) The commissioner may, after suspending or revoking
 9 registration of any broker-dealer, salesman, investment
 10 adviser, or investment adviser representative, impose a fine
 11 not to exceed \$5,000 upon such broker-dealer, salesman,
 12 investment adviser, or investment adviser representative.
 13 The fine is in addition to all other penalties imposed by
 14 the laws of this state and must be collected by the
 15 commissioner in the name of the state of Montana and
 16 deposited in the general fund. Imposition of any fine under
 17 this subsection is an order from which an appeal may be
 18 taken pursuant to 30-10-308. If any broker-dealer, salesman,
 19 investment adviser, or investment adviser representative
 20 fails to pay a fine referred to in this subsection, the
 21 amount of the fine is a lien upon all of the assets and
 22 property of such broker-dealer, salesman, investment
 23 adviser, or investment adviser representative in this state
 24 and may be recovered by suit by the commissioner and
 25 deposited in the general fund. Failure of a broker-dealer,

1 salesman, investment adviser, or investment adviser
 2 representative to pay a fine also constitutes a forfeiture
 3 of his right to do business in this state under parts 1
 4 through 3 of this chapter."

5 **Section 3.** Section 30-10-206, MCA, is amended to read:

6 "30-10-206. General provisions regarding registration
 7 of securities. (1) A registration statement may be filed by
 8 the issuer, any other person on whose behalf the offering is
 9 to be made, or a registered broker-dealer. ~~Any document~~
 10 ~~filed under parts 1 through 3 of this chapter or a~~
 11 ~~predecessor law within 3 years preceding the filing of a~~
 12 ~~registration statement may be incorporated by reference in~~
 13 ~~the registration statement to the extent that the document~~
 14 ~~is currently accurate.~~ The commissioner may by rule or
 15 otherwise permit the omission of any item of information or
 16 document from any registration statement.

17 (2) (a) The commissioner may require as a condition of
 18 registration by qualification or coordination:

19 (i) that the following securities be deposited in
 20 escrow:

21 (A) any security issued within the past 3 years or to
 22 be issued to:

23 (I) a promoter for a consideration substantially
 24 different from the public offering price; or

25 (II) any person for a consideration other than cash; and

1 (B) any security issued or to be issued to a promoter
 2 while a corporation is still in a promotional or
 3 developmental stage; however, if shares were issued by a
 4 corporation while it was in a promotional or developmental
 5 stage and it no longer is in such stage, then this condition
 6 does not apply; and

7 (ii) that the proceeds from the sale of the registered
 8 security in this state be impounded until the issuer
 9 receives a specified amount from the sale of the security
 10 either in this state or elsewhere.

11 (b) The commissioner may determine the conditions of
 12 any escrow or impounding required hereunder, but he may not
 13 reject a depository solely because of location in another
 14 state.

15 (3) When securities are registered by notification,
 16 coordination, or qualification, they may be offered and sold
 17 by the issuer, any other person on whose behalf they are
 18 registered, or by any registered broker-dealer. Every
 19 registration shall remain effective for a period of 1 year
 20 unless it is revoked by the commissioner, terminated upon
 21 request of the registrant with the consent of the
 22 commissioner, or renewed under 30-10-209(1)(b); however,
 23 said registration shall be automatically suspended upon a
 24 stop order or suspension proceedings being instituted by the
 25 securities and exchange commission relative to said

1 securities and shall continue suspended so long as such
 2 proceedings are pending and until the registration or filing
 3 with the securities and exchange commission is effective.
 4 All outstanding securities of the same class as a currently
 5 registered security are considered to be registered for the
 6 purpose of any nonissuer transaction. A registration
 7 statement which has become effective may not be withdrawn
 8 for 1 year from its effective date if any securities of the
 9 same class are outstanding. Subject to the provisions of
 10 30-10-104 and 30-10-105, a salesman who offers or sells
 11 registered securities must be registered pursuant to
 12 30-10-201.

13 (4) The commissioner may require the person who filed
 14 the registration statement to file reports to keep
 15 reasonably current the information contained in the
 16 registration statement and to disclose the progress of the
 17 offering with respect to registered securities which:

18 (a) are issued by a face-amount certificate company or
 19 a redeemable security issued by an open-end management
 20 company or unit investment trust as those terms are defined
 21 in the Investment Company Act of 1940; or

22 (b) are being offered and sold directly by or for the
 23 account of the issuer.

24 (5) No securities registration statement may be
 25 withdrawn, whether or not such statement has become

1 effective, without the express written consent of the
2 commissioner."

3 **Section 4.** Section 30-10-208, MCA, is amended to read:

4 "30-10-208. Consent to service of process -- manner of
5 service. (1) Every applicant for registration as a
6 broker-dealer, or investment adviser, or salesman, or
7 investment adviser representative under parts 1 through 3 of
8 this chapter and every issuer which proposes to register and
9 offer a security in this state through any person acting on
10 an agency basis in the common-law sense shall file with the
11 commissioner, in such form as he prescribes, an irrevocable
12 consent appointing the commissioner and his successors in
13 office to be the attorney of the applicant to receive
14 service of any lawful process in any noncriminal suit,
15 action, or proceeding against the applicant or its or his
16 successor, executor, or administrator which arises under
17 parts 1 through 3 of this chapter or any rule or order
18 hereunder after the consent has been filed, with the same
19 force and validity as if served personally on the person
20 filing the consent. ~~A person who has filed such a consent in~~
21 ~~connection with a previous registration need not file~~
22 ~~another.~~

23 (2) Service may be made by leaving a copy of the
24 process in the office of the commissioner, but it is not
25 effective unless:

1 (a) the plaintiff, who may be the commissioner, in a
2 suit, action, or proceeding instituted by him, forthwith
3 sends notice of the service and a copy of the process by
4 certified or registered mail to the defendant or respondent
5 at its or his last address on file with the commissioner;
6 and

7 (b) the plaintiff's affidavit of compliance with this
8 section is filed in the case on or before the return day of
9 the process, if any, or within such further time as the
10 court allows."

11 **Section 5.** Section 30-10-209, MCA, is amended to read:

12 "30-10-209. Fees. The following fees shall be paid in
13 advance under the provisions of parts 1 through 3 of this
14 chapter:

15 (1) (a) For the registration of securities by
16 notification, coordination, or qualification, there shall be
17 paid to the commissioner for the first year of registration
18 a registration fee of \$200 for the first \$100,000 of initial
19 issue or portion thereof in this state, based on offering
20 price, plus 1/10 of 1% for any excess over \$100,000, with a
21 maximum of \$1,000.

22 (b) Each year thereafter, a registration of securities
23 may be renewed, prior to its termination date, for an
24 additional year upon consent of the commissioner and payment
25 of an additional registration fee to be computed at 1/10 of

1 1% of the aggregate offering price of such securities which
 2 are to be offered in this state during that year, even
 3 though the maximum fee was paid the preceding year. In no
 4 event shall the additional registration fee be less than
 5 \$200 or more than \$1,000. The registration statement for
 6 such securities may be amended to increase the amount of
 7 securities to be offered.

8 (c) If a registrant sells securities in excess of the
 9 aggregate amount registered for sale in this state, the
 10 registrant may file an amendment to the registration
 11 statement to include the excess sales. If the registrant
 12 fails to file an amendment before the expiration date of the
 13 registration order, he shall pay a filing fee for the excess
 14 sales of three times the amount calculated in the manner
 15 specified in subsection (1)(b). Registration of the excess
 16 securities is effective retroactively to the date of the
 17 existing registration.

18 (2) (a) For registration of a broker-dealer or
 19 investment adviser, the fee shall be \$200 for original
 20 registration and \$200 for each annual renewal.

21 (b) For registration of a salesman or investment
 22 adviser representative, the fee shall be \$50 for original
 23 registration with each employer, \$50 for each annual
 24 renewal, and \$50 for each transfer.

25 (3) For certified or uncertified copies of any

1 documents filed with the commissioner, the fee shall be the
 2 cost to the department.

3 (4) For a request for an exemption under 30-10-105(15),
 4 the fee shall be established by the commissioner by rule.
 5 For a request for any other exemption or an exception to the
 6 provisions of parts 1 through 3 of this chapter, the fee
 7 shall be \$50.

8 (5) All fees are considered fully earned when received.
 9 In the event of overpayment, only those amounts in excess of
 10 \$10 may be refunded.

11 (6) All fees, examination charges, miscellaneous
 12 charges, fines, and penalties collected by the commissioner
 13 pursuant to parts 1 through 3 of this chapter and the rules
 14 adopted hereunder must be deposited in the general fund."

15 NEW SECTION. **Section 6.** Effective date. [This act] is
 16 effective on passage and approval.

-End-

1 SENATE BILL NO. 5

2 INTRODUCED BY B. BROWN

3 BY REQUEST OF THE STATE AUDITOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS;
7 CLARIFYING PHYSICAL DELIVERY OF COMMODITIES; EXPANDING THE
8 DEFINITION OF SECURITY; MODIFYING THE REQUIREMENTS FOR
9 FILING REGISTRATION STATEMENTS; AMENDING SECTIONS 30-10-103,
10 30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
12

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

14 **Section 1.** Section 30-10-103, MCA, is amended to read:

15 "30-10-103. Definitions. When used in parts 1 through 3
16 of this chapter, unless the context requires otherwise, the
17 following definitions apply:

18 (1) "Commissioner" means securities commissioner of
19 this state.

20 (2) "Salesman" means any individual other than a
21 broker-dealer who represents a broker-dealer or issuer in
22 effecting or attempting to effect sales of securities. A
23 partner, officer, or director of a broker-dealer or issuer
24 is a salesman only if he otherwise comes within this
25 definition. "Salesman" does not include an individual who

1 represents an issuer in:

2 (a) effecting a transaction in a security exempted by
3 subsections subsection (1), (2), (3), (8), (9), (10), or
4 (11) of 30-10-104;

5 (b) effecting transactions exempted by 30-10-105 except
6 when registration as a salesman, pursuant to 30-10-201, is
7 required by 30-10-105 or by any rule promulgated under
8 30-10-105; or

9 (c) effecting transactions with existing employees,
10 partners, or directors of the issuer if no commission or
11 other remuneration is paid or given directly or indirectly
12 for soliciting any person in this state.

13 (3) "Broker-dealer" means any person engaged in the
14 business of effecting transactions in securities for the
15 account of others or for his own account. "Broker-dealer"
16 does not include:

17 (a) a salesman, issuer, bank, savings institution,
18 trust company, or insurance company; or

19 (b) a person who has no place of business in this state
20 if he effects transactions in this state exclusively with or
21 through the issuers of the securities involved in the
22 transactions, other broker-dealers, or banks, savings
23 institutions, trust companies, insurance companies,
24 investment companies as defined in the Investment Company
25 Act of 1940, pension or profit-sharing trusts, or other

REFERENCE BILL

1 financial institutions or institutional buyers, whether
2 acting for themselves or as trustee.

3 (4) "Registered broker-dealer" means a broker-dealer
4 registered pursuant to 30-10-201.

5 (5) (a) "Commodity" means:

6 (i) any agricultural, grain, or livestock product or
7 byproduct;

8 (ii) any metal or mineral, including a precious metal,
9 or any gem or gem stone, whether characterized as precious,
10 semiprecious, or otherwise;

11 (iii) any fuel, whether liquid, gaseous, or otherwise;

12 (iv) foreign currency; and

13 (v) all other goods, articles, products, or items of
14 any kind.

15 (b) Commodity does not include:

16 (i) a numismatic coin with a fair market value at least
17 15% higher than the value of the metal it contains;

18 (ii) real property or any timber, agricultural, or
19 livestock product grown or raised on real property and
20 offered and sold by the owner or lessee of such real
21 property; or

22 (iii) any work of art offered or sold by an art dealer
23 at public auction or offered or sold through a private sale
24 by the owner.

25 (6) "Commodity Exchange Act" means the federal statute

1 of that name as amended on the effective date of this
2 subsection.

3 (7) "Commodity futures trading commission" means the
4 independent regulatory agency established by congress to
5 administer the Commodity Exchange Act.

6 (8) (a) "Commodity investment contract" means any
7 account, agreement, or contract for the purchase or sale,
8 primarily for speculation or investment purposes and not for
9 use or consumption by the offeree or purchaser, of one or
10 more commodities, whether for immediate or subsequent
11 delivery or whether delivery is intended by the parties, and
12 whether characterized as a cash contract, deferred shipment
13 or deferred delivery contract, forward contract, futures
14 contract, installment or margin contract, leverage contract,
15 or otherwise. Any commodity investment contract offered or
16 sold, in the absence of evidence to the contrary, is
17 presumed to be offered or sold for speculation or investment
18 purposes.

19 (b) A commodity investment contract does not include a
20 contract or agreement that requires, and under which the
21 purchaser receives, within 28 calendar days after the
22 payment in good funds of any portion of the purchase price,
23 physical delivery of the total amount of each commodity to
24 be purchased under the contract or agreement. The purchaser
25 is not considered to have received physical delivery of the

1 total amount of each commodity to be purchased under the
 2 contract or agreement when the commodity or commodities are
 3 held as collateral for a loan or are subject to a lien of
 4 any person when the loan or lien arises in connection with
 5 the purchase of each commodity or commodities.

6 (9) (a) "Commodity option" means any account,
 7 agreement, or contract giving a party to the account,
 8 agreement, or contract the right but not the obligation to
 9 purchase or sell one or more commodities or one or more
 10 commodity contracts, whether characterized as an option,
 11 privilege, indemnity, bid, offer, put, call, advance
 12 guaranty, decline guaranty, or otherwise.

13 (b) The term does not include an option traded on a
 14 national securities exchange registered with the U.S.
 15 securities and exchange commission.

16 (10) "Guaranteed" means guaranteed as to payment of
 17 principal, interest, or dividends.

18 (11) (a) "Investment adviser" means any person who, for
 19 compensation, engages in the business of advising others,
 20 either directly or through publications or writings, as to
 21 the value of securities or as to the advisability of
 22 investing in, purchasing, or selling securities or who, for
 23 compensation and as a part of a regular business, issues or
 24 promulgates analyses or reports concerning securities.

25 (b) The term includes a financial planner or other

1 person who:

2 (i) as an integral component of other financially
 3 related services, provides the investment advisory services
 4 described in subsection (11)(a) to others for compensation,
 5 as part of a business; or

6 (ii) represents himself as providing the investment
 7 advisory services described in subsection (11)(a) to others
 8 for compensation.

9 (c) Investment adviser does not include:

10 (i) an investment adviser representative;

11 (ii) a bank, savings institution, trust company, or
 12 insurance company;

13 (iii) a lawyer, accountant, engineer, or teacher whose
 14 performance of these services is solely incidental to the
 15 practice of his profession;

16 (iv) a registered broker-dealer;

17 (v) a publisher of any newspaper, news column,
 18 newsletter, news magazine, or business or financial
 19 publication or service, whether communicated in hard copy
 20 form or by electronic means or otherwise, that does not
 21 consist of the rendering of advice on the basis of the
 22 specific investment situation of each client;

23 (vi) a person whose advice, analyses, or reports relate
 24 only to securities exempted by 30-10-104(1); or

25 (vii) such other persons not within the intent of this

1 subsection (11) as the commissioner may by rule or order
2 designate.

3 (12) (a) "Investment adviser representative" means any
4 partner of, officer of, director of, or a person occupying a
5 similar status or performing similar functions, or other
6 individual employed by or associated with an investment
7 adviser, except clerical or ministerial personnel, who:

8 (i) makes any recommendation or otherwise renders
9 advice regarding securities to clients;

10 (ii) manages accounts or portfolios of clients;

11 (iii) solicits, offers, or negotiates for the sale or
12 sells investment advisory services; or

13 (iv) supervises employees who perform any of the
14 foregoing.

15 (b) Investment adviser representative does not include
16 an individual registered as a salesman pursuant to
17 30-10-201.

18 (13) "Issuer" means any person who issues or proposes to
19 issue any security, except that with respect to certificates
20 of deposit, voting-trust certificates, or collateral-trust
21 certificates or with respect to certificates of interest or
22 shares in an unincorporated investment trust not having a
23 board of directors (or persons performing similar functions)
24 or of the fixed, restricted management, or unit type, the
25 term "issuer" means the person or persons performing the

1 acts and assuming the duties of depositor or manager
2 pursuant to the provisions of the trust or other agreement
3 or instrument under which the security is issued.

4 (14) "Nonissuer" means not directly or indirectly for
5 the benefit of the issuer.

6 (15) "Person", for the purpose of parts 1 through 3 of
7 this chapter, means an individual, a corporation, a
8 partnership, an association, a joint-stock company, a trust
9 where the interests of the beneficiaries are evidenced by a
10 security, an unincorporated organization, a government, or a
11 political subdivision of a government.

12 (16) "Precious metal" means the following, in coin,
13 bullion, or other form:

14 (a) silver;

15 (b) gold;

16 (c) platinum;

17 (d) palladium;

18 (e) copper; and

19 (f) such other items as the commissioner may by rule or
20 order specify.

21 (17) (a) "Sale" or "sell" includes every contract of
22 sale of, contract to sell, or disposition of a security or
23 interest in a security for value.

24 (b) "Offer" or "offer to sell" includes every attempt
25 or offer to dispose of or solicitation of an offer to buy a

1 security or interest in a security for value.

2 (c) Any security given or delivered with or as a bonus
3 on account of any purchase of securities or any other thing
4 is considered to constitute part of the subject of the
5 purchase and to have been offered and sold for value. A
6 purported gift of assessable stock is considered to involve
7 an offer and sale. Every sale or offer of a warrant or right
8 to purchase or subscribe to another security of the same or
9 another issuer, as well as every sale or offer of a security
10 which gives the holder a present or future right or
11 privilege to convert into another security of the same or
12 another issuer, is considered to include an offer of the
13 other security.

14 (18) "Securities Act of 1933", "Securities Exchange Act
15 of 1934", "Public Utility Holding Company Act of 1935",
16 "Investment Advisors Act of 1940", and "Investment Company
17 Act of 1940" mean the federal statutes of those names as
18 amended before or after July 1, 1961.

19 (19) "Security" means any note; stock; treasury stock;
20 bond; commodity investment contract; commodity option;
21 debenture; evidence of indebtedness; certificate of interest
22 or participation in any profit-sharing agreement;
23 collateral-trust certificate; preorganization certificate or
24 subscription; transferable shares; investment contract;
25 voting-trust certificate; certificate of deposit for a

1 security; certificate of interest or participation in an
2 oil, gas, or mining title or lease or in payments out of
3 production under such a title or lease; or, in general, any
4 interest or instrument commonly known as a security, any
5 put, call, straddle, option, or privilege on any security,
6 certificate of deposit, or group or index of securities,
7 including any interest in a security or based on the value
8 of a security, or any certificate of interest or
9 participation in, temporary or interim certificate for,
10 receipt for, guarantee of, or warrant or right to subscribe
11 to or purchase any of the foregoing. "Security" does not
12 include any insurance or endowment policy or annuity
13 contract under which an insurance company promises to pay a
14 sum of money either in a lump sum or periodically for life
15 or some other specified period.

16 (20) "State" means any state, territory, or possession
17 of the United States, as well as the District of Columbia
18 and Puerto Rico.

19 (21) "Transact", "transact business", or "transaction"
20 includes the meanings of the terms "sale", "sell", and
21 "offer".

22 **Section 2.** Section 30-10-201, MCA, is amended to read:

23 "30-10-201. Registration of broker-dealers, salesmen,
24 investment advisers, and investment adviser representatives.

25 (1) It is unlawful for a person to transact business in this

1 state as a broker-dealer or salesman, except as provided in
2 30-10-105, unless he is registered under parts 1 through 3
3 of this chapter.

4 (2) It is unlawful for a broker-dealer or issuer to
5 employ a salesman to represent him in this state, except in
6 transactions exempt under 30-10-105, unless the salesman is
7 registered under parts 1 through 3 of this chapter.

8 (3) It is unlawful for any person to transact business
9 in this state as an investment adviser or as an investment
10 adviser representative unless:

11 (a) he is so registered under parts 1 through 3 of this
12 chapter;

13 (b) he is registered as a broker-dealer under parts 1
14 through 3 of this chapter;

15 (c) his only clients in this state are:

16 (i) investment companies, as defined in the Investment
17 Company Act of 1940, or insurance companies;

18 (ii) other investment advisers;

19 (iii) broker-dealers;

20 (iv) banks;

21 (v) trust companies;

22 (vi) savings and loan associations;

23 (vii) employee benefit plans with assets of not less
24 than \$1 million;

25 (viii) governmental agencies or instrumentalities,

1 whether acting for themselves or as trustees with investment
2 control; or

3 (ix) other institutional investors as are designated by
4 rule or order of the commissioner; or

5 (d) he has no place of business in this state and
6 during any 12 consecutive months does not direct business
7 communications in this state in any manner to more than five
8 present or prospective clients, other than those specified
9 in subsection (3)(c), whether or not he or any of the
10 persons to whom the communications are directed are then
11 present in this state.

12 (4) A broker-dealer or a salesman, acting as an agent
13 for an issuer or as an agent for a broker-dealer in the
14 offer or sale of securities for an issuer, or an investment
15 adviser or investment adviser representative may apply for
16 registration by filing an application in such form as the
17 commissioner prescribes and payment of the fee prescribed in
18 30-10-209. A salesman acting as agent for an issuer or
19 broker-dealer who is not currently in compliance with the
20 financial responsibility requirements prescribed by the
21 Securities Exchange Act of 1934 and by regulations adopted
22 under it, may, in the discretion of the commissioner, be
23 required to file with the commissioner a bond of a surety
24 company duly authorized to transact business in this state.
25 The bond shall be in an amount determined by the

1 commissioner, payable to the state of Montana and
 2 conditioned upon the faithful compliance with the provisions
 3 of parts 1 through 3 of this chapter, and provide that upon
 4 failure to so comply, the salesman shall be liable to any
 5 and all persons who may suffer loss by reason thereof.

6 (5) The application shall contain whatever information
 7 the commissioner requires. No registration application of a
 8 broker-dealer, salesman, investment adviser, or investment
 9 adviser representative may be withdrawn before the
 10 commissioner approves or denies such registration, without
 11 the express written consent of the commissioner.

12 (6) When the registration requirements are met, the
 13 commissioner shall make the registration effective. No
 14 effective registration of a broker-dealer, salesman,
 15 investment adviser, or investment adviser representative may
 16 be withdrawn or terminated without the express written
 17 consent of the commissioner.

18 (7) Except as provided in subsection (6), registration
 19 of a broker-dealer, salesman, investment adviser, or
 20 investment adviser representative:

21 (a) is effective until December 31 following such
 22 registration or such other time as the commissioner may by
 23 rule adopt; and

24 (b) may be renewed.

25 (8) The registration of a salesman is not effective

1 during any period when he is not associated with an issuer
 2 or a registered broker-dealer specified in his application.
 3 When a salesman begins or terminates a connection with an
 4 issuer or registered broker-dealer, the salesman and the
 5 issuer or broker-dealer shall promptly notify the
 6 commissioner.

7 (9) The registration of an investment adviser
 8 representative is not effective during any period when he is
 9 not associated with an investment adviser registered under
 10 this act and specified in the application. When an
 11 investment adviser representative begins or terminates a
 12 connection with an investment adviser, the investment
 13 adviser shall promptly notify the commissioner.

14 (10) Registration of a broker-dealer, salesman,
 15 investment adviser, or investment adviser representative may
 16 be renewed by filing, prior to the expiration thereof, an
 17 application containing such information as the commissioner
 18 may require to indicate any material change in the
 19 information contained in the original application or any
 20 renewal application for registration as a broker-dealer,
 21 salesman, investment adviser, or investment adviser
 22 representative filed by the applicant, payment of the
 23 prescribed fee, and, in the case of a broker-dealer who is
 24 not a member of NASD, inc., by filing a financial statement
 25 showing the financial condition of such broker-dealer as of

1 a date within 90 days. A registered broker-dealer or
2 investment adviser may file an application for registration
3 of a successor, to become effective upon approval of the
4 commissioner.

5 (11) Every registered broker-dealer and investment
6 adviser shall make and keep such accounts and other records,
7 except with respect to securities exempt under 30-10-104(1),
8 as may be prescribed by the commissioner. All records so
9 required shall be preserved for 3 years unless the
10 commissioner prescribes otherwise for particular types of
11 records. All the records of a registered broker-dealer or
12 investment adviser are subject at any time or from time to
13 time to such reasonable periodic, special, or other
14 examinations, within or without this state, by
15 representatives of the commissioner, as the commissioner
16 considers necessary or appropriate in the public interest or
17 for the protection of investors.

18 (12) The commissioner may by order deny, suspend, or
19 revoke registration of any broker-dealer, salesman,
20 investment adviser, or investment adviser representative if
21 he finds that the order is in the public interest and that
22 the applicant or registrant or, in the case of a
23 broker-dealer or investment adviser, any partner, officer,
24 director, person occupying a similar status or performing
25 similar functions, or person directly or indirectly

1 controlling the broker-dealer or investment adviser:

2 (a) has filed an application for registration under
3 this section which, as of its effective date or as of any
4 date after filing in the case of an order denying
5 effectiveness, was incomplete in any material respect or
6 contained any statement which was, in the light of the
7 circumstances under which it was made, false or misleading
8 with respect to any material fact;

9 (b) has willfully violated or willfully failed to
10 comply with any provision of parts 1 through 3 of this
11 chapter or a predecessor law or any rule or order under
12 parts 1 through 3 of this chapter or a predecessor law;

13 (c) has been convicted of any misdemeanor involving a
14 security or any aspect of the securities business or any
15 felony;

16 (d) is permanently or temporarily enjoined by any court
17 of competent jurisdiction from engaging in or continuing any
18 conduct or practice involving any aspect of the securities
19 business;

20 (e) is the subject of an order of the commissioner
21 denying, suspending, or revoking registration as a
22 broker-dealer, salesman, investment adviser, or investment
23 adviser representative;

24 (f) is the subject of an adjudication or determination,
25 within the past 5 years, by a securities or commodities

1 agency or administrator of another state or a court of
2 competent jurisdiction, that the person has violated the
3 Securities Act of 1933, the Securities Exchange Act of 1934,
4 the Investment Advisors Act of 1940, the Investment Company
5 Act of 1940, or the Commodity Exchange Act or the securities
6 or commodities law of any other state;

7 (g) has engaged in dishonest or unethical practices in
8 the securities business;

9 (h) is insolvent, either in the sense that his
10 liabilities exceed his assets or in the sense that he cannot
11 meet his obligations as they mature, but the commissioner
12 may not enter an order against a broker-dealer or investment
13 adviser under this subsection (h) without a finding of
14 insolvency as to the broker-dealer or investment adviser;

15 (i) has not complied with a condition imposed by the
16 commissioner under this section or is not qualified on the
17 basis of such factors as training, experience, or knowledge
18 of the securities business;

19 (j) has failed to pay the proper filing fee, but the
20 commissioner may enter only a denial order under this
21 subsection (j), and he shall vacate any such order when the
22 deficiency has been corrected; or

23 (k) has failed to reasonably supervise his salesmen or
24 employees, ~~if he is a broker-dealer~~ or his investment
25 adviser representatives or employees, ~~if he is an investment~~

1 adviser, to assure their compliance with this act.

2 (13) The commissioner may not institute a suspension or
3 revocation proceeding on the basis of a fact or transaction
4 known to him when registration became effective unless the
5 proceeding is instituted within 30 days after the date on
6 which the registration became effective.

7 (14) The commissioner may by order summarily postpone or
8 suspend registration pending final determination of any
9 proceeding under this section.

10 (15) Upon the entry of the order under subsection (12)
11 of this section, the commissioner shall promptly notify the
12 applicant or registrant, as well as the employer or
13 prospective employer if the applicant or registrant is a
14 salesman or investment adviser representative, that it has
15 been entered and of the reasons therefor and that if
16 requested by the applicant or registrant within 15 days
17 after the receipt of the commissioner's notification the
18 matter will be promptly set down for hearing. If no hearing
19 is requested within 15 days and none is ordered by the
20 commissioner, the order will remain in effect until it is
21 modified or vacated by the commissioner. If a hearing is
22 requested or ordered, the commissioner, after notice of and
23 opportunity for hearing, may modify or vacate the order or
24 extend it until final determination.

25 (16) If the commissioner finds that any registrant or

1 applicant for registration is no longer in existence or has
 2 ceased to do business as a broker-dealer, salesman,
 3 investment adviser, or investment adviser representative or
 4 is subject to an adjudication of mental incompetence or to
 5 the control of a committee, conservator, or guardian or
 6 cannot be located after reasonable search, the commissioner
 7 may by order cancel the registration or application.

8 (17) The commissioner may, after suspending or revoking
 9 registration of any broker-dealer, salesman, investment
 10 adviser, or investment adviser representative, impose a fine
 11 not to exceed \$5,000 upon such broker-dealer, salesman,
 12 investment adviser, or investment adviser representative.
 13 The fine is in addition to all other penalties imposed by
 14 the laws of this state and must be collected by the
 15 commissioner in the name of the state of Montana and
 16 deposited in the general fund. Imposition of any fine under
 17 this subsection is an order from which an appeal may be
 18 taken pursuant to 30-10-308. If any broker-dealer, salesman,
 19 investment adviser, or investment adviser representative
 20 fails to pay a fine referred to in this subsection, the
 21 amount of the fine is a lien upon all of the assets and
 22 property of such broker-dealer, salesman, investment
 23 adviser, or investment adviser representative in this state
 24 and may be recovered by suit by the commissioner and
 25 deposited in the general fund. Failure of a broker-dealer,

1 salesman, investment adviser, or investment adviser
 2 representative to pay a fine also constitutes a forfeiture
 3 of his right to do business in this state under parts 1
 4 through 3 of this chapter."

5 **Section 3.** Section 30-10-206, MCA, is amended to read:

6 "30-10-206. General provisions regarding registration
 7 of securities. (1) A registration statement may be filed by
 8 the issuer, any other person on whose behalf the offering is
 9 to be made, or a registered broker-dealer. ~~Any document~~
 10 ~~filed--under--parts--1--through--3--of--this--chapter--or--a~~
 11 ~~predecessor-law-within-3-years-preceding--the--filing--of--a~~
 12 ~~registration--statement--may-be-incorporated-by-reference-in~~
 13 ~~the-registration-statement-to-the-extent-that--the--document~~
 14 ~~is--currently--accurate.~~ The commissioner may by rule or
 15 otherwise permit the omission of any item of information or
 16 document from any registration statement.

17 (2) (a) The commissioner may require as a condition of
 18 registration by qualification or coordination:

19 (i) that the following securities be deposited in
 20 escrow:

21 (A) any security issued within the past 3 years or to
 22 be issued to:

23 (I) a promoter for a consideration substantially
 24 different from the public offering price; or

25 (II) any person for a consideration other than cash; and

1 (B) any security issued or to be issued to a promoter
 2 while a corporation is still in a promotional or
 3 developmental stage; however, if shares were issued by a
 4 corporation while it was in a promotional or developmental
 5 stage and it no longer is in such stage, then this condition
 6 does not apply; and

7 (ii) that the proceeds from the sale of the registered
 8 security in this state be impounded until the issuer
 9 receives a specified amount from the sale of the security
 10 either in this state or elsewhere.

11 (b) The commissioner may determine the conditions of
 12 any escrow or impounding required hereunder, but he may not
 13 reject a depository solely because of location in another
 14 state.

15 (3) When securities are registered by notification,
 16 coordination, or qualification, they may be offered and sold
 17 by the issuer, any other person on whose behalf they are
 18 registered, or by any registered broker-dealer. Every
 19 registration shall remain effective for a period of 1 year
 20 unless it is revoked by the commissioner, terminated upon
 21 request of the registrant with the consent of the
 22 commissioner, or renewed under 30-10-209(1)(b); however,
 23 said registration shall be automatically suspended upon a
 24 stop order or suspension proceedings being instituted by the
 25 securities and exchange commission relative to said

1 securities and shall continue suspended so long as such
 2 proceedings are pending and until the registration or filing
 3 with the securities and exchange commission is effective.
 4 All outstanding securities of the same class as a currently
 5 registered security are considered to be registered for the
 6 purpose of any nonissuer transaction. A registration
 7 statement which has become effective may not be withdrawn
 8 for 1 year from its effective date if any securities of the
 9 same class are outstanding. Subject to the provisions of
 10 30-10-104 and 30-10-105, a salesman who offers or sells
 11 registered securities must be registered pursuant to
 12 30-10-201.

13 (4) The commissioner may require the person who filed
 14 the registration statement to file reports to keep
 15 reasonably current the information contained in the
 16 registration statement and to disclose the progress of the
 17 offering with respect to registered securities which:

18 (a) are issued by a face-amount certificate company or
 19 a redeemable security issued by an open-end management
 20 company or unit investment trust as those terms are defined
 21 in the Investment Company Act of 1940; or

22 (b) are being offered and sold directly by or for the
 23 account of the issuer.

24 (5) No securities registration statement may be
 25 withdrawn, whether or not such statement has become

1 effective, without the express written consent of the
2 commissioner."

3 **Section 4.** Section 30-10-208, MCA, is amended to read:

4 "30-10-208. Consent to service of process -- manner of
5 service. (1) Every applicant for registration as a
6 broker-dealer, or investment adviser, or salesman, or
7 investment adviser representative under parts 1 through 3 of
8 this chapter and every issuer which proposes to register and
9 offer a security in this state through any person acting on
10 an agency basis in the common-law sense shall file with the
11 commissioner, in such form as he prescribes, an irrevocable
12 consent appointing the commissioner and his successors in
13 office to be the attorney of the applicant to receive
14 service of any lawful process in any noncriminal suit,
15 action, or proceeding against the applicant or its or his
16 successor, executor, or administrator which arises under
17 parts 1 through 3 of this chapter or any rule or order
18 hereunder after the consent has been filed, with the same
19 force and validity as if served personally on the person
20 filing the consent. ~~A person who has filed such a consent in
21 connection with a previous registration need not file
22 another.~~

23 (2) Service may be made by leaving a copy of the
24 process in the office of the commissioner, but it is not
25 effective unless:

1 (a) the plaintiff, who may be the commissioner, in a
2 suit, action, or proceeding instituted by him, forthwith
3 sends notice of the service and a copy of the process by
4 certified or registered mail to the defendant or respondent
5 at its or his last address on file with the commissioner;
6 and

7 (b) the plaintiff's affidavit of compliance with this
8 section is filed in the case on or before the return day of
9 the process, if any, or within such further time as the
10 court allows."

11 **Section 5.** Section 30-10-209, MCA, is amended to read:

12 "30-10-209. Fees. The following fees shall be paid in
13 advance under the provisions of parts 1 through 3 of this
14 chapter:

15 (1) (a) For the registration of securities by
16 notification, coordination, or qualification, there shall be
17 paid to the commissioner for the first year of registration
18 a registration fee of \$200 for the first \$100,000 of initial
19 issue or portion thereof in this state, based on offering
20 price, plus 1/10 of 1% for any excess over \$100,000, with a
21 maximum of \$1,000.

22 (b) Each year thereafter, a registration of securities
23 may be renewed, prior to its termination date, for an
24 additional year upon consent of the commissioner and payment
25 of an additional registration fee to be computed at 1/10 of

1 1% of the aggregate offering price of such securities which
 2 are to be offered in this state during that year, even
 3 though the maximum fee was paid the preceding year. In no
 4 event shall the additional registration fee be less than
 5 \$200 or more than \$1,000. The registration statement for
 6 such securities may be amended to increase the amount of
 7 securities to be offered.

8 (c) If a registrant sells securities in excess of the
 9 aggregate amount registered for sale in this state, the
 10 registrant may file an amendment to the registration
 11 statement to include the excess sales. If the registrant
 12 fails to file an amendment before the expiration date of the
 13 registration order, he shall pay a filing fee for the excess
 14 sales of three times the amount calculated in the manner
 15 specified in subsection (1)(b). Registration of the excess
 16 securities is effective retroactively to the date of the
 17 existing registration.

18 (2) (a) For registration of a broker-dealer or
 19 investment adviser, the fee shall be \$200 for original
 20 registration and \$200 for each annual renewal.

21 (b) For registration of a salesman or investment
 22 adviser representative, the fee shall be \$50 for original
 23 registration with each employer, \$50 for each annual
 24 renewal, and \$50 for each transfer.

25 (3) For certified or uncertified copies of any

1 documents filed with the commissioner, the fee shall be the
 2 cost to the department.

3 (4) For a request for an exemption under 30-10-105(15),
 4 the fee shall be established by the commissioner by rule.
 5 For a request for any other exemption or an exception to the
 6 provisions of parts 1 through 3 of this chapter, the fee
 7 shall be \$50.

8 (5) All fees are considered fully earned when received.
 9 In the event of overpayment, only those amounts in excess of
 10 \$10 may be refunded.

11 (6) All fees, examination charges, miscellaneous
 12 charges, fines, and penalties collected by the commissioner
 13 pursuant to parts 1 through 3 of this chapter and the rules
 14 adopted hereunder must be deposited in the general fund."

15 NEW SECTION. **Section 6. Effective date.** [This act] is
 16 effective on passage and approval.

-End-