SENATE BILL NO. 5

INTRODUCED BY B. BROWN BY REQUEST OF THE STATE AUDITOR

IN THE SENATE

DECEMBER 28, 1990

INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.

INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

PRINTING REPORT.

COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.

JANUARY 11, 1991

SECOND READING, DO PASS.

JANUARY 12, 1991

THIRD READING, PASSED.

AYES, 49; NOES, 0.

ENGROSSING REPORT.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 14, 1991

JANUARY 18, 1991

JANUARY 19, 1991

RETURNED TO SENATE.

AYES, 94; NOES, 3.

FIRST READING.

IN THE SENATE

JANUARY 21, 1991

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN.

JANUARY 21, 1991

JANUARY 7, 1991

JANUARY 10, 1991

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1 SENATE BILL NO. 5 1 represents an issuer in: 2 INTRODUCED BY B. BROWN 2 3 BY REQUEST OF THE STATE AUDITOR 3 4 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 5 6 SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS; б 7 CLARIFYING PHYSICAL DELIVERY OF COMMODITIES: EXPANDING THE 7 8 DEFINITION OF SECURITY: MODIFYING THE REQUIREMENTS FOR 8 9 FILING REGISTRATION STATEMENTS: AMENDING SECTIONS 30-10-103. 9 10 30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA: AND 10 11 PROVIDING AN IMMEDIATE EFFECTIVE DATE." 11 12 12 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 13 Section 1. Section 30-10-103, MCA, is amended to read: 14 14 15 *30-10-103. Definitions. When used in parts 1 through 3 15 16 16 of this chapter, unless the context requires otherwise, the 17 17 following definitions apply: 18 (1) "Commissioner" means securities commissioner of 18 19 19 this state. 20 (2) "Salesman" means any individual other than a 20 21 21 broker-dealer who represents a broker-dealer or issuer in 22 22 effecting or attempting to effect sales of securities. A 23 23 partner, officer, or director of a broker-dealer or issuer 24 24 is a salesman only if he otherwise comes within this 25 25 definition. "Salesman" does not include an individual who

(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

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financial institutions or institutional buyers, whether acting for themselves or as trustee. (4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201. (5) (a) "Commodity" means: (i) any agricultural, grain, or livestock product or byproduct; (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise; (iii) any fuel, whether liquid, gaseous, or otherwise: (iv) foreign currency; and (v) all other goods, articles, products, or items of any kind. (b) Commodity does not include: (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains: (ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of such real property; or (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner. (6) "Commodity Exchange Act" means the federal statute -3-

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

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

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

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

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

(11) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or 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

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

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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 30-10-201. 17 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

acts and assuming the duties of depositor or manager
 pursuant to the provisions of the trust or other agreement
 or instrument under which the security is issued.
 (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 the purpose of t

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

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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 another issuer, is considered to include an offer of the 12 13 other security.

(18) "Securities Act of 1933", "Securities Exchange Act
of 1934", "Public Utility Holding Company Act of 1935",
"Investment Advisors Act of 1940", and "Investment Company
Act of 1940" mean the federal statutes of those names as
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

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1 security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of 2 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 я 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 include any insurance or endowment policy or annuity 12 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"."

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

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state as a broker-dealer or salesman, except as provided in
 30-10-105, unless he is registered under parts 1 through 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 114 through 3 of this chapter;

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

16 (i) investment companies, as defined in the Investment17 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 less24 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 broker-dealer who is not currently in compliance with the 19 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 commissioner, payable to the state of Montana and
 conditioned upon the faithful compliance with the provisions
 of parts 1 through 3 of this chapter, and provide that upon
 failure to so comply, the salesman shall be liable to any
 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:

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

24 (b) may be renewed.

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

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during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the 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 be renewed by filing, prior to the expiration thereof, an 16 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 prescribed fee, and, in the case of a broker-dealer who is 23 24 not a member of NASD, inc., by filing a financial statement 25 showing the financial condition of such broker-dealer as of

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

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

(12) The commissioner may by order deny, suspend, or 18 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 applicant or registrant or, in the case of a the broker-dealer or investment adviser, any partner, officer, 23 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;

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

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

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

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

7 (g) has engaged in dishonest or unethical practices in8 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;

(i) has not complied with a condition imposed by the
commissioner under this section or is not gualified on the
basis of such factors as training, experience, or knowledge
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

(k) has failed to reasonably supervise his salesmen or
 employees₇-if-he--is--a--broker-dealer₇ or his investment
 adviser representatives or employees₇-if-he-is-an-investment

1 adviser, to assure their compliance with this act.

2 (13) The commissioner may not institute a suspension or 7 revocation proceeding on the basis of a fact or transaction 74 known to him when registration became effective unless the 75 proceeding is instituted within 30 days after the date on 76 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.

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

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

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applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesman, investment adviser, or investment adviser representative or subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner 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 adviser, or investment adviser representative, impose a fine 10 not to exceed \$5,000 upon such broker-dealer, salesman, 11 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 this subsection is an order from which an appeal may be 17 taken pursuant to 30-10-308. If any broker-dealer, salesman, 18 investment adviser, or investment adviser representative 19 20 fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and 21 22 property of such broker-dealer, salesman, investment adviser, or investment adviser representative in this state 23 24 and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, 25

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: б *30-10-206. General provisions regarding registration 7 of securities. (1) A registration statement may be filed by R 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--l--through--3--of--this--chapter--or--a 11 predecessor-law-within-3-years-preceding--the--filing--of--g 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 of18 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 substantially24 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 registered, or by any registered broker-dealer. Every 18 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 stop order or suspension proceedings being instituted by the 24 25 securities and exchange commission relative to said

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

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

24 (5) No securities registration statement may be25 withdrawn, whether or not such statement has become

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

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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 б 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 filing the consent. A-person-who-has-filed-such-a-consent-in 20 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.

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

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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.

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8 (c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the 9 registrant may file an amendment to the registration 10 statement to include the excess sales. If the registrant 11 fails to file an amendment before the expiration date of the 12 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.

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

25 (3) For certified or uncertified copies of any

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documents filed with the commissioner, the fee shall be the
 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.

(6) All fees, examination charges, miscellaneous
charges, fines, and penalties collected by the commissioner
pursuant to parts 1 through 3 of this chapter and the rules
adopted hereunder must be deposited in the general fund."
NEW SECTION. Section 6. Effective date. [This act] is

16 effective on passage and approval.

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SB 0005/01 APPROVED BY COMM. ON BUSINESS & INDUSTRY

1	SENATE BILL NO. 5
2	INTRODUCED BY B. BROWN
3	BY REQUEST OF THE STATE AUDITOR

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."

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13 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:

18 (1) "Commissioner" means securities commissioner of 19 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

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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	<u>30-10-105;</u> 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			
	SECOND READING			

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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) (a) "Commodity" means:

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6 (i) any agricultural, grain, or livestock product or7 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

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

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

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

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

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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.

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6 (9) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, 7 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 quaranty, decline quaranty, 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: (i) as an integral component of other financially 2 related services, provides the investment advisory services 3 described in subsection (11)(a) to others for compensation, Δ as part of a business; or 5 (ii) represents himself as providing the investment 6 advisory services described in subsection (11)(a) to others 7 R for compensation. 9 (c) Investment adviser does not include: (i) an investment adviser representative; 10 (ii) a bank, savings institution, trust company, or 13 12 insurance company; 13 (iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the 14 15 practice of his profession; 16 (iv) a registered broker-dealer; (v) a publisher of any newspaper, news column, 17 newsletter, news magazine, or business or financial 18 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; (vi) a person whose advice, analyses, or reports relate 23 24 only to securities exempted by 30-10-104(1); or

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

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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 the14 foregoing.

(b) Investment adviser representative does not include
an individual registered as a salesman pursuant to
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 certificates or with respect to certificates of interest or 21 shares in an unincorporated investment trust not having a 22 board of directors (or persons performing similar functions) 23 or of the fixed, restricted management, or unit type, the 24 25 term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager
 pursuant to the provisions of the trust or other agreement
 or instrument under which the security is issued.

4 (14) "Nonissuer" means not directly or indirectly for5 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

(f) such other items as the commissioner may by rule ororder 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.

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

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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 purported gift of assessable stock is considered to involve 6 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.

(18) "Securities Act of 1933", "Securities Exchange Act
of 1934", "Public Utility Holding Company Act of 1935",
"Investment Advisors Act of 1940", and "Investment Company
Act of 1940" mean the federal statutes of those names as
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

security; certificate of interest or participation in an ł 2 oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any 3 interest or instrument commonly known as a security, any 4 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 я 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

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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 Company Act of 1940, or insurance companies; 17

(ii) other investment advisers; 18

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,

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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

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commissioner, payable to the state of Montana and
 conditioned upon the faithful compliance with the provisions
 of parts 1 through 3 of this chapter, and provide that upon
 failure to so comply, the salesman shall be liable to any
 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

during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. 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.

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

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

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

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

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;

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

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

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

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

7 (g) has engaged in dishonest or unethical practices in8 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

(k) has failed to reasonably supervise his salesmen or
employees₇-if-he--is--a--broker-dealer₇ or his investment
adviser representatives or employees₇-if-he-is-an-investment

1 adviser7 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.

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

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

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applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesman, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner 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 not to exceed \$5,000 upon such broker-dealer, salesman, 11 investment adviser, or investment adviser representative. 12 13 The fine is in addition to all other penalties imposed by 14 the laws of this state and must be collected by the commissioner in the name of the state of Montana and 15 deposited in the general fund. Imposition of any fine under 16 this subsection is an order from which an appeal may be 17 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 adviser, or investment adviser representative in this state 23 and may be recovered by suit by the commissioner and 24 deposited in the general fund. Failure of a broker-dealer, 25

salesman, investment adviser, or investment adviser
 representative to pay a fine also constitutes a forfeiture
 of his right to do business in this state under parts 1
 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--l--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 substantially24 different from the public offering price; or

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

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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 registration shall remain effective for a period of 1 year 19 20 unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the 21 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

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

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

24 (5) No securities registration statement may be25 withdrawn, whether or not such statement has become

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

Section 4. Section 30-10-208, MCA, is amended to read: 3 "30-10-208. Consent to service of process -- manner of 4 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 A 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 office to be the attorney of the applicant to receive 13 service of any lawful process in any noncriminal suit, 14 action, or proceeding against the applicant or its or his 15 16 successor, executor, or administrator which arises under parts 1 through 3 of this chapter or any rule or order 17 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 anothers

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:

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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:

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

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

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

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

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

25 (3) For certified or uncertified copies of any

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

1

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.

(6) All fees, examination charges, miscellaneous
charges, fines, and penalties collected by the commissioner
pursuant to parts 1 through 3 of this chapter and the rules
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-

(a) effecting a transaction in a security exempted by

represents an issuer in:

1 2

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:
14 15	Section 1. Section 30-10-103, MCA, is amended to read: *30-10-103. Definitions. When used in parts 1 through 3
15	"30-10-103. Definitions. When used in parts 1 through 3
15 16	*30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the
15 16 17	*30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:
15 16 17 18	"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
15 16 17 18 19	<pre>"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.</pre>
15 16 17 18 19 20	<pre>"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</pre>
15 16 17 18 19 20 21	 "30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply: "Commissioner" means securities commissioner of this state. "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in
15 16 17 18 19 20 21 22	 "30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply: "Commissioner" means securities commissioner of this state. "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
15 16 17 18 19 20 21 22 23	 "30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply: "Commissioner" means securities commissioner of this state. "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

ing Legislative Council

subsections subsection (1), (2), (3), (8), (9), (10), or 3 4 (11) of 30-10-104; (b) effecting transactions exempted by 30-10-105 except 5 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 savings transactions, other broker-dealers, or banks, 23 insurance companies, institutions, trust companies, 24 investment companies as defined in the Investment Company 25 Act of 1940, pension or profit-sharing trusts, or other

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financial institutions or institutional buyers, whether
 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 or7 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;

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

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

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

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

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

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

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

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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 of17 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 (ll)(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

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1	subsection (11) as the commissioner may by rule or order	1
2	designate.	2
3	(12) (a) "Investment adviser representative" means any	3
4	partner of, officer of, director of, or a person occupying a	4
5	similar status or performing similar functions, or other	5
6	individual employed by or associated with an investment	6
7	adviser, except clerical or ministerial personnel, who:	7
8	(i) makes any recommendation or otherwise renders	8
9	advice regarding securities to clients;	9
10	(ii) manages accounts or portfolios of clients;	10
11	(iii) solicits, offers, or negotiates for the sale or	11
12	sells investment advisory services; or	12
13	(iv) supervises employees who perform any of the	13
14	foregoing.	14
15	(b) Investment adviser representative does not include	15
16	an individual registered as a salesman pursuant to	16
17	30-10-201.	17
18	(13) "Issuer" means any person who issues or proposes to	18
19	issue any security, except that with respect to certificates	19
20	of deposit, voting-trust certificates, or collateral-trust	20
21	certificates or with respect to certificates of interest or	21
22	shares in an unincorporated investment trust not having a	22
23	board of directors (or persons performing similar functions)	23
24	or of the fixed, restricted management, or unit type, the	24
25	term "issuer" means the person or persons performing the	25

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

4 (14) "Nonissuer" means not directly or indirectly for5 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;
- .6 (c) platinum;

17 (d) palladium;

18 (e) copper; and

(f) such other items as the commissioner may by rule ororder 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.

(b) "Offer" or "offer to sell" includes every attempt
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.

(18) "Securities Act of 1933", "Securities Exchange Act
of 1934", "Public Utility Holding Company Act of 1935",
"Investment Advisors Act of 1940", and "Investment Company
Act of 1940" mean the federal statutes of those names as
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 participation in any profit-sharing OF 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 production under such a title or lease; or, in general, any 3 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, quarantee 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:

33 "30-10-201. Registration of broker-dealers, salesmen,
investment advisers, and investment adviser representatives.
(1) It is unlawful for a person to transact business in this

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state as a broker-dealer or salesman, except as provided in
 30-10-105, unless he is registered under parts 1 through 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 114 through 3 of this chapter;

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

16 (i) investment companies, as defined in the Investment17 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 less24 than \$1 million;

25 (viii) governmental agencies or instrumentalities,

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

3 (ix) other institutional investors as are designated by4 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

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commissioner, payable to the state of Montana and
 conditioned upon the faithful compliance with the provisions
 of parts 1 through 3 of this chapter, and provide that upon
 failure to so comply, the salesman shall be liable to any
 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:

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

24 (b) may be renewed.

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

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

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

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

5 (11) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, 6 except with respect to securities exempt under 30-10-104(1), 7 as may be prescribed by the commissioner. All records so 8 required shall be preserved for 3 years unless the 9 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 representatives of the commissioner, as the commissioner 15 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 he finds that the order is in the public interest and that 21 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:

(a) has filed an application for registration under 2 this section which, as of its effective date or as of any 3 date after filing in the case of an order denying 4 effectiveness, was incomplete in any material respect or 5 contained any statement which was, in the light of the 6 circumstances under which it was made, false or misleading 7 with respect to any material fact; 8 (b) has willfully violated or willfully failed to 9 comply with any provision of parts 1 through 3 of this 10 chapter or a predecessor law or any rule or order under 11 parts 1 through 3 of this chapter or a predecessor law; 12 (c) has been convicted of any misdemeanor involving a 13 security or any aspect of the securities business or any 14 15 felony: (d) is permanently or temporarily enjoined by any court 16 of competent jurisdiction from engaging in or continuing any 17 conduct or practice involving any aspect of the securities 18 business: 19 (e) is the subject of an order of the commissioner 20 denying, suspending, or revoking registration as a 21 broker-dealer, salesman, investment adviser, or investment 22

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

adviser representative;

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

7 (g) has engaged in dishonest or unethical practices in8 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;

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

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

(k) has failed to reasonably supervise his salesmen or
 employees7-if-he--is--a--broker-dealer7 or his investment
 adviser representatives or employees7-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.

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

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

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

8 (17) The commissioner may, after suspending or revoking 0 registration of any broker-dealer, salesman, investment 10 adviser, or investment adviser representative, impose a fine not to exceed \$5,000 upon such broker-dealer, salesman, 11 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 commissioner in the name of the state of Montana and 15 deposited in the general fund. Imposition of any fine under 16 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 and may be recovered by suit by the commissioner and 24 25 deposited in the general fund. Failure of a broker-dealer,

salesman, investment adviser, or investment adviser
 representative to pay a fine also constitutes a forfeiture
 of his right to do business in this state under parts 1
 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 the issuer, any other person on whose behalf the offering is 8 9 to be made, or a registered broker-dealer. Any-document 10 filed--under--parts--l--through--j--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 document from any registration statement. 16 17 (2) (a) The commissioner may require as a condition of

16 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 substantially24 different from the public offering price; or

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

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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 does not apply; and 6

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.

(b) The commissioner may determine the conditions of 11 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 registered, or by any registered broker-dealer. Every 18 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, said registration shall be automatically suspended upon a 23 24 stop order or suspension proceedings being instituted by the 25 securities and exchange commission relative to said -

securities and shall continue suspended so long as such 1 proceedings are pending and until the registration or filing 2 with the securities and exchange commission is effective. 3 All outstanding securities of the same class as a currently ۸ registered security are considered to be registered for the 5 purpose of any nonissuer transaction. A registration 6 7 statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the 8 same class are outstanding. Subject to the provisions of 9 30-10-104 and 30-10-105, a salesman who offers or sells 10 registered securities must be registered pursuant to 11 12 30-10-201. (4) The commissioner may require the person who filed 13 the registration statement to file reports to keep 14 15 reasonably current the information contained in the registration statement and to disclose the progress of the 16 offering with respect to registered securities which: 17 (a) are issued by a face-amount certificate company or 18 a redeemable security issued by an open-end management 19 company or unit investment trust as those terms are defined 20 in the Investment Company Act of 1940; or 21 (b) are being offered and sold directly by or for the 22 23 account of the issuer.

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

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

Section 4. Section 30-10-208, MCA, is amended to read: 3 4 "30-10-208. Consent to service of process -- manner of 5 service. (1) Every applicant for registration as a broker-dealer, or investment adviser, or salesman, or 6 7 investment adviser representative under parts 1 through 3 of 8 this chapter and every issuer which proposes to register and offer a security in this state through any person acting on 9 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 hereunder after the consent has been filed, with the same 18 19 force and validity as if served personally on the person 20 filing the consent. A-person-who-has-filed-such-a-consent-in connection--with--a--previous--registration--need--not--file 21 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. Pees. 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.

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

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

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

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

25 (3) For certified or uncertified copies of any

documents filed with the commissioner, the fee shall be the
 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.

(6) All fees, examination charges, miscellaneous
 charges, fines, and penalties collected by the commissioner
 pursuant to parts 1 through 3 of this chapter and the rules
 adopted hereunder must be deposited in the general fund."
 NEW SECTION. Section 6. Effective date. [This act] is

16 effective on passage and approval.

-End-

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SB 0005/02

1	SENATE BILL NO. 5	1	repre
2	INTRODUCED BY B. BROWN	2	
3	BY REQUEST OF THE STATE AUDITOR	3	subsi
4	· · · ·	4	(11)
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	5	
6	SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS;	б	when
7	CLARIFYING PHYSICAL DELIVERY OF COMMODITIES; EXPANDING THE	7	requ
8	DEFINITION OF SECURITY; MODIFYING THE REQUIREMENTS FOR	8	30-1
9	FILING REGISTRATION STATEMENTS; AMENDING SECTIONS 30-10-103,	9	
10	30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA; AND	10	parti
11	PROVIDING AN IMMEDIATE EFFECTIVE DATE."	11	othe
12		12	for
13	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	13	
14	Section 1. Section 30-10-103, MCA, is amended to read:	14	busi
15	"30-10-103. Definitions. When used in parts 1 through 3	15	acco
16	of this chapter, unless the context requires otherwise, the	16	does
17	following definitions apply:	17	
18	(1) "Commissioner" means securities commissioner of	18	trus
19	this state.	19	
20	(2) "Salesman" means any individual other than a	20	if h
21	broker-dealer who represents a broker-dealer or issuer in	21	thro
22	effecting or attempting to effect sales of securities. A	22	tran
23	partner, officer, or director of a broker-dealer or issuer	23	inst
24	is a salesman only if he otherwise comes within this	24	inve

definition. "Salesman" does not include an individual who



esents an issuer in: (a) effecting a transaction in a security exempted by ections subsection (1), (2), (3), (8), (9), (10), or of 30-10-104: (b) effecting transactions exempted by 30-10-105 except registration as a salesman, pursuant to 30-10-201, is ired by 30-10-105 or by any rule promulgated under .0-105; or (c) effecting transactions with existing employees, mers, or directors of the issuer if no commission or r remuneration is paid or given directly or indirectly soliciting any person in this state. (3) "Broker-dealer" means any person engaged in the iness of effecting transactions in securities for the ount of others or for his own account. "Broker-dealer" not include: (a) a salesman, issuer, bank, savings institution, t company, or insurance company; or (b) a person who has no place of business in this state ne effects transactions in this state exclusively with or ough the issuers of the securities involved in the sactions, other broker-dealers, or banks, savings itutions, trust companies, insurance companies, estment companies as defined in the Investment Company

25 Act of 1940, pension or profit-sharing trusts, or other

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REFERENCE BILL

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1 financial institutions or institutional buyers, whether acting for themselves or as trustee. 2 (4) "Registered broker-dealer" means a broker-dealer 3 registered pursuant to 30-10-201. 4 (5) (a) "Commodity" means: 5 (i) any agricultural, grain, or livestock product or 6 byproduct; 7 (ii) any metal or mineral, including a precious metal, 8 or any gem or gem stone, whether characterized as precious, 9 semiprecious, or otherwise; 10 (iii) any fuel, whether liquid, gaseous, or otherwise; 11 12 (iv) foreign currency; and 13 (v) all other goods, articles, products, or items of 14 any kind. 15 (b) Commodity does not include: (i) a numismatic coin with a fair market value at least 16 15% higher than the value of the metal it contains; 17 (ii) real property or any timber, agricultural, or 18 livestock product grown or raised on real property and 19 20 offered and sold by the owner or lessee of such real 21 property; or (iii) any work of art offered or sold by an art dealer 22 23 at public auction or offered or sold through a private sale 24 by the owner. (6) "Commodity Exchange Act" means the federal statute 25 -3-SB 5

of that name as amended on the effective date of this 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 account, agreement, or contract for the purchase or sale, 7 primarily for speculation or investment purposes and not for я use or consumption by the offeree or purchaser, of one or 9 more commodities, whether for immediate or subsequent 10 delivery or whether delivery is intended by the parties, and 11 whether characterized as a cash contract, deferred shipment 12 13 or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, 14 or otherwise. Any commodity investment contract offered or 15 sold, in the absence of evidence to the contrary, is 16 presumed to be offered or sold for speculation or investment 17 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. <u>The purchaser</u> 25 is not considered to have received physical delivery of the

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total amount of each commodity to be purchased under the 1 contract or agreement when the commodity or commodities are 2 held as collateral for a loan or are subject to a lien of 3 any person when the loan or lien arises in connection with 4 the purchase of each commodity or commodities. 5 (9) (a) "Commodity option" means any account. 6 agreement, or contract giving a party to the account, 7 8 agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more 9 commodity contracts, whether characterized as an option, 10 privilege, indemnity, bid, offer, put, call, advance 11 quaranty, decline quaranty, or otherwise. 12 (b) The term does not include an option traded on a 13 national securities exchange registered with the U.S. 14

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

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1 person who:

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2 (i) as an integral component of other financially 3 related services, provides the investment advisory services 4 described in subsection (ll)(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 (ll)(a) to others
8 for compensation.

9 (c) Investment adviser does not include:

(i) an investment adviser representative;

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

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

16 (iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the 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

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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 similar status or performing similar functions, or other 5 individual employed by or associated with an investment 6 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. 16 (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

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acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued. (14) "Nonissuer" means not directly or indirectly for the benefit of the issuer. (15) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government. (16) "Precious metal" means the following, in coin, 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.

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

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1 security or interest in a security for value.

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

(18) "Securities Act of 1933", "Securities Exchange Act
of 1934", "Public Utility Holding Company Act of 1935",
"Investment Advisors Act of 1940", and "Investment Company
Act of 1940" mean the federal statutes of those names as
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

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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, receipt for, guarantee of, or warrant or right to subscribe 10 11 to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity 12 contract under which an insurance company promises to pay a 13 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

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state as a broker-dealer or salesman, except as provided in
 30-10-105, unless he is registered under parts 1 through 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 114 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 less24 than \$1 million;

25 (viii) governmental agencies or instrumentalities,

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1 whether acting for themselves or as trustees with investment

2 control; or

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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

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commissioner, payable to the state of Montana and
 conditioned upon the faithful compliance with the provisions
 of parts 1 through 3 of this chapter, and provide that upon
 failure to so comply, the salesman shall be liable to any
 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:

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

24 (b) may be renewed.

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

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

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

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 information contained in the original application or any 19 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 not a member of NASD, inc., by filing a financial statement 24 25 showing the financial condition of such broker-dealer as of

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a date within 90 days. A registered broker-dealer or
 investment adviser may file an application for registration
 of a successor, to become effective upon approval of the
 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, bv representatives of the commissioner, as the commissioner 15 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 applicant or registrant or, in the case of a the 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

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agency or administrator of another state or a court of
 competent jurisdiction, that the person has violated the
 Securities Act of 1933, the Securities Exchange Act of 1934,
 the Investment Advisors Act of 1940, the Investment Company
 Act of 1940, or the Commodity Exchange Act or the securities
 or commodities law of any other state:

7 (g) has engaged in dishonest or unethical practices in8 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;

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

(k) has failed to reasonably supervise his salesmen or
 employees₇-if-he--is--a--broker-dealer₇ or his investment
 adviser representatives or employees₇-if-he-is-an-investment

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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.

(16) If the commissioner finds that any registrant or

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applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesman, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner 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 not to exceed \$5,000 upon such broker-dealer, salesman, 11 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 taken pursuant to 30-10-308. If any broker-dealer, salesman, 18 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 property of such broker-dealer, salesman, investment 22 23 adviser, or investment adviser representative in this state 24 and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, 25

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

Section 3. Section 30-10-206, MCA, is amended to read: 5 "30-10-206. General provisions regarding registration 6 of securities. (1) A registration statement may be filed by 7 the issuer, any other person on whose behalf the offering is 8 to be made, or a registered broker-dealer. Any-document 9 filed--under--parts--1--through--3--of--this--chapter--or--a 10 11 predecessor-law-within-3-years-preceding--the--filing--of--a 12 registration--statement--may-be-incorporated-by-reference-in the-registration-statement-to-the-extent-that--the--document 13 is--currently--accurate. The commissioner may by rule or 14 otherwise permit the omission of any item of information or 15 16 document from any registration statement. (2) (a) The commissioner may require as a condition of 17

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 to22 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

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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.

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

15 (3) When securities are registered by notification, coordination, or gualification, they may be offered and sold 16 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 securities and exchange commission relative to said 25

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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 for 1 year from its effective date if any securities of the 8 9 same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesman who offers or sells 10 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

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

24 (5) No securities registration statement may be25 withdrawn, whether or not such statement has become

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

Section 4. Section 30-10-208, MCA, is amended to read: 3 4 "30-10-208. Consent to service of process -- manner of Every applicant for registration as a service. (1) 5 broker-dealer, or investment adviser, or salesman, or 6 investment adviser representative under parts 1 through 3 of 7 8 this chapter and every issuer which proposes to register and offer a security in this state through any person acting on 9 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 service of any lawful process in any noncriminal suit, 14 action, or proceeding against the applicant or its or his 15 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:

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

a second subsequences and a subsequences of the second s

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:

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

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

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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.

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

25 (3) For certified or uncertified copies of any

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documents filed with the commissioner, the fee shall be the 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-

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