



1 ~~SENATE~~ BILL NO. 248  
 2 INTRODUCED BY Sen. Hammond  
 3 BY REQUEST OF THE SECURITIES COMMISSIONER

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS  
 6 RELATING TO SECURITIES REGULATION; INCREASING THE NUMBER OF  
 7 OFFERERS UNDER THE LIMITED OFFERING EXEMPTION; REVISING  
 8 EXEMPTION PROCEDURES; PROVIDING FOR THE REGULATION OF  
 9 LIMITED OFFERING EXEMPTIONS; AND AMENDING SECTION 30-10-105,  
 10 MCA."  
 11

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

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

14 **\*30-10-105. Exempt transactions.** Except as in this  
 15 section expressly provided, 30-10-201 through 30-10-207  
 16 shall not apply to any of the following transactions:

17 (1) any nonissuer isolated transaction, whether  
 18 effected through a broker-dealer or not. A transaction is  
 19 presumed to be isolated if it is one of not more than three  
 20 transactions during the prior 12-month period.

21 (2) (a) any nonissuer distribution of an outstanding  
 22 security by a broker-dealer registered pursuant to 30-10-201  
 23 if:

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

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

6 (ii) the security has a fixed maturity or a fixed  
 7 interest or dividend provision and there has been no default  
 8 during the current fiscal year or within the 3 preceding  
 9 fiscal years, or during the existence of the issuer and any  
 10 predecessors if less than 3 years, in the payment of  
 11 principal, interest, or dividends on the security.

12 (b) The commissioner may by order deny or revoke the  
 13 exemption specified in subsection (2)(a) with respect to a  
 14 specific security. Upon the entry of such an order, the  
 15 commissioner shall promptly notify all registered  
 16 broker-dealers that it has been entered and of the reasons  
 17 therefor and that within 15 days of the receipt of a written  
 18 request the matter will be set down for hearing. If no  
 19 hearing is requested 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 to all interested persons, may  
 24 modify or vacate the order or extend it until final  
 25 determination. No order under this subsection may operate

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

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

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

16 (5) any transaction by an executor, administrator,  
 17 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 18 or conservator in the performance of his official duties as  
 19 such;

20 (6) any transaction executed by a bona fide pledgee  
 21 without any purpose of evading parts 1 through 3 of this  
 22 chapter;

23 (7) any offer or sale to a bank, savings institution,  
 24 trust company, insurance company, investment company as  
 25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trust, or other financial institution or  
 2 institutional buyer, or to a broker-dealer, whether the  
 3 purchaser is acting for itself or in some fiduciary  
 4 capacity;

5 (8) (a) any transaction pursuant to an offer made in  
 6 this state directed by the offeror to not more than ~~10~~ 25  
 7 persons (other than those designated in subsection (7))  
 8 during any period of 12 consecutive months, if:

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

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

18 (iii) the offeror applies for and obtains the written  
 19 approval of the commissioner prior to making any offers in  
 20 this state and pays a filing fee that must accompany the  
 21 application for approval;

22 (b) any issues transaction by a newly incorporated  
 23 Montana corporation, effected within 90 days from the date  
 24 of incorporation, pursuant to an offer or sale directed to  
 25 no more than 10 persons in this state.

1 (c) The commissioner may by rule or order as to any  
 2 security or transaction or any type of security or  
 3 transaction:

4 (i) withdraw or further condition the exemptions  
 5 provided in this subsection (8);

6 (ii) increase or decrease the number of permissible  
 7 offerees; or

8 (iii) waive the conditions of this subsection (8) with  
 9 or without the substitution of a limitation on remuneration.

10 ~~(b)~~(d) For the purpose of the exemption exemptions  
 11 provided for in subsection (8)~~(a)~~, an offer to sell is made  
 12 in this state, whether or not the offeror or any of the  
 13 offerees is then present in this state, if the offer either  
 14 originates from this state or is directed by the offeror to  
 15 this state and received at the place to which it is directed  
 16 (or at any post office in this state in the case of a mailed  
 17 offer).

18 (9) any offer or sale of a preorganization certificate  
 19 or subscription if:

20 (a) no commission or other remuneration is paid or  
 21 given directly or indirectly for soliciting any prospective  
 22 subscriber;

23 (b) the number of subscribers does not exceed ~~10~~ 25;  
 24 and

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

1 (10) any transaction pursuant to an offer to existing  
 2 security holders of the issuer, including persons who at the  
 3 time of the transaction are holders of convertible  
 4 securities, nontransferable warrants, or transferable  
 5 warrants exercisable within not more than 90 days of their  
 6 issuance, if:

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

10 (b) the issuer first files a notice specifying the  
 11 terms of the offer and the commissioner does not by order  
 12 disallow either (a) or (b) of this subsection;

13 (11) any offer (but not a sale) of a security for which  
 14 registration statements have been filed under both parts 1  
 15 through 3 of this chapter and the Securities Act of 1933 if  
 16 no stop, refusal, denial, suspension, or revocation order is  
 17 in effect and no public proceeding or examination looking  
 18 toward such an order is pending under either law;

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

24 (13) the issuance of any stock dividend, whether the  
 25 corporation distributing the dividend is the issuer of the

1 stock or not, if nothing of value is given by stockholders  
 2 for the distribution other than the surrender of a right to  
 3 a cash dividend where the stockholder can elect to take a  
 4 dividend in cash or stock;

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

10 (15) any transaction in compliance with such rules as  
 11 the commissioner in his discretion may adopt to serve the  
 12 purposes of 30-10-102. The commissioner may in his  
 13 discretion require that 30-10-201 through 30-10-207 apply to  
 14 any or all transactional exemptions adopted by rule.

15 (16) any transaction by a certified Montana capital  
 16 company as defined in 90-8-104, provided that such company  
 17 first files all disclosure documents, along with a consent  
 18 to service of process, with the commissioner. The  
 19 commissioner may not charge a fee for the filing.

20 (17) the sale of a commodity investment contract traded  
 21 on a commodities exchange recognized by the commissioner at  
 22 the time of sale;

23 (18) transaction within the exclusive jurisdiction of  
 24 the commodity futures trading commission as granted under  
 25 the Commodity Exchange Act;

1 (19) a transaction that:

2 (a) involves the purchase of one or more precious  
 3 metals; and

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

13 (i) (A) is a financial institution (meaning a bank,  
 14 savings institution, or trust company organized under or  
 15 supervised pursuant to the laws of the United States or of  
 16 this state);

17 (B) is a depository the warehouse receipts of which are  
 18 recognized for delivery purposes for any commodity on a  
 19 contract market designated by the commodity futures trading  
 20 commission; or

21 (C) is a storage facility licensed by the United States  
 22 or any agency of the United States; and

23 (ii) issues, and the purchaser receives, a certificate,  
 24 document of title, confirmation, or other instrument  
 25 evidencing that such quantity of precious metals has been

1 delivered to the depository and is being and will continue  
2 to be held on the purchaser's behalf, free and clear of all  
3 liens and encumbrances other than:

- 4 (A) liens of the purchaser;
- 5 (B) tax liens;
- 6 (C) liens agreed to by the purchaser; or
- 7 (D) liens of the depository for fees and expenses that  
8 previously have been disclosed to the purchaser.

9 (20) a transaction involving a commodity investment  
10 contract solely between persons engaged in producing,  
11 processing, using commercially, or handling as merchants  
12 each commodity subject to the contract or any byproduct of  
13 the commodity;

14 (21) any offer or sale of a security to an employee of  
15 the issuer, pursuant to an employee stock ownership plan  
16 qualified under section 401 of the Internal Revenue Code of  
17 1986."

-End-

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

1                   SENATE BILL NO. 248  
 2                   INTRODUCED BY HAMMOND  
 3                   BY REQUEST OF THE SECURITIES COMMISSIONER  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS  
 6 RELATING TO SECURITIES REGULATION; ~~INCREASING-THE-NUMBER-OF~~  
 7 ~~OPPEREES--UNDER--THE~~ CREATING A NEW LIMITED OFFERING  
 8 EXEMPTION; REVISING EXEMPTION PROCEDURES; PROVIDING FOR THE  
 9 REGULATION OF LIMITED OFFERING EXEMPTIONS; AND AMENDING  
 10 SECTION 30-10-105, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13       **Section 1.** Section 30-10-105, MCA, is amended to read:  
 14       "30-10-105. **Exempt transactions.** Except as in this  
 15 section expressly provided, 30-10-201 through 30-10-207  
 16 shall not apply to any of the following transactions:  
 17       (1) any nonissuer isolated transaction, whether  
 18 effected through a broker-dealer or not. A transaction is  
 19 presumed to be isolated if it is one of not more than three  
 20 transactions during the prior 12-month period.  
 21       (2) (a) any nonissuer distribution of an outstanding  
 22 security by a broker-dealer registered pursuant to 30-10-201  
 23 if:  
 24       (i) quotations for the securities to be offered or sold  
 25 (or the securities issuable upon exercise of any warrant or

1 right to purchase or subscribe to such securities) are  
 2 reported by the automated quotations system operated by the  
 3 national association of securities dealers, inc., (NASDAQ)  
 4 or by any other quotation system approved by the  
 5 commissioner by rule; or  
 6       (ii) the security has a fixed maturity or a fixed  
 7 interest or dividend provision and there has been no default  
 8 during the current fiscal year or within the 3 preceding  
 9 fiscal years, or during the existence of the issuer and any  
 10 predecessors if less than 3 years, in the payment of  
 11 principal, interest, or dividends on the security.  
 12       (b) The commissioner may by order deny or revoke the  
 13 exemption specified in subsection (2)(a) with respect to a  
 14 specific security. Upon the entry of such an order, the  
 15 commissioner shall promptly notify all registered  
 16 broker-dealers that it has been entered and of the reasons  
 17 therefor and that within 15 days of the receipt of a written  
 18 request the matter will be set down for hearing. If no  
 19 hearing is requested 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 to all interested persons, may  
 24 modify or vacate the order or extend it until final  
 25 determination. No order under this subsection may operate

**SECOND READING**



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

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

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

16 (5) any transaction by an executor, administrator,  
 17 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 18 or conservator in the performance of his official duties as  
 19 such;

20 (6) any transaction executed by a bona fide pledgee  
 21 without any purpose of evading parts 1 through 3 of this  
 22 chapter;

23 (7) any offer or sale to a bank, savings institution,  
 24 trust company, insurance company, investment company as  
 25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trust, or other financial institution or  
 2 institutional buyer, or to a broker-dealer, whether the  
 3 purchaser is acting for itself or in some fiduciary  
 4 capacity;

5 (8) (a) any transaction pursuant to an offer made in  
 6 this state directed by the offeror to not more than ~~10~~ 25 10  
 7 persons (other than those designated in subsection (7))  
 8 during any period of 12 consecutive months, if:

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

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

18 ~~{iii} the offeror applies for and obtains the written~~  
 19 ~~approval of the commissioner prior to making any offers in~~  
 20 ~~this state and pays a filing fee that must accompany the~~  
 21 ~~application for approval;~~

22 ~~{b} any issues transaction by a newly incorporated~~  
 23 ~~Montana corporation effected within 90 days from the date~~  
 24 ~~of incorporation pursuant to an offer or sale directed to~~  
 25 ~~no more than 10 persons in this state;~~



1 ~~{e}(B) The commissioner may by rule or order as to any~~  
 2 ~~security or transaction or any type of security or~~  
 3 ~~transaction:~~  
 4 ~~{i} withdraw or further condition the exemptions~~  
 5 ~~provided in this subsection (8);~~  
 6 ~~{ii} increase or decrease the number of permissible~~  
 7 ~~offerees; or~~  
 8 ~~{iii} waive the conditions of this subsection (8) with~~  
 9 ~~or without the substitution of a limitation on remuneration;~~  
 10 ANY TRANSACTION PURSUANT TO AN OFFER MADE IN THIS STATE  
 11 DIRECTED BY THE OFFEROR TO NOT MORE THAN 25 PERSONS, OTHER  
 12 THAN THOSE DESIGNATED IN SUBSECTION (7), DURING ANY PERIOD  
 13 OF 12 CONSECUTIVE MONTHS IF:  
 14 (I) THE SELLER REASONABLY BELIEVES THAT ALL THE BUYERS  
 15 ARE PURCHASING FOR INVESTMENT;  
 16 (II) NO COMMISSION OR OTHER REMUNERATION IS PAID OR  
 17 GIVEN DIRECTLY OR INDIRECTLY FOR SOLICITING ANY PROSPECTIVE  
 18 BUYER; PROVIDED, HOWEVER, THAT A COMMISSION MAY BE PAID TO A  
 19 REGISTERED BROKER-DEALER IF THE SECURITIES INVOLVED ARE  
 20 REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE  
 21 COMMISSION UNDER THE FEDERAL SECURITIES ACT OF 1933, AS  
 22 AMENDED; AND  
 23 (III) THE OFFEROR APPLIES FOR AND OBTAINS THE WRITTEN  
 24 APPROVAL OF THE COMMISSIONER PRIOR TO MAKING ANY OFFERS IN  
 25 THIS STATE AND PAYS A FILING FEE THAT MUST ACCOMPANY THE

1 APPLICATION FOR APPROVAL. THE COMMISSIONER MAY DENY AN  
 2 APPLICATION.  
 3 ~~{b}{d}(C)~~ For the purpose of the exemption exemptions  
 4 provided for in subsection (8){a}, an offer to sell is made  
 5 in this state, whether or not the offeror or any of the  
 6 offerees is then present in this state, if the offer either  
 7 originates from this state or is directed by the offeror to  
 8 this state and received at the place to which it is directed  
 9 (or at any post office in this state in the case of a mailed  
 10 offer).  
 11 (9) any offer or sale of a preorganization certificate  
 12 or subscription if:  
 13 (a) no commission or other remuneration is paid or  
 14 given directly or indirectly for soliciting any prospective  
 15 subscriber;  
 16 (b) the number of subscribers does not exceed ±0 25;  
 17 and  
 18 (c) no payment is made by any subscriber;  
 19 (10) any transaction pursuant to an offer to existing  
 20 security holders of the issuer, including persons who at the  
 21 time of the transaction are holders of convertible  
 22 securities, nontransferable warrants, or transferable  
 23 warrants exercisable within not more than 90 days of their  
 24 issuance, if:  
 25 (a) no commission or other remuneration (other than a

1 standby commission) is paid or given directly or indirectly  
2 for soliciting any security holder in this state; or

3 (b) the issuer first files a notice specifying the  
4 terms of the offer and the commissioner does not by order  
5 disallow either (a) or (b) of this subsection;

6 (11) any offer (but not a sale) of a security for which  
7 registration statements have been filed under both parts 1  
8 through 3 of this chapter and the Securities Act of 1933 if  
9 no stop, refusal, denial, suspension, or revocation order is  
10 in effect and no public proceeding or examination looking  
11 toward such an order is pending under either law;

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

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

23 (14) any transaction incident to a right of conversion  
24 or a statutory or judicially approved reclassification,  
25 recapitalization, reorganization, quasi-reorganization,

1 stock split, reverse stock split, merger, consolidation, or  
2 sale of assets;

3 (15) any transaction in compliance with such rules as  
4 the commissioner in his discretion may adopt to serve the  
5 purposes of 30-10-102. The commissioner may in his  
6 discretion require that 30-10-201 through 30-10-207 apply to  
7 any or all transactional exemptions adopted by rule.

8 (16) any transaction by a certified Montana capital  
9 company as defined in 90-8-104, provided that such company  
10 first files all disclosure documents, along with a consent  
11 to service of process, with the commissioner. The  
12 commissioner may not charge a fee for the filing.

13 (17) the sale of a commodity investment contract traded  
14 on a commodities exchange recognized by the commissioner at  
15 the time of sale;

16 (18) transaction within the exclusive jurisdiction of  
17 the commodity futures trading commission as granted under  
18 the Commodity Exchange Act;

19 (19) a transaction that:

20 (a) involves the purchase of one or more precious  
21 metals; and

22 (b) requires, and under which the purchaser receives  
23 within 7 calendar days after payment in good funds of any  
24 portion of the purchase price, physical delivery of the  
25 quantity of the precious metals purchased. For the purposes

1 of this subsection, physical delivery is considered to have  
 2 occurred if, within the 7-day period, the quantity of  
 3 precious metals, whether in specifically segregated or  
 4 fungible bulk, purchased by such payment is delivered into  
 5 the possession of a depository (other than the seller) that:

6 (i) (A) is a financial institution (meaning a bank,  
 7 savings institution, or trust company organized under or  
 8 supervised pursuant to the laws of the United States or of  
 9 this state);

10 (B) is a depository the warehouse receipts of which are  
 11 recognized for delivery purposes for any commodity on a  
 12 contract market designated by the commodity futures trading  
 13 commission; or

14 (C) is a storage facility licensed by the United States  
 15 or any agency of the United States; and

16 (ii) issues, and the purchaser receives, a certificate,  
 17 document of title, confirmation, or other instrument  
 18 evidencing that such quantity of precious metals has been  
 19 delivered to the depository and is being and will continue  
 20 to be held on the purchaser's behalf, free and clear of all  
 21 liens and encumbrances other than:

22 (A) liens of the purchaser;

23 (B) tax liens;

24 (C) liens agreed to by the purchaser; or

25 (D) liens of the depository for fees and expenses that

1 previously have been disclosed to the purchaser.

2 (20) a transaction involving a commodity investment  
 3 contract solely between persons engaged in producing,  
 4 processing, using commercially, or handling as merchants  
 5 each commodity subject to the contract or any byproduct of  
 6 the commodity;

7 (21) any offer or sale of a security to an employee of  
 8 the issuer, pursuant to an employee stock ownership plan  
 9 qualified under section 401 of the Internal Revenue Code of  
 10 1986."

-End-

1 SENATE BILL NO. 248

2 INTRODUCED BY HAMMOND

3 BY REQUEST OF THE SECURITIES COMMISSIONER

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS  
6 RELATING TO SECURITIES REGULATION; ~~INCREASING-THE-NUMBER-OF~~  
7 ~~OFFERERS--UNDER--THE~~ CREATING A NEW LIMITED OFFERING  
8 EXEMPTION; REVISING EXEMPTION PROCEDURES; PROVIDING FOR THE  
9 REGULATION OF LIMITED OFFERING EXEMPTIONS; AND AMENDING  
10 SECTION 30-10-105, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

14 "30-10-105. **Exempt transactions.** Except as in this  
15 section expressly provided, 30-10-201 through 30-10-207  
16 shall not apply to any of the following transactions:

17 (1) any nonissuer isolated transaction, whether  
18 effected through a broker-dealer or not. A transaction is  
19 presumed to be isolated if it is one of not more than three  
20 transactions during the prior 12-month period.

21 (2) (a) any nonissuer distribution of an outstanding  
22 security by a broker-dealer registered pursuant to 30-10-201  
23 if:

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

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

6 (ii) the security has a fixed maturity or a fixed  
7 interest or dividend provision and there has been no default  
8 during the current fiscal year or within the 3 preceding  
9 fiscal years, or during the existence of the issuer and any  
10 predecessors if less than 3 years, in the payment of  
11 principal, interest, or dividends on the security.

12 (b) The commissioner may by order deny or revoke the  
13 exemption specified in subsection (2)(a) with respect to a  
14 specific security. Upon the entry of such an order, the  
15 commissioner shall promptly notify all registered  
16 broker-dealers that it has been entered and of the reasons  
17 therefor and that within 15 days of the receipt of a written  
18 request the matter will be set down for hearing. If no  
19 hearing is requested 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 to all interested persons, may  
24 modify or vacate the order or extend it until final  
25 determination. No order under this subsection may operate

THIRD READING

SB 248

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

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

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

16 (5) any transaction by an executor, administrator,  
 17 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 18 or conservator in the performance of his official duties as  
 19 such;

20 (6) any transaction executed by a bona fide pledgee  
 21 without any purpose of evading parts 1 through 3 of this  
 22 chapter;

23 (7) any offer or sale to a bank, savings institution,  
 24 trust company, insurance company, investment company as  
 25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trust, or other financial institution or  
 2 institutional buyer, or to a broker-dealer, whether the  
 3 purchaser is acting for itself or in some fiduciary  
 4 capacity;

5 (8) (a) any transaction pursuant to an offer made in  
 6 this state directed by the offeror to not more than ~~10~~ 25 10  
 7 persons (other than those designated in subsection (7))  
 8 during any period of 12 consecutive months, if:

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

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

18 ~~(iii) the offeror applies for and obtains the written~~  
 19 ~~approval of the commissioner prior to making any offers in~~  
 20 ~~this state and pays a filing fee that must accompany the~~  
 21 ~~application for approval;~~

22 ~~(b) any issuer transaction by a newly incorporated~~  
 23 ~~Montana corporation, effected within 90 days from the date~~  
 24 ~~of incorporation, pursuant to an offer or sale directed to~~  
 25 ~~no more than 10 persons in this state.~~

1 ~~(c)(B) The commissioner may by rule or order as to any~~  
 2 ~~security or transaction or any type of security or~~  
 3 ~~transaction:~~

4 ~~(i) withdraw or further condition the exemptions~~  
 5 ~~provided in this subsection (8);~~

6 ~~(ii) increase or decrease the number of permissible~~  
 7 ~~offerees; or~~

8 ~~(iii) waive the conditions of this subsection (8) with~~  
 9 ~~or without the substitution of a limitation on remuneration;~~

10 ANY TRANSACTION PURSUANT TO AN OFFER MADE IN THIS STATE  
 11 DIRECTED BY THE OFFEROR TO NOT MORE THAN 25 PERSONS, OTHER  
 12 THAN THOSE DESIGNATED IN SUBSECTION (7), DURING ANY PERIOD  
 13 OF 12 CONSECUTIVE MONTHS IF:

14 (I) THE SELLER REASONABLY BELIEVES THAT ALL THE BUYERS  
 15 ARE PURCHASING FOR INVESTMENT;

16 (II) NO COMMISSION OR OTHER REMUNERATION IS PAID OR  
 17 GIVEN DIRECTLY OR INDIRECTLY FOR SOLICITING ANY PROSPECTIVE  
 18 BUYER; PROVIDED, HOWEVER, THAT A COMMISSION MAY BE PAID TO A  
 19 REGISTERED BROKER-DEALER IF THE SECURITIES INVOLVED ARE  
 20 REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE  
 21 COMMISSION UNDER THE FEDERAL SECURITIES ACT OF 1933, AS  
 22 AMENDED; AND

23 (III) THE OFFEROR APPLIES FOR AND OBTAINS THE WRITTEN  
 24 APPROVAL OF THE COMMISSIONER PRIOR TO MAKING ANY OFFERS IN  
 25 THIS STATE AND PAYS A FILING FEE THAT MUST ACCOMPANY THE

1 APPLICATION FOR APPROVAL. THE COMMISSIONER MAY DENY AN  
 2 APPLICATION.

3 ~~(b)(d)(C)~~ For the purpose of the exemption exemptions  
 4 provided for in subsection (8)(a), an offer to sell is made  
 5 in this state, whether or not the offeror or any of the  
 6 offerees is then present in this state, if the offer either  
 7 originates from this state or is directed by the offeror to  
 8 this state and received at the place to which it is directed  
 9 (or at any post office in this state in the case of a mailed  
 10 offer).

11 (9) any offer or sale of a preorganization certificate  
 12 or subscription if:

13 (a) no commission or other remuneration is paid or  
 14 given directly or indirectly for soliciting any prospective  
 15 subscriber;

16 (b) the number of subscribers does not exceed ~~to~~ 25;  
 17 and

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

19 (10) any transaction pursuant to an offer to existing  
 20 security holders of the issuer, including persons who at the  
 21 time of the transaction are holders of convertible  
 22 securities, nontransferable warrants, or transferable  
 23 warrants exercisable within not more than 90 days of their  
 24 issuance, if:

25 (a) no commission or other remuneration (other than a

1 standby commission) is paid or given directly or indirectly  
2 for soliciting any security holder in this state; or

3 (b) the issuer first files a notice specifying the  
4 terms of the offer and the commissioner does not by order  
5 disallow either (a) or (b) of this subsection;

6 (11) any offer (but not a sale) of a security for which  
7 registration statements have been filed under both parts 1  
8 through 3 of this chapter and the Securities Act of 1933 if  
9 no stop, refusal, denial, suspension, or revocation order is  
10 in effect and no public proceeding or examination looking  
11 toward such an order is pending under either law;

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

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

23 (14) any transaction incident to a right of conversion  
24 or a statutory or judicially approved reclassification,  
25 recapitalization, reorganization, quasi-reorganization,

1 stock split, reverse stock split, merger, consolidation, or  
2 sale of assets;

3 (15) any transaction in compliance with such rules as  
4 the commissioner in his discretion may adopt to serve the  
5 purposes of 30-10-102. The commissioner may in his  
6 discretion require that 30-10-201 through 30-10-207 apply to  
7 any or all transactional exemptions adopted by rule.

8 (16) any transaction by a certified Montana capital  
9 company as defined in 90-8-104, provided that such company  
10 first files all disclosure documents, along with a consent  
11 to service of process, with the commissioner. The  
12 commissioner may not charge a fee for the filing.

13 (17) the sale of a commodity investment contract traded  
14 on a commodities exchange recognized by the commissioner at  
15 the time of sale;

16 (18) transaction within the exclusive jurisdiction of  
17 the commodity futures trading commission as granted under  
18 the Commodity Exchange Act;

19 (19) a transaction that:

20 (a) involves the purchase of one or more precious  
21 metals; and

22 (b) requires, and under which the purchaser receives  
23 within 7 calendar days after payment in good funds of any  
24 portion of the purchase price, physical delivery of the  
25 quantity of the precious metals purchased. For the purposes

1 of this subsection, physical delivery is considered to have  
 2 occurred if, within the 7-day period, the quantity of  
 3 precious metals, whether in specifically segregated or  
 4 fungible bulk, purchased by such payment is delivered into  
 5 the possession of a depository (other than the seller) that:

6 (i) (A) is a financial institution (meaning a bank,  
 7 savings institution, or trust company organized under or  
 8 supervised pursuant to the laws of the United States or of  
 9 this state);

10 (B) is a depository the warehouse receipts of which are  
 11 recognized for delivery purposes for any commodity on a  
 12 contract market designated by the commodity futures trading  
 13 commission; or

14 (C) is a storage facility licensed by the United States  
 15 or any agency of the United States; and

16 (ii) issues, and the purchaser receives, a certificate,  
 17 document of title, confirmation, or other instrument  
 18 evidencing that such quantity of precious metals has been  
 19 delivered to the depository and is being and will continue  
 20 to be held on the purchaser's behalf, free and clear of all  
 21 liens and encumbrances other than:

22 (A) liens of the purchaser;

23 (B) tax liens;

24 (C) liens agreed to by the purchaser; or

25 (D) liens of the depository for fees and expenses that

1 previously have been disclosed to the purchaser.

2 (20) a transaction involving a commodity investment  
 3 contract solely between persons engaged in producing,  
 4 processing, using commercially, or handling as merchants  
 5 each commodity subject to the contract or any byproduct of  
 6 the commodity;

7 (21) any offer or sale of a security to an employee of  
 8 the issuer, pursuant to an employee stock ownership plan  
 9 qualified under section 401 of the Internal Revenue Code of  
 10 1986."

-End-



SENATE BILL NO. 248

INTRODUCED BY HAMMOND

BY REQUEST OF THE SECURITIES COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS RELATING TO SECURITIES REGULATION; ~~INCREASING-THE-NUMBER-OF OFFERERS--UNDER--THE~~ CREATING A NEW LIMITED OFFERING EXEMPTION; REVISING EXEMPTION PROCEDURES; PROVIDING FOR THE REGULATION OF LIMITED OFFERING EXEMPTIONS; AND AMENDING SECTION 30-10-105, MCA."

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

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

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

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) any nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

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

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

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

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

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

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

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

16 (5) any transaction by an executor, administrator,  
 17 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 18 or conservator in the performance of his official duties as  
 19 such;

20 (6) any transaction executed by a bona fide pledgee  
 21 without any purpose of evading parts 1 through 3 of this  
 22 chapter;

23 (7) any offer or sale to a bank, savings institution,  
 24 trust company, insurance company, investment company as  
 25 defined in the Investment Company Act of 1940, pension or

1 profit-sharing trust, or other financial institution or  
 2 institutional buyer, or to a broker-dealer, whether the  
 3 purchaser is acting for itself or in some fiduciary  
 4 capacity;

5 (8) (a) any transaction pursuant to an offer made in  
 6 this state directed by the offeror to not more than ~~10~~ 25 10  
 7 persons (other than those designated in subsection (7))  
 8 during any period of 12 consecutive months, if:

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

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

18 ~~(iii) the offeror applies for and obtains the written~~  
 19 ~~approval of the commissioner prior to making any offers in~~  
 20 ~~this state and pays a fitting fee that must accompany the~~  
 21 ~~application for approval;~~

22 ~~(b) any issuer transaction by a newly incorporated~~  
 23 ~~Montana corporation, effected within 90 days from the date~~  
 24 ~~of incorporation, pursuant to an offer or sale directed to~~  
 25 ~~no more than 10 persons in this state;~~

1 ~~{c}(B) The commissioner may by rule or order as to any~~  
 2 ~~security or transaction or any type of security or~~  
 3 ~~transaction:~~

4 ~~{i) withdraw or further condition the exemptions~~  
 5 ~~provided in this subsection (8);~~

6 ~~{ii) increase or decrease the number of permissible~~  
 7 ~~offerees; or~~

8 ~~{iii) waive the conditions of this subsection (8) with~~  
 9 ~~or without the substitution of a limitation on remuneration;~~

10 ANY TRANSACTION PURSUANT TO AN OFFER MADE IN THIS STATE  
 11 DIRECTED BY THE OFFEROR TO NOT MORE THAN 25 PERSONS, OTHER  
 12 THAN THOSE DESIGNATED IN SUBSECTION (7), DURING ANY PERIOD  
 13 OF 12 CONSECUTIVE MONTHS IF:

14 (I) THE SELLER REASONABLY BELIEVES THAT ALL THE BUYERS  
 15 ARE PURCHASING FOR INVESTMENT;

16 (II) NO COMMISSION OR OTHER REMUNERATION IS PAID OR  
 17 GIVEN DIRECTLY OR INDIRECTLY FOR SOLICITING ANY PROSPECTIVE  
 18 BUYER; PROVIDED, HOWEVER, THAT A COMMISSION MAY BE PAID TO A  
 19 REGISTERED BROKER-DEALER IF THE SECURITIES INVOLVED ARE  
 20 REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE  
 21 COMMISSION UNDER THE FEDERAL SECURITIES ACT OF 1933, AS  
 22 AMENDED; AND

23 (III) THE OFFEROR APPLIES FOR AND OBTAINS THE WRITTEN  
 24 APPROVAL OF THE COMMISSIONER PRIOR TO MAKING ANY OFFERS IN  
 25 THIS STATE AND PAYS A FILING FEE THAT MUST ACCOMPANY THE

1 APPLICATION FOR APPROVAL. THE COMMISSIONER MAY DENY AN  
 2 APPLICATION.

3 {b){d){C) For the purpose of the exemption exemptions  
 4 provided for in subsection (8){a), an offer to sell is made  
 5 in this state, whether or not the offeror or any of the  
 6 offerees is then present in this state, if the offer either  
 7 originates from this state or is directed by the offeror to  
 8 this state and received at the place to which it is directed  
 9 (or at any post office in this state in the case of a mailed  
 10 offer).

11 (9) any offer or sale of a preorganization certificate  
 12 or subscription if:

13 (a) no commission or other remuneration is paid or  
 14 given directly or indirectly for soliciting any prospective  
 15 subscriber;

16 (b) the number of subscribers does not exceed ±0 25;  
 17 and

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

19 (10) any transaction pursuant to an offer to existing  
 20 security holders of the issuer, including persons who at the  
 21 time of the transaction are holders of convertible  
 22 securities, nontransferable warrants, or transferable  
 23 warrants exercisable within not more than 90 days of their  
 24 issuance, if:

25 (a) no commission or other remuneration (other than a

1 standby commission) is paid or given directly or indirectly  
2 for soliciting any security holder in this state; or

3 (b) the issuer first files a notice specifying the  
4 terms of the offer and the commissioner does not by order  
5 disallow either (a) or (b) of this subsection;

6 (11) any offer (but not a sale) of a security for which  
7 registration statements have been filed under both parts 1  
8 through 3 of this chapter and the Securities Act of 1933 if  
9 no stop, refusal, denial, suspension, or revocation order is  
10 in effect and no public proceeding or examination looking  
11 toward such an order is pending under either law;

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

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

23 (14) any transaction incident to a right of conversion  
24 or a statutory or judicially approved reclassification,  
25 recapitalization, reorganization, quasi-reorganization,

1 stock split, reverse stock split, merger, consolidation, or  
2 sale of assets;

3 (15) any transaction in compliance with such rules as  
4 the commissioner in his discretion may adopt to serve the  
5 purposes of 30-10-102. The commissioner may in his  
6 discretion require that 30-10-201 through 30-10-207 apply to  
7 any or all transactional exemptions adopted by rule.

8 (16) any transaction by a certified Montana capital  
9 company as defined in 90-8-104, provided that such company  
10 first files all disclosure documents, along with a consent  
11 to service of process, with the commissioner. The  
12 commissioner may not charge a fee for the filing.

13 (17) the sale of a commodity investment contract traded  
14 on a commodities exchange recognized by the commissioner at  
15 the time of sale;

16 (18) transaction within the exclusive jurisdiction of  
17 the commodity futures trading commission as granted under  
18 the Commodity Exchange Act;

19 (19) a transaction that:

20 (a) involves the purchase of one or more precious  
21 metals; and

22 (b) requires, and under which the purchaser receives  
23 within 7 calendar days after payment in good funds of any  
24 portion of the purchase price, physical delivery of the  
25 quantity of the precious metals purchased. For the purposes

1 of this subsection, physical delivery is considered to have  
 2 occurred if, within the 7-day period, the quantity of  
 3 precious metals, whether in specifically segregated or  
 4 fungible bulk, purchased by such payment is delivered into  
 5 the possession of a depository (other than the seller) that:

6 (i) (A) is a financial institution (meaning a bank,  
 7 savings institution, or trust company organized under or  
 8 supervised pursuant to the laws of the United States or of  
 9 this state);

10 (B) is a depository the warehouse receipts of which are  
 11 recognized for delivery purposes for any commodity on a  
 12 contract market designated by the commodity futures trading  
 13 commission; or

14 (C) is a storage facility licensed by the United States  
 15 or any agency of the United States; and

16 (ii) issues, and the purchaser receives, a certificate,  
 17 document of title, confirmation, or other instrument  
 18 evidencing that such quantity of precious metals has been  
 19 delivered to the depository and is being and will continue  
 20 to be held on the purchaser's behalf, free and clear of all  
 21 liens and encumbrances other than:

22 (A) liens of the purchaser;

23 (B) tax liens;

24 (C) liens agreed to by the purchaser; or

25 (D) liens of the depository for fees and expenses that

1 previously have been disclosed to the purchaser.

2 (20) a transaction involving a commodity investment  
 3 contract solely between persons engaged in producing,  
 4 processing, using commercially, or handling as merchants  
 5 each commodity subject to the contract or any byproduct of  
 6 the commodity;

7 (21) any offer or sale of a security to an employee of  
 8 the issuer, pursuant to an employee stock ownership plan  
 9 qualified under section 401 of the Internal Revenue Code of  
 10 1986."

-End-