

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 14, 1985

The 21st meeting of the Business & Industry Committee met on February 14 in Room 410 of the Capitol Building at 10 a.m. Chairman Mike Halligan called the meeting to order

ROLL CALL: All committee members were present. Senator Cecil Weeding is now an official voting member of the committee making a total of eleven members.

CONSIDERATION OF SENATE BILL 350: Senator Bruce Crippen, Senate District 45 from Billings, is the sponsor of this bill at the request of the securities division of the State Auditor's office. This act provides for the imposition of fines by the securities commissioner upon finding that a securities act has been violated or upon the revocation or suspension of the license of a broker-dealer, salesman, or investment adviser. He added that a fine can be imposed only after a hearing has been held, and only after it has been appealed and the amount will be limited to \$500 per violation. He felt that possibly the word "first" should be struck before "lien" in two sections of the bill.

PROPOSERS: Kim Schulke, Staff Attorney for the State Auditor's Office, stated this will enable them to impose a fine when violations occur and provide an additional remedy for the securities department to be reimbursed for expenses whenever a violation occurs.

OPPOSERS: There were no opponents to Senate Bill 350.

Questions were then called for. Rick Tucker, Deputy Director of the Securities Commission, explained that the lien does not provide a problem for them but for out-of-state violators it is perhaps the only remedy for compensation if they do not have property in the state. Senator Halligan asked if the \$500 was enough and Kim Schulke replied they were looking more for a penalization rather than a felony and felt that \$500 was adequate. Senator Crippen closed the hearing on Senate Bill 350.

CONSIDERATION OF SENATE BILL 399: Senator Bruce Crippen, Senate District 45 from Billings, introduced this bill at the request of the Securities Division of the State Auditor's Office. This bill will generally revise the laws relating to securities. He explained there are four areas he wanted to make note of. The first deals with the exemption securities just making it conform with the language of the uniform securities act. The second creates a new exemption which would exempt from registration those securities meeting the criteria which is the electronic marketplace. The third, on page 15, clarifies when the small offering exemption is available. On page 29 there is new language which allows a securities registrant to sell securities in excess of the amount registered.

PROPOSERS: Kim Schulke, Staff Attorney for the State Auditor's Office, explained in more detail the changes being proposed. (EXHIBIT 1) She also turned in several letters they had received supporting this revision of security laws. (EXHIBIT 2) Doug James, a Billings attorney representing the National Association of Security Dealers, or NASD, expressed their support for this bill. Montana first adopted laws in 1962 for these securities but since then there have been many technological changes, especially NSDAQ, the equivalent of the New York Stock Exchange using computer technology. This bill would correct the inequities that now exist and allow better information and service to Montana customers. He also turned in letters of support. (EXHIBIT 3) Robert Minto, an Attorney from Missoula, who works closely with securities strongly supported this measure. Gene Hufford, from D.A. Davidson, supports the measure also. Mike DaSilva, with G.T. Murray in Helena, stated it would allow them to sell to their clients and offer them a much better variety of securities and urged support. Dale Harris, Deputy Administrator of the Economic Development Board, appeared on behalf of Keith Colbo, Director of the Department of Commerce, urging support of the measure because of the benefits it will provide to the people of Montana and help raise the equity capital of our state.

OPPOSERS: There were no opposers to this bill.

Questions were then called for. Senator Neuman wanted to know if by eliminating fees the process was still done. Kim Schulke explained the filing of an annual statement is no longer required but it is the processing of the fee that takes the time as they have an extensive receipting procedure. Senator Christiaens wanted to know how they came up with "three times the amount" language in the bill and was told this from language that other states have adopted. Senator Halligan asked Doug James who plugged the information into the computer and he explained if a market meets the criteria then their information is put into computers and fed to the brokerage firms. Senator Crippen closed the hearing on Senate Bill 399.

DISPOSITION OF SENATE BILL 399: Senator Thayer then moved TO PASS the amendment to strike 30-10-201(1) from page 30, line 18 and insert 30-10-201(4). This motion carried. Senator Goodover then moved that Senate Bill 399 PASS AS AMENDED. The motion carried. (EXHIBIT 4)

DISPOSITION OF SENATE BILL 350: Senator Kolstad then moved TO PASS an amendment to strike the word "first" on page 8, line 25, and on page 11, line 3. The motion carried. Senator Kolstad then moved to PASS AS AMENDED Senate Bill 350. (EXHIBIT 5)

CONSIDERATION OF SENATE BILL 340: Senator Bob Brown, Senate District 2, Whitefish, is the principal sponsor of this bill. It will authorize that public moneys can be invested in credit

unions in addition to banks. He feels our public moneys should be placed in a place that is secure and wherever they can receive the highest return on their investments. He feels it would just offer the local governments another choice.

PROPONENTS: Jeff Kirkland, Vice-President of Governmental Relations for the Montana Credit Union's League, stated they are in favor of this measure because it will allow all financial institutions in the state to serve as depositories for public funds in the State of Montana. It would allow them to serve in the same capacity as commercial banks. (EXHIBIT 6) Gene Rice, Chairman of the Treasure State Corporate Central Credit Union favors this measure because it will place all financial institutions on the same level providing more equitable competition. (EXHIBIT 7) Ron Newberry, representing the Whitefish Credit Union, feels people have a right to invest where they feel it will do the most good and urged support. Al Sampson, from the League of Cities and Towns, feels that competition is important and supports the bill. Greg Jackson, representing the Urban Coalition of Montana, supports the concept of providing the option for local governments to invest where they feel their money will do the most good.

OPPONENTS: John Cadby, representing the Montana Taxpayer's Association, explained what a credit union was created to do as compared to a commercial bank or savings association. He feels they are a public entity and are owned by the shareholders and they can only borrow up to 50% of their total assets. (EXHIBIT 8) He opposes credit unions accepting public funds.

Questions were then asked from the committee members. Senator Goodover asked Jeff Kirkland about just what a credit union is allowed to do and he said there is a provision in the federal credit union act which allows them to accept deposits for federal funds. Senator Gage wondered if they would purchase bonds for building local projects such as schools and was told they did not think this would be the type of things they would be interested in but just be able to be used as a depository. Senator Brown feels this bill will increase competition and it will create another option for retirement programs etc. The hearing on Senate Bill 340 was closed.

CONSIDERATION OF A RESOLUTION COMMEMORATING REA: Senator Christiaens asked the committee to consider writing a resolution honoring the 50th anniversary of the REA. A motion was then made by Senator Christiaens that the Business & Industry Committee request a resolution be drafted honoring the 50th year of the REA. The motion carried.


CONSIDERATION OF SENATE BILL 349: Senator Joe Mazurek, Senate District 23 of Helena, drafted this bill at the request of the Montana Economic Development Board. The board has already sold two bonds and the purpose is to provide long-term fixed rate financing for businesses in Montana. This bill will make three changes in the industrial pool revenue bond program. It would clarify that the total limit on the program is \$75 million. Section 2 and 3 authorize the board to place a portion of the in-state investment fund in a guaranteed fund to backpool industrial revenue bonds issued by the board. By doing so, he stated it will place the bonds where they are more marketable. Section 4 authorizes the board to use board fees and a portion of the interest earned to establish a loan loss reserve fund.

PROPOSERS: Dale Harris, Deputy Administrator of the Economic Board, explained the bill includes three separate but related amendments to existing law. Section 1 clarifies without increasing the bonding ceiling for the revenue bond program. Section 2 & 3 sets up a guaranty or reserve fund and section 4 authorizes the board to use fees and a portion of the interest to establish a loan loss reserve fund. (EXHIBIT 9) He gave the committee a handout which explained what the protection to fund the guaranty does. (EXHIBIT 10) They feel this is a very sound program. As they do more bond issues the bond market will dry up in Montana and so they will need access to national bond markets. They need the authority to use a modest portion of the coal severance tax money to be placed as a guaranty to supplement the private guaranty behind the industrial revenue bonds. He feels it is prudent to set aside a fund to have a reserve for loan losses should they occur in the future. The board urges adoption of this measure. Gene Hufford, with D.A. Davidson, stated they are the senior managers of these bonds that were sold already and they all received an "A" rating. He feels this would greatly benefit the state of Montana if this legislation is passed. Mary Munger, Chairman of the Montana Health Facilities, feels it would provide an option for their organization to be able to help rural areas especially with low interest loans. Gary Erickson, real estate developer from Missoula, supports the bill but would like to see it amended. (EXHIBIT 11) Steve Browning, representing Miller-Schroeder Municipals, is in full support of this program. (EXHIBIT 12) The committee was told there were many more who would have been here to speak if there had been longer notice.

Questions were then asked from the committee members. Senator Thayer asked about the amendments discussed and was told the amendment proposed for page 5, line 5 was the one the Economic Board is recommending be added. (EXHIBIT 13) Senator Neuman asked Gene Hufford what was necessary to keep the "A" rating and was told they needed access to \$15 million. Senator Gage stated last session they used a portion of general revenue bonds to get the "A" rating. Dale Harris explained the purpose is the

same but mechanically this works differently. Senator Williams asked what type of businesses the current loans were made to and was told most were for small businesses and 1/4 was for starting new businesses. Senator Halligan asked what sort of discretion is used to pick those who can get loans and was told most businesses in Montana were eligible. They must go through a bank and they in turn deal with the board. Senator Christiaens asked if they were saying that by guaranteeing the loans that the bond rating would be better and Dale Harris stated they were. Senator Mazurek closed by urging a do pass on this legislation. The hearing was closed on Senate Bill 349.

The meeting was adjourned at noon.


Mike Halligan, Chairman

cd

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/14/85

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

TO: BUSINESS AND INDUSTRY COMMITTEE

FROM: J. KIM SCHULKE, Staff Attorney
Office of the State Auditor, Securities Department

RE: SB 399
GENERAL REVISION OF SECURITIES LAWS

Page 2, lines 23-24. The definition of "registered broker-dealer" was added so that where that term appears in the act, it is clear that the broker-dealer must be registered in Montana.

Page 7, lines 22-25. This provision deals with a registration exemption for securities issued by certain banks, savings institutions or trust companies. The section has been changed to conform to the language of the Uniform Act as it is the position of the Department that the Uniform language is more clear.

Page 12, lines 5-8. All fees have been moved to one section so the \$50 fee for this exemption is put in 30-10-209.

Page 12, lines 20-25, and page 13, lines 1-3. This section provides a new exemption from registration for national market system securities listed or approved for listing on the National Association of Securities Dealers automated quotation system, better known as NASDAQ/NMS. The state of Georgia has recently adopted a similar exemption and it is before the legislatures of several states.

The exemption immediately preceding this one is a securities exemption for securities listed on stock exchanges. It is the position of the Department, that while NASDAQ/NMS is not an exchange; these securities are on par with those securities listed on the major securities exchanges. Designation as a NASDAQ/NMS security is made pursuant to criteria set forth in a rule promulgated by the Securities and Exchange Commission and subject to change only through the SEC rulemaking process. Any such change must comport with the mandates of Congress as embodied in the 1975 Amendments to the Securities Exchange Act, which created the concept of a national market system for securities transactions. The Department believes that the listing criteria for NASDAQ/NMS are equal to and in some cases exceed the criteria for listing on various securities exchanges.

Page 15, lines 20-25 and page 16, lines 10-16. This is a small offering transactional exemption from registration under the Securities Act, whereby neither the securities nor the broker-dealer or salesman need be registered in order to engage in the offer or sale of securities if they comply with this section. The additional language is meant to clarify when an offer to sell is made in this state.

Page 19, lines 9 and 10. This section describes the method of registering as a broker-dealer, salesman, or investment advisor under our Act. The current law states that the application is filed with the Securities Commissioner. However, we now have an automated registration system, whereby registration is accomplished in Washington, D.C., by the National Association of Securities Dealers. Therefore, the necessity of filing an application here is no longer necessary.

Page 19, lines 19 and 20. Again, all fees have been placed in §30-10-209. This is a fee for a waiver of the residency requirement for registration of salesmen.

Page 20, lines 24 and 25, and page 21, lines 5 and 7. These changes deal with the central automated registration system again, negating the necessity of filing certain information with the commissioner. It should be noted that for those broker-dealers who are not members of the association which operates the automated system, financial statements are still required to be filed with our department.

Page 27, lines 18-25, and page 28, lines 1 and 2. This subsection has been deleted because the financial data required to be filed with the commissioner is available elsewhere.

Page 28, line 1, and page 29, lines 1-13. When a securities issue is registered with the department, a certain number are registered. Frequently, more than the number registered are sold. The proposed language in this subsection would allow these excess sales but would require the registrant to file an amendment to the registration statement to include the excess sales. If such amendment is not filed before the expiration of the registration order, which is in effect for one year, he must pay a filing fee for the excess sales of three times the normal registration fee. Registration for those excess fees is then made retroactive to the date of the existing registration.

The problem with the excess sales is that these securities are technically not registered and sales are therefore in violation of our act. By this legislation, the commissioner will retroactively register such excess sales made during the period that the registration order is in effect, but will charge a triple fee.

Page 29, lines 14-19, and page 30, lines 1-8. These fees have been eliminated because they cost more to process than they bring in.

Page 30, lines 15 and 16. This language was inadvertently deleted last session when another amendment was made to this section. The Commissioner has always charged \$50 for exemption and exception requests because it requires staff time to research the exemption or exception to see if it applies to the person requesting it.

Page 30, lines 17-19. This is a fee that was moved from another section.

Page 30, lines 20-22. This language is taken from the insurance department's fee section 33-2-708. The processing of an application is what costs the department time and money -- not whether the application is granted or not.

Page 31, lines 9-10. This section provides that the Commissioner may issue a temporary cease and desist order that remains in effect until 10 days after any hearing is held. It is the position of the department that the intent was that the temporary order would remain in effect until 10 days after the hearing on the merits of the cease and desist order and not some preliminary hearing. The language has been changed to reflect that position.



P.O. Box 1409
HAMILTON, MONTANA
59840 USA
(406) 363-6214

January 30, 1985

EXHIBIT 2
BUSINESS & INDUSTRY
February 14, 1985

Ms. Andrea Hemstad,
State Auditor
State Auditor's Office
P. O. Box 4009
Helena, MT 59604

Dear Ms. Hemstad:

Congratulations on your election as State Auditor. I am sure that you are extremely busy establishing yourself into the new position, but I did want to take this opportunity to commend you and Rick Tucker on the forward-looking approach you have taken in regard to putting NASDAQ National Market System securities on parity with the other Exchanges.

We here at Ribi ImmunoChem fully support your efforts and offer any assistance we can give in seeing the matter through the current Legislature. This change has been long overdue and will only add benefit to the companies doing business in our state as well as provide a benefit for our citizens.

Keep up the good work. I look forward to meeting you sometime in the near future.

Sincerely,

Nils A. Ribi,
Chief Executive Officer

NAR/m

cc: Mr. Rick Tucker

RECEIVED
STATE AUDITORS
OFFICE
JAN 31 9 59 AM '85
HELENA, MONT.



BANK OF MONTANA

S Y S T E M

P. O. BOX 5100, GREAT FALLS, MONTANA 59403

February 1, 1985.

Mrs. Andrea Bennett, State Auditor
State of Montana
Mitchell Building
P. O. Box 4009
Helena, MT 59604

Dear Mrs. Bennett:

Bank of Montana System supports the Securities Department's proposal that would provide an exemption from registration for NASDAQ/NMS Securities.

We believe this action is long overdue and we commend the Securities Department for its progressive approach.

Very truly yours,

JOSEPH J. FRIEND
Senior Vice President

JJF:emd

cc: Gless Faulkner

LAW OFFICES OF
SMALL, HATCH, DOUBEK & PYFER
LIVERY SQUARE
39 NEILL AVENUE
HELENA, MONTANA 59601

February 8, 1985

FLOYD O. SMALL
CARL A. HATCH
JOHN C. DOUBEK
RICHARD J. PYFER

RECEIVED
STATE AUDITORS
FEB 11 11 24 AM '85
HELENA, MONT.

Ms. Andrea Hemstead
State Auditor/Securities Commissioner
State of Montana
Capitol Complex
Helena, MT 59620

Dear Ms. Hemstead:

It has been brought to my attention that legislation has been proposed which creates a new exemption under Montana's securities statutes for securities listed on the NASDAQ/National Market System.

Considering how intensive and extensive the requirements and standards are for acceptance by the NASDAQ/NMS, the proposed exemption makes sense. In the several states with which I am familiar, satisfying NASDAQ/NMS requirements is more comprehensive and exhaustive than the applicable blue-sky statutes.

In the case of certain of my securities clients, having to additionally satisfy applicable blue-sky statutes would be duplicitious, costly and serve absolutely no justifiable purpose. If the important disclosures and information has already been furnished to NASDAQ/NMS then it makes no sense to build a smaller, weaker wheel (at a cost of anywhere between \$5,000 and \$20,000) for each of perhaps several states' blue-sky laws.

Thus, the money savings alone will be an incentive to companies interested in selling stock to make one more thorough and better filing (with NASDAQ/NMS) than several piecemeal state filings. Further, the better quality of filings will serve to protect investors from fraud and save them money as well. More money will be available to companies and concerns to grow and develop, as opposed to paying legal bills and administrative fees.

Much of what I have said appears to be hurting my own pocket-book inasmuch as I do prepare blue-sky submittals. Nevertheless, having seen what can happen to the unwary, unsuspecting investor, I strongly urge that this exemption will go a long way to protect them, and that is really what the securities law, both state and federal, are all about.

Sincerely,

John C. Doubek
John C. Doubek *(nr)*
Attorney at Law

JCD/nr

DORSEY & WHITNEY

A Partnership Including Professional Corporations

201 DAVIDSON BUILDING
8 THIRD STREET NORTH
GREAT FALLS, MONTANA 59401
(406) 727-3632

2200 FIRST BANK PLACE EAST
MINNEAPOLIS, MINNESOTA 55402
(612) 340-2600

880 WEST-FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
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312 FIRST NATIONAL BANK BUILDING
WAYZATA, MINNESOTA 55391
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1800 M STREET N.W.
WASHINGTON, D. C. 20036
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ROCHESTER, MINNESOTA 55903
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30 RUE LA BOÉTIE
75008 PARIS, FRANCE
TEL: (1) 562 32 50

February 1, 1985

JOHN W. MANNING

Ms. Andrea Hemstad Bennett
State Auditor
Room 270
Sam W. Mitchell Building
P. O. Box 4009
Helena, Montana 59604

Mr. Rick Tucker
Montana Securities Department
Room 270
Sam W. Mitchell Building
P. O. Box 4009
Helena, Montana 59604

Dear Andy and Rick:

It has come to my attention that there is legislation in the State Legislature to exempt NASDAQ National Market System securities from registration in Montana. I strongly believe that such an exemption is desirable and would be beneficial to several companies headquartered in Montana.

The NASDAQ system in general, and the National Market System in particular, has developed into a very significant and effective trading market in the past several years. As you know, the NASD regulates its listed companies in much the same manner as the national and regional stock exchanges. Although I am aware of the competition between the exchanges and the National Market System to enlist issuers, I do not believe that there are any good reasons for treating National Market System securities any differently than securities listed on the established exchanges.

Adoption of such an exemption would in my opinion be best accomplished by amending Section 30-10-104(13) of the Montana Securities Act by inserting a few words referring to the NASDAQ National Market System. For the reasons expressed above, I reiterate my support for the adoption of this amendment and urge you to support that legislation.

If you should have any questions with respect to the foregoing, please do not hesitate to contact me.

Very truly yours,



John W. Manning

JWM/mc



**FIRST FEDERAL SAVINGS
BANK**

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HELENA, MONT.

February 8, 1985

Ms. Andrea Bennett
State Auditor
Mitchell Building
Helena, MT 59620

Dear Ms. Bennett:

We have recently been advised that your office, representing the Securities Department for the State of Montana, is proposing to introduce a legislative amendment to the Montana Securities Act. It is our understanding this amendment would provide an exemption from certain registration provisions of the Securities Act for securities qualified for trading in the National Market System (NMS) which are listed on the National Association of Securities Dealers Automations Quotations System (NASDAQ).

Presently, certain securities listed on some national securities exchanges are exempt from the registration of the Securities Act, and we understand the proposed amendment would provide a similar exemption to securities traded on NASDAQ/NMS and recognize them as a qualified exchange. We strongly support your office's efforts in this endeavor and it is warranted, as we believe that adequate procedures and controls to protect the investor are equal to other recognized national exchanges. The marketability of the shares and the strength of the companies are equally as strong as companies traded on other exchanges. We further support the issue, as we believe this not only is beneficial to our own recently converted-to-stock company but to other public stock corporations in the State of Montana, as it provides investors with additional current market information and possibly reduces the cost and time to execute orders, which in itself should be beneficial to Montana investors.

If we can be of further assistance to your office in support of this issue via the legislative process, please do not hesitate to contact me.

Sincerely,

F. Charles Mercord
President

FCM: jh



ROCKY MOUNTAIN CAPITAL, LTD.

February 11, 1985

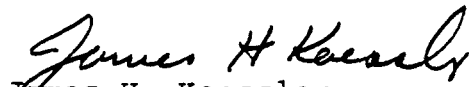
Ms. Andrea Bennett
State Auditor and Ex
Officio Securities Commissioner
P. O. Box 4009
Helena, Montana 59604

Re: Securities Legislation
The NASDAQ/NMS Exemption

Dear Ms. Bennett,

The proposed legislation to create an exemption for securities listed on NASDAQ/NMS is supported by Rocky Mountain Capital. As venture capitalists, we appreciate the need for legislation that facilitates capital formation, and believe such legislation would be an important element in the overall "build Montana" efforts.

Truly yours,


James H. Koessler
President

JHK/cb

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STATE AUDITORS
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HELENA, MONT.

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10115 Cabin Creek Road
Shepherd, Montana 59079

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5555 Magnatron Boulevard
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San Diego, California 92111

(619) 279-4250

Yorkridge Center, Suite K
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Timonium, Maryland 21093

(301) 252-5331
(301) 252-5332

UNITED TOTE

February 4, 1985

Ms. Andrea Bennett
State Auditor
State Capital
Helena, Montana 59601

Dear State Auditor:

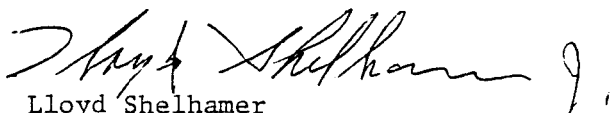
We are pleased a bill is being proposed in Montana to equalize the state filing requirements for securities registered with the National Association of Securities Dealers (NASD) on the over-the-counter market.

Currently, companies listed under the New York and American Stock Exchanges are not required to register secondary offerings or issues of stock with the Montana Securities Department.

The proposed bill would give companies listed with NASD the same filing rights as afforded members of the New York and American Stock Exchange.

The bill is an equitable bill which we will support fully. Please give your support to the bill when it is presented in the Montana Legislature.

Sincerely,


Lloyd Shelhamer
President

LS/jj

LUXAN & MURFITT

ATTORNEYS AT LAW

MONTANA CLUB BUILDING • 24 W. SIXTH AVE.

P.O. BOX 1144 • HELENA, MONTANA 59624

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OFFICE

FEB 5 9 26 AM '05

HELENA, MONT.

February 4, 1985

H.J. LUXAN (1918-1984)
WALTER S. MURFITT
MICHAEL J. MULRONEY
GARY L. DAVIS
TERRY B. COSGROVE
DALE E. REAGOR
PATRICK E. MELBY
MICHAEL J. RIELEY

Andrea "Andy" Bennett
State Auditor and
Ex Officio Securities Commission
P.O. Box 4009
Helena, MT 59604

Re: Proposal Amendment to 30-10-104(13) MCA

Dear Commissioner Bennett:

I am a Montana lawyer with a substantial practice in securities law.

The purpose of this letter is to express my strong support for your proposed amendment to 30-10-104(13) MCA which would allow an exemption from registration in the State of Montana to securities which are part of the NASDQ National Market System (NASDQ/NMS).

While I have a number of reasons as a practicing securities attorney for support of this amendment my primary reasons are:

- (1) Such an amendment would facilitate the raising of capital and thereby encourage economic development in our state.
- (2) Securities eligible to become listed on NASDQ/NMS must meet certain qualitative criteria established by the Securities and Exchange Commission and therefore citizens of Montana will not be encouraged or exposed to fraudulent investments as a result of investment in such exempted securities.
- (3) The workload of your already burdened office will be lessened.
- (4) A large number of other states have adopted this amendment to eliminate duplicative filing requirements, achieve the above listed benefits and additional benefits associated with modern computer technology.

Andrea "Andy" Bennett
February 4, 1985
Page Two

Please feel free to introduce this letter to the legislature to demonstrate my support.

Sincerely yours,

MICHAEL J. MULRONEY

A handwritten signature in cursive script, appearing to read "Michael J. Mulroney".

for LUXAN & MURFITT

MJM/ds
cc: Doug James, Esq.

William A. Brodin

ATTORNEY AT LAW
ONE TEN WEST PARK AVENUE
P.O. Box 1397
ANACONDA, MONTANA 59711-1397
—
TELEPHONE (406) 563-8412

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STATE AUDITORS
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HELENA, MONT.

February 8, 1985

Honorable Andrea Bennett
State Auditor
and Ex Officio Securities Commissioner
P.O. Box 4009
Helena, MT 59604

Dear Mrs. Bennett:

It has just come to my attention that a bill is to be introduced in this legislative session, with the blessings of the State Securities Department, to allow for an exemption under the Securities Act for securities listed on the NASDAQ/National Market System. I am most interested in this legislation as I feel it will greatly benefit the future economic growth of the State, and offers no new risk.

As you are well aware, such exemption has, for years, been granted to other exchange listings. NASDAQ has proved its reliability, by its regulation of NASD member firms and the built-in protections afforded to investors. It seems only fair and equitable that such exemption should be allowed NASDAQ/National Market System.

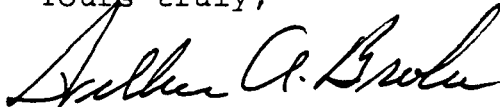
A further fact however, is the assistance it would provide to Montana entrepreneurs. As General Counsel to Ribi Immunochem Research, Inc., I have been closely affiliated with and respectful of the NASD system. To have had the exemptions as proposed, would have greatly aided our company in its early financing and it would assist Montana companies seeking capital expansion in the future. This exemption is presently offered in many of the States of this Country and hopefully the exemption will soon be the law of this State.

Further, I am unable to appreciate why anyone would be legitimately opposed to extending this exemption to NASDAQ/National Market System, as it appears beneficial to all of Montana for any entrepreneurial development that will or may take place. The granting of such exemption does not create an undue disadvantage to the jeopardy of any of the existing named exchanges which already have the benefit of the exemption.

Honorable Andrea Bennett
February 8, 1985
Page 2

I do therefore most sincerely congratulate your office for proposing such legislation, and I offer my wholehearted support and cooperation. Should I be able to be of service in this regard, please feel free to call on me.

Yours truly,

A handwritten signature in cursive script, appearing to read "William A. Brolin".

William A. Brolin

WAB/mf

cc. Doug James

ROBERT K. OGG
ATTORNEY AT LAW
100 SECOND ST. EAST
SUITE 207
WHITEFISH, MONTANA 59937
(406) 862-7761

February 8, 1985

Andrea Bennett
State Auditor
and Ex Officio Securities Commissioner
P.O. Box 4009
Helena, Montana 59604

Dear Ms. Bennett:

I am writing this letter to express my support for the proposed exemption under the Montana Securities Act for securities listed on the NASDAQ National Market System. As a securities attorney I try to keep abreast of developments concerning securities registration and exemptions. As I am sure you are aware, there are stringent requirements for listing of a company's stock on the NASDAQ National Market System. Of course, all NMS companies are also reporting companies under the Securities Exchange Act of 1934, as amended, and as such are required to meet certain reporting requirements to remain on NASDAQ.

The approval of this exemption could help to dispel the backwoods image of Montana and its business climate. Without this kind of forward thinking business legislation, Montana is apt to remain in the backwaters of the stream of national commerce. This exemption would be one step of many that should be taken to move Montana into the United States of America that exists in the 1980's.

Sincerely,

Robert K. Ogg
Robert K. Ogg

RKO/cb
Encl.
cc: Doug James

RECEIVED
STATE AUDITORS
OFFICE
FEB 11 10 02 AM '85
HELENA, MONT.

LAW OFFICES

MOULTON, BELLINGHAM, LONGO & MATHER, P. C.

SECURITIES BUILDING

BILLINGS, MONTANA 59103

WM. H. BELLINGHAM
BERNARD E. LONGO
W. S. MATHER
WARD SWANER
BRENT R. CROMLEY
GERALD B. MURPHY
RANDY H. BELLINGHAM
ROBERT H. PRIGGE
SIDNEY R. THOMAS
GREGORY G. MURPHY
WILLIAM A. FORSYTHE
DOUG JAMES
BRAD H. ANDERSON
THOMAS E. SMITH

TELEPHONE 248-7731
AREA CODE 406

P. O. BOX 2545

FREDRIC D. MOULTON
OF COUNSEL

February 8, 1985

Ms. Andrea Bennett
State Auditor and
Ex Officio Securities Commissioner
P. O. Box 4009
Helena, Montana 59604

Re: Securities Legislation
The NASDAQ/NMS Exemption

Dear Andy:

I am writing to express my support for your proposal to amend Section 30-10-104(13), MCA, of the Securities Act of Montana to create an exemption for securities listed on the National Association of Securities Dealers Automated Quotation System's/National Market System (NASDAQ/NMS). This exemption will benefit Montana business as well as investors.

Your proposal to create an exemption for securities listed on NASDAQ/NMS will remove a great inequity that currently exists in our Securities Act. When the Securities Act of Montana was adopted in 1961, the Securities Act provided an exemption from registration for securities listed on the major national exchanges. In 1961, NASDAQ/NMS didn't exist. Yet, today, NASDAQ/NMS is in every respect, the electronic equivalent of the traditional stock exchange. Although the exchanges and NASDAQ/NMS are essentially equal, our Securities Act presently requires securities listed on NASDAQ/NMS to be registered, while exempting securities listed on the various exchanges. Your proposal eliminates this inequity. Your proposal provides the common sense solution of simply giving securities listed on NASDAQ/NMS the same exemption status of securities listed on the various exchanges. This legislation is nothing new. It simply eliminates the inequities that have developed because of the technological revolution in the securities industry.

I believe that only one or two Montana firms are listed on the American Stock Exchange. Already, five Montana firms are listed or approved for listing on NASDAQ/NMS. The Montana firms are: Bank of Montana Systems; First Federal Savings Bank of Montana; Ribi Immunochem Research, Inc.; United States Antimony Corporation; and United Tote, Inc. NASDAQ/NMS will give Montana businesses greater visibility, which will give them

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OFFICE
FEB 11 10 02 AM '85
HELENA, MONT.

Ms. Andrea Bennett

Page 2

greater market depth, and make it easier for them to raise additional funds by selling their securities. Investors win, because information on NASDAQ/NMS listed securities is disbursed rapidly and broadly, making it possible for investors to make more informed decisions.

The National Association of Securities Dealers Automated Quotation System (NASDAQ) was started in 1971. Since then, it has won a major share of the OTC market. On August 3, 1984, the daily trading volume on NASDAQ reached 122 million shares. There are over 120,000 terminals that can instantaneously receive quotations on NASDAQ listed securities.

The NASDAQ/NMS is a segment of NASDAQ reserved for certain high quality securities. Securities become listed on NASDAQ/NMS by meeting the strict criteria established by the Securities and Exchange Commission. The listing requirements for NASDAQ/NMS are equal to and in some cases actually higher than the listing requirements of the various exchanges. NASDAQ/NMS listed securities are also subject to the SEC and the NASD disclosure and reporting requirements, which are aimed at ensuring that the public is provided with all material information. The NASDAQ/NMS is the electronic equivalent of the traditional stock exchange.

The NASDAQ/NMS will make it considerably easier for Montana firms to develop a national reputation and to create a national market for their securities. The NASD is seeking an exemption to NASDAQ/NMS throughout the country. I believe that securities listed on NASDAQ/NMS are currently exempt from registration in: Colorado, Connecticut, District of Columbia, Florida, Hawaii, Kansas, New Jersey, New York, New Hampshire, Nevada, Oregon, Pennsylvania, and Utah. Additionally, Georgia recently adopted a new exemption for NASDAQ/NMS listed securities. When Georgia adopted the NASDAQ/NMS exemption, the Georgia Secretary of State noted that:

There are many benefits that will result from this decision. It will:

1. Facilitate the raising of capital, thereby encouraging economic development;
2. Eliminate duplicative filing requirements and reduce the regulatory burden on legitimate industry;
3. Allow a more efficient use of our scarce state resources by letting us concentrate on the enforcement provisions of our securities law to investigate and prosecute those who sell fraudulent securities to our citizenry; and
4. Continue my theme of encouraging economic development by providing a business regulatory program that protects our citizens without an undue burden on legitimate industry. This makes Georgia an attractive environment for business development . . . (emphasis added.)

Ms. Andrea Bennett

Page 3

As the Georgia Secretary of State noted, there are many benefits to adopting a NASDAQ/NMS exemption. Each of his listed reasons is applicable in Montana. I cannot think of any reason why Montana should not adopt a NASDAQ/NMS exemption. It is the logical and efficient transition to the computer age. Montana will not lose any revenue by adopting this exemption. Additionally, the exemption is not going to open a door for securities fraud.

The NASDAQ/NMS exemption will benefit Montana businesses and consumers. This exemption will also subject the traditional stock exchanges to greater competition. Understandably, some of the exchanges are lobbying against this exemption, and against greater competition in the market place. What's best for New York is not necessarily what's best for Montana investors and Montana businesses.

I support your proposal to create a NASDAQ/NMS exemption without qualification. It is clearly in the best interests of Montana consumers and businesses to adopt this legislation.

Sincerely,

MOULTON, BELLINGHAM, LONGO
& MATHER, P.C.

By 

Doug James

DJ:pi

EXHIBIT 3
BUSINESS & INDUSTRY
February 14, 1985

DORSEY & WHITNEY

A Partnership Including Professional Corporations

201 DAVIDSON BUILDING
8 THIRD STREET NORTH
GREAT FALLS, MONTANA 59401
(406) 727-3632

2200 FIRST BANK PLACE EAST
MINNEAPOLIS, MINNESOTA 55402
(612) 340-2600

880 WEST-FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
(612) 227-8017

312 FIRST NATIONAL BANK BUILDING
WAYZATA, MINNESOTA 55391
(612) 475-0373

SUITE 675 NORTH
1800 M STREET N.W.
WASHINGTON, D. C. 20036
(202) 296-2780

P. O. BOX 848
340 FIRST NATIONAL BANK BUILDING
ROCHESTER, MINNESOTA 55903
(507) 288-3156

30 RUE LA BOÉTIE
75008 PARIS, FRANCE
TEL: (1) 562 32 50

February 1, 1985

JOHN W. MANNING

Ms. Andrea Hemstad Bennett
State Auditor
Room 270
Sam W. Mitchell Building
P. O. Box 4009
Helena, Montana 59604

Mr. Rick Tucker
Montana Securities Department
Room 270
Sam W. Mitchell Building
P. O. Box 4009
Helena, Montana 59604

Dear Andy and Rick:

It has come to my attention that there is legislation in the State Legislature to exempt NASDAQ National Market System securities from registration in Montana. I strongly believe that such an exemption is desirable and would be beneficial to several companies headquartered in Montana.

The NASDAQ system in general, and the National Market System in particular, has developed into a very significant and effective trading market in the past several years. As you know, the NASD regulates its listed companies in much the same manner as the national and regional stock exchanges. Although I am aware of the competition between the exchanges and the National Market System to enlist issuers, I do not believe that there are any good reasons for treating National Market System securities any differently than securities listed on the established exchanges.

Adoption of such an exemption would in my opinion be best accomplished by amending Section 30-10-104(13) of the Montana Securities Act by inserting a few words referring to the NASDAQ National Market System. For the reasons expressed above, I reiterate my support for the adoption of this amendment and urge you to support that legislation.

If you should have any questions with respect to the foregoing, please do not hesitate to contact me.

Very truly yours,


John W. Manning

JWM/mc

February 11, 1985

Andrea Bennett
State Auditor and
Ex Officio Securities Commissioner
P. O. Box 4009
Helena, MT 59604

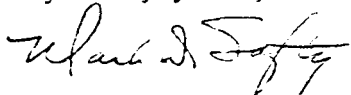
Dear Ms. Bennett:

We ask for your support of legislation to be proposed in this session which would create a registration exemption under Montana Securities Laws for firms whose securities are listed on the NASDAQ National Market System. As you know, listing with NASDAQ/ NMS is the functional equivalent of a listing with one of the other major stock exchanges (ie. New York or American Stock Exchange).

I am an attorney practicing in the securities field, and a Montanan closely involved in business throughout the state. This proposed exemption would benefit business without minimizing in any way, the protections afforded Montanans by the Securities Laws.

Thank you for your consideration of this matter.

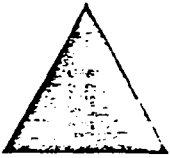
Very truly yours,



Mark D. Safty General Counsel
and Secretary

CC: Doug James

MDS:lkp

**BANK OF MONTANA****S Y S T E M**

P. O. BOX 5100, GREAT FALLS, MONTANA 59403

February 1, 1985.

Mrs. Andrea Bennett, State Auditor
State of Montana
Mitchell Building
P. O. Box 4009
Helena, MT 59604

Dear Mrs. Bennett:

Bank of Montana System supports the Securities Department's proposal that would provide an exemption from registration for NASDAQ/NMS Securities.

We believe this action is long overdue and we commend the Securities Department for its progressive approach.

Very truly yours,

JOSEPH J. FRIEND
Senior Vice President

JJF:emd

cc: Gless Faulkner

First Bank — Billings
Suite 401
Billings, Montana 59101
406/252-2106

 **Piper, Jaffray & Hopwood**
INCORPORATED

Established 1895 Member New York Stock Exchange, Inc.

February 4, 1985

Andrea Bennett
State Auditor
Mitchell Building
P. O. Box 4009
Helena, Montana 59604

Dear Mrs. Bennett:

We support the NASD's effort to secure a NASDQ National Market System Exemption under Montana's securities law. Why the sudden interest from outsiders in New York? Could it be to keep the monopoly in the jobs on Wall Street? If there is anything we could do to assist you with your proposed legislation, please let me know.

Sincerely,



Lawrence C. VanAtta
Branch Manager/Vice President



RIBI
IMMUNOCHEM
RESEARCH, INC.

FAULKNER 2/4/85

P.O. Box 1409
HAMILTON, MONTANA
59840 USA
(406) 363-6214

January 30, 1985

Ms. Andrea Hemstad,
State Auditor
State Auditor's Office
P. O. Box 4009
Helena, MT 59604

Dear Ms. Hemstad:

Congratulations on your election as State Auditor. I am sure that you are extremely busy establishing yourself into the new position, but I did want to take this opportunity to commend you and Rick Tucker on the forward-looking approach you have taken in regard to putting NASDAQ National Market System securities on parity with the other Exchanges.

We here at Ribi ImmunoChem fully support your efforts and offer any assistance we can give in seeing the matter through the current Legislature. This change has been long overdue and will only add benefit to the companies doing business in our state as well as provide a benefit for our citizens.

Keep up the good work. I look forward to meeting you sometime in the near future.

Sincerely,

Nils A. Ribi,
Chief Executive Officer

NAR/m

cc: Mr. Rick Tucker



ROCKY MOUNTAIN CAPITAL, LTD.

February 11, 1985

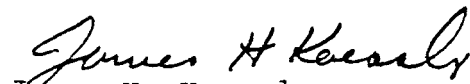
Ms. Andrea Bennett
State Auditor and Ex
Officio Securities Commissioner
P. O. Box 4009
Helena, Montana 59604

Re: Securities Legislation
The NASDAQ/NMS Exemption

Dear Ms. Bennett,

The proposed legislation to create an exemption for securities listed on NASDAQ/NMS is supported by Rocky Mountain Capital. As venture capitalists, we appreciate the need for legislation that facilitates capital formation, and believe such legislation would be an important element in the overall "build Montana" efforts.

Truly yours,


James H. Koessler
President

JHK/cb

William A. Brodin

ATTORNEY AT LAW
ONE TEN WEST PARK AVENUE
P.O. Box 1397
ANACONDA, MONTANA 59711-1397

—
TELEPHONE (406) 563-8412

February 8, 1985

Honorable Andrea Bennett
State Auditor
and Ex Officio Securities Commissioner
P.O. Box 4009
Helena, MT 59604

Dear Mrs. Bennett:

It has just come to my attention that a bill is to be introduced in this legislative session, with the blessings of the State Securities Department, to allow for an exemption under the Securities Act for securities listed on the NASDAQ/National Market System. I am most interested in this legislation as I feel it will greatly benefit the future economic growth of the State, and offers no new risk.

As you are well aware, such exemption has, for years, been granted to other exchange listings. NASDAQ has proved its reliability, by its regulation of NASD member firms and the built-in protections afforded to investors. It seems only fair and equitable that such exemption should be allowed NASDAQ/National Market System.

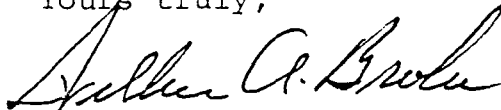
A further fact however, is the assistance it would provide to Montana entrepreneurs. As General Counsel to Ribi Immunochem Research, Inc., I have been closely affiliated with and respectful of the NASD system. To have had the exemptions as proposed, would have greatly aided our company in its early financing and it would assist Montana companies seeking capital expansion in the future. This exemption is presently offered in many of the States of this Country and hopefully the exemption will soon be the law of this State.

Further, I am unable to appreciate why anyone would be legitimately opposed to extending this exemption to NASDAQ/National Market System, as it appears beneficial to all of Montana for any entrepreneurial development that will or may take place. The granting of such exemption does not create an undue disadvantage to the jeopardy of any of the existing named exchanges which already have the benefit of the exemption.

Honorable Andrea Bennett
February 8, 1985
Page 2

I do therefore most sincerely congratulate your office for proposing such legislation, and I offer my wholehearted support and cooperation. Should I be able to be of service in this regard, please feel free to call on me.

Yours truly,

A handwritten signature in cursive script, appearing to read "William A. Brolin".

William A. Brolin

WAB/mf

cc. Doug James

ROBERT K. OGG
ATTORNEY AT LAW
100 SECOND ST. EAST
SUITE 207
WHITEFISH, MONTANA 59937
(406) 862 1131

February 8, 1985

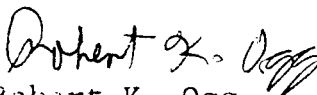
Andrea Bennett
State Auditor
and Ex Officio Securities Commissioner
P.O. Box 4009
Helena, Montana 59604

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The approval of this exemption could help to dispel the backwoods image of Montana and its business climate. Without this kind of forward thinking business legislation, Montana is apt to remain in the backwaters of the stream of national commerce. This exemption would be one step of many that should be taken to move Montana into the United States of America that exists in the 1980's.

Sincerely,


Robert K. Ogg

RKO/cb
Encl.
cc: Doug James

LAW OFFICES OF
SMALL, HATCH, DOUBEK & PYFER
LIVERY SQUARE
39 NEILL AVENUE
HELENA, MONTANA 59601

FLOYD O. SMALL
CARL A. HATCH
JOHN C. DOUBEK
RICHARD J. PYFER

February 8, 1985

Ms. Andrea Hemstead
State Auditor/Securities Commissioner
State of Montana
Capitol Complex
Helena, MT 59620

COPY

Dear Ms. Hemstead:

It has been brought to my attention that legislation has been proposed which creates a new exemption under Montana's securities statutes for securities listed on the NASDAQ/National Market System.

Considering how intensive and extensive the requirements and standards are for acceptance by the NASDAQ/NMS, the proposed exemption makes sense. In the several states with which I am familiar, satisfying NASDAQ/NMS requirements is more comprehensive and exhaustive than the applicable blue-sky statutes.

In the case of certain of my securities clients, having to additionally satisfy applicable blue-sky statutes would be duplicitious, costly and serve absolutely no justifiable purpose. If the important disclosures and information has already been furnished to NASDAQ/NMS then it makes no sense to build a smaller, weaker wheel (at a cost of anywhere between \$5,000 and \$20,000) for each of perhaps several states' blue-sky laws.

Thus, the money savings alone will be an incentive to companies interested in selling stock to make one more thorough and better filing (with NASDAQ/NMS) than several piece-meal state filings. Further, the better quality of filings will serve to protect investors from fraud and save them money as well. More money will be available to companies and concerns to grow and develop, as opposed to paying legal bills and administrative fees.

Much of what I have said appears to be hurting my own pocket-book inasmuch as I do prepare blue-sky submittals. Nevertheless, having seen what can happen to the unwary, unsuspecting investor, I strongly urge that this exemption will go a long way to protect them, and that is really what the securities law, both state and federal, are all about.

Sincerely,

John C. Doubek
Attorney at Law

LAW OFFICES
MOULTON, BELLINGHAM, LONGO & MATHER, P. C.
SECURITIES BUILDING
BILLINGS, MONTANA 59103

WM. H. BELLINGHAM
BERNARD E. LONGO
W. S. MATHER
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BRENT R. CROMLEY
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GREGORY G. MURPHY
WILLIAM A. FORSYTHE
DOUG JAMES
BRAD H. ANDERSON
THOMAS E. SMITH

TELEPHONE 248-7731
AREA CODE 406

P. O. BOX 2545

FREDRIC D. MOULTON
OF COUNSEL

February 8, 1985

Ms. Andrea Bennett
State Auditor and
Ex Officio Securities Commissioner
P. O. Box 4009
Helena, Montana 59604

Re: Securities Legislation
The NASDAQ/NMS Exemption

Dear Andy:

I am writing to express my support for your proposal to amend Section 30-10-104(13), MCA, of the Securities Act of Montana to create an exemption for securities listed on the National Association of Securities Dealers Automated Quotation System's/National Market System (NASDAQ/NMS). This exemption will benefit Montana business as well as investors.

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Ms. Andrea Bennett

Page 2

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There are many benefits that will result from this decision. It will:

1. Facilitate the raising of capital, thereby encouraging economic development;
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Ms. Andrea Bennett

Page 3

As the Georgia Secretary of State noted, there are many benefits to adopting a NASDAQ/NMS exemption. Each of his listed reasons is applicable in Montana. I cannot think of any reason why Montana should not adopt a NASDAQ/NMS exemption. It is the logical and efficient transition to the computer age. Montana will not lose any revenue by adopting this exemption. Additionally, the exemption is not going to open a door for securities fraud.

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I support your proposal to create a NASDAQ/NMS exemption without qualification. It is clearly in the best interests of Montana consumers and businesses to adopt this legislation.

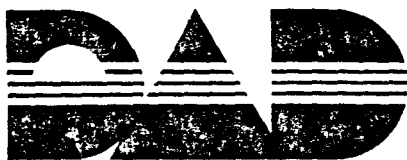
Sincerely,

MOULTON, BELLINGHAM, LONGO
& MATHER, P.C.

By 

Doug James

DJ:pi



An investment firm you like
to tell your friends about.

February 4, 1985

**D.A.
Davidson
& Co.**

Incorporated

Davidson Building
P.O. Box 5015
Great Falls, Montana
59403

(406) 727-4200

Offices: Billings,
Bozeman, Butte,
Havre, Helena, Kalispell,
Missoula, Montana;
Williston, North Dakota;
Moscow, Idaho

Corporate Office:
Davidson Building
Great Falls,
Montana 59401

Members:
Midwest Stock
Exchange Inc.
Pacific Stock
Exchange Inc.
Securities Investor
Protection Corp.

Ms. Andrea Bennett
State Auditor
Mitchell Building
Helena, Montana 59620

RE: Proposed Amendment to State Securities Laws

Dear Ms. Bennett:

It has come to our attention that your office, as ex officio Securities Commissioner for the State of Montana, is contemplating an amendment to the Securities Act of Montana (the "Act") which would provide an exemption from the registration provisions of the Act for all securities designated as qualified for trading in the National Market System ("NMS") which are listed or approved for listing upon notice of issuance on the National Association of Securities Dealers Automated Quotation System (NASDAQ). D.A. Davidson & Co. strongly endorses the efforts of your office to effectuate such an amendment.

At the present time securities listed on certain national securities exchanges, specifically the New York, American, Pacific and Midwest Exchanges, are exempt from the registration requirements of the Act. The proposed amendment would provide a similar exemption to securities traded on NASDAQ/NMS and recognize NASDAQ/NMS as a qualified national exchange. We believe that such treatment and recognition is warranted since adequate procedures and controls are in place for the protection of investors equal to those on other recognized national exchanges. Further, NASDAQ/NMS provides investors with current market information similar to national exchange listed stocks, rapid execution of orders and execution costs which on average are 10% less than the cost of executing similar orders on other exchanges.

While we support the basic concept of the proposed amendment, we would like to suggest certain modifications to the draft legislation we have reviewed. The modifications would be as follows:

- (1) Instead of a separate sub-section under MCA Section 30-10-104 providing an exemption for NASDAQ/NMS we would suggest inclusion of NASDAQ/NMS as an approved exchange under existing MCA Section 30-10-104(13).
- (2) We suggest that only those stocks that are actually listed on NASDAQ/NMS be exempt rather than those that are approved for listing.
- (3) We do not favor the additional language contained in the draft which would permit revocation or denial of the NASDAQ/NMS exemption or of the exchange exemptions as presently contained in MCA Section 30-10-104(13). The basis for this language is currently found in the transactional exemptions permitted by

Ms. Andrea Bennett
February 4, 1985
Page 2

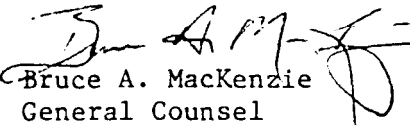
MCA Section 30-10-105. It is appropriate to grant the Commissioner the authority to strip abusive securities of the cloak of the transactional exemption when the public interest requires the removal of such an exemption. To permit the unilateral revocation of an exemption in cases where the character of the security itself has resulted in the granting of an exemption by the Legislature would result in an incongruity in the law which does not coincide with the total scheme of securities regulation.

There are other modifications within the draft which we would favor but which do not directly relate to the NASDAQ/NMS exemption and therefore are beyond the scope of this letter. We would, however, appreciate an opportunity to review this proposed legislation with you and your staff.

Thank you for your attention to these matters. If you or any of your staff have any questions concerning these comments please do not hesitate to give us a call.

With best regards.

Sincerely,


Bruce A. MacKenzie
General Counsel

BAM:lkh

cc: Kim Schulke
Rick Tucker



An investment firm you like
to tell your friends about.

February 7, 1985

Ms. Andrea Bennett
State Auditor
Mitchell Building
Helena, Montana 59620

RE: Proposed Amendment to State Securities Laws

Dear Ms. Bennett:

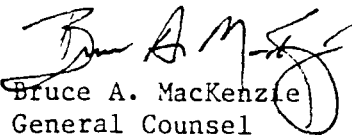
Thank you for taking the time to meet with Doug James and me concerning the proposed amendment to the Securities Act of Montana. This letter will confirm our conversation in which I indicated my consent for the Department to use my letter dated February 4, 1985, supporting the NASDAQ/NMS exemption during the legislative hearings on this particular legislation.

As I indicated to you in our conversation, however, my letter of February 4 contains three (3) proposed modifications to the legislation. After further consideration and discussions with your staff, the second modification I proposed in that letter which requested that only those stocks that are actually listed on NASDAQ/NMS be exempt rather than those that are approved for listing would be an ill-advised and inappropriate modification. I would appreciate it if you would attach a copy of this letter to the letter of February 4, 1985, clarifying D.A. Davidson & Co.'s position.

Thank you again for your attention to this matter. If you have any questions or if I can be of any further assistance please do not hesitate to contact this office.

With best regards.

Sincerely,


Bruce A. MacKenzie
General Counsel

cc: Rick Tucker

D.A.
Davidson
& Co.

Incorporated

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59403

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Members:
Midwest Stock
Exchange Inc.
Pacific Stock
Exchange Inc.
Securities Investor
Protection Corp.

NASDAQ given equal footing

By Jean Nolan

One thing that has always irked NASDAQ, the Washington-based National Association of Securities Dealers Automated Quotation market for over-the-counter stock trading, is that it has never been treated in the same way as the New York and American stock exchanges.

For example, securities offered or sold in the United States must be registered for sale with the individual states and the District in addition to being registered with the federal Securities and Exchange Commission. While all NYSE and AMEX stocks are automatically granted state certification, companies traded on NASDAQ must follow a costly and time-consuming process to register in each state. "We have a discrimination issue," says Ray Cocchi, vice president of congressional and state liaisons for NASDAQ.

However, the "discrimination" against NASDAQ will end in the state of Georgia as of Jan. 1, 1985, and it appears other states soon will follow suit.

Two weeks ago Georgia Secretary of State Max Cleland, in his role as the state's commissioner of securities, signed an order exempting securities of NASDAQ National Market Systems (NMS) companies from additional qualification procedures. That means NMS companies are automatically eligible for sale in Georgia, an action that grants NASDAQ parity with the New York and American stock exchanges.

"We are very pleased by this far-sighted move and hope the securities commissioners of the other 49 states will follow Georgia's lead in simplifying securities registration procedures," says Gordon Macklin, president of the National Association of Securities Dealers.

Stocks that make up NASDAQ's National Market System represent the "creme de la creme," of NASDAQ stocks, Cocchi says. Of the more than 4,000 NASDAQ stocks, those that meet rigid admission standards of market value, net income, minimum bid price and size of the stock float are placed on the NMS. So far, there are about 1,100 NMS stocks and a recent SEC ruling should expand the total to 2,500 issues.

NASDAQ has received written confirmation from Montana that it is about to follow the same procedure as Georgia, says Cocchi. To date, NASDAQ has held discussions regarding qualification procedures with these two states as well as California, Texas and Ohio—the three states with the toughest eligibility requirements, Cocchi says.

The tough requirements of individual states deter some companies from registering their NASDAQ stocks there. "There are companies that deliberately avoid certain states because they have to jump through hoops. It isn't worth the time, cost and frustration," Cocchi says.

Georgia's decision to grant NASDAQ issues parity with their counterparts on the New York and American exchanges was predicated on the amount of information and the standards NASDAQ uses to qualify companies for its national market list, according to Cleland.

For NASDAQ companies that are not part of the National Market System, Cleland says that after Jan. 1 the National Association of Securities Dealers will be in charge of processing registration applications on behalf of Georgia, a procedure that already is followed in the other 49 states, the District and Puerto Rico. ■

Thursday, November 29, 1984. © 1984.

NASDAQ delivers a solid punch to established stock exchanges

Researchers say computerized trading floor aids liquidity of issues

By JOHN CUNIFF
AP Business Analyst

NEW YORK — For years, the proudest boast of the New York and American stock exchanges was that they offered the greatest liquidity, or ability to find buyers and sellers for stocks at the best prices possible.

Companies liked that, because it exposed their shares to the greatest number of potential buyers and kept prices from wild gyrations. Buyers and sellers liked it for much the same reasons.

But the claim, once accepted as a given, now is being disputed, most recently by two Texas A&M University researchers who report their findings in the winter edition of *The Journal of Financial Research*.

"The results presented in this study indicate a marked decline in liquidity for securities moving from the over-the-counter market to either of the organized exchanges," said researchers David Dubofsky and John Groth.

Such a claim comes like a punch in the nose to organized stock exchanges, but it isn't the first blow.

Earlier research at the same university reached a somewhat similar conclusion. And members of "organized exchanges" themselves have commented on what they see as a developing problem with liquidity.

Moreover, over the past few years both the New York and American exchanges have had

Business Mirror

problems in finding growing companies that are eager to list their shares for trading, and liquidity is often cited as one of the reasons why.

What seems like a blow to organized exchanges, however, seems more like a caress to NASDAQ, a relatively new force made up of what used to be called the over-the-counter market and whose "trading floor" is a computer screen.

NASDAQ — an acronym for National Association of Securities Dealers Automated Quotation System — is especially pleased at the reason for liquidity differences that were offered by Dubofsky and Groth.

"The most logical reason for greater OTC liquidity," the authors state in the journal, "is the different market-making mechanisms."

The mechanism of the two largest organized exchanges funnel all buy and sell orders through brokers to the floor where, when a mismatch of orders develops, a specialist steps in and buys or sells for his own account.

Critics often have claimed over the years that the specialist can be viewed as a monopolist, since he has enormous price-setting powers over the stocks in which he specializes. It is a criticism that has plagued the exchanges.

The many specialists on the floor, each making a market in a limited numbers of stocks, also have risky, highly responsible jobs, since they may be compelled to buy against the order flow if the market is to move smoothly.

NASDAQ, however, has neither specialists nor trading floors. Instead, it has more than 400 competing dealers or market makers across the country, who maintain an inventory of certain stocks they are willing to buy or sell.

For some NASDAQ companies, such as MCI Communications, there are more than 30 competing traders, each offering what they feel is the best price, and all available to a broker in his or her office, displayed on a video screen.

Overall, the NASDAQ market is a vast computerized network linking brokers and dealers across the country and in Europe, with competitive bids and offers for shares being displayed in thousands of offices.

It is this system that Dubofsky and Groth refer to when they write that "Competing dealers in OTC securities may provide more continuous and liquid markets than the organized exchanges that employ monopolist specialists."

Ironically, the NASDAQ system, which emerged or evolved rather than being built from a master plan, resembles somewhat the unfulfilled, years-old goals of Congress to create through central planning a national market system.

100 NASDAQ/NMS MARKET VALUE LEADERS
1984

Symbol	Company Name	Market Value	Shares Outstanding
1. INTC	Intel Corporation	3,178,140,000	112,501,000
2. MCIC	MCI Communications Corporation	1,806,057,000	240,808,000
3. AAPL	Apple Computer, Inc.	1,763,081,000	61,325,000
4. FGRP	Farmers Group, Inc.	1,680,624,000	33,866,000
5. INGR	Intergraph Corporation	1,413,555,000	25,937,000
6. SAFC	Safeco Corporation	1,226,841,000	37,037,000
7. ROAD	Roadway Services, Inc.	1,211,155,000	40,372,000
8. STPL	St. Paul Companies, Inc. (The)	1,074,859,000	20,044,000
9. PHYB	Pioneer Hi-Bred International, Inc.	1,013,650,000	31,926,000
10. PNCF	PNC Financial Corp.	1,004,279,000	22,072,000
11. PCLB	Price Company (The)	934,538,000	22,724,000
12. AGREA	American Greetings Corporation	880,956,000	27,856,000
13. ALBN	Allied Bancshares, Inc.	874,543,000	40,914,000
14. DIGI	Digital Switch Corporation	871,987,000	39,862,000
15. ANAT	American National Insurance Company	869,220,000	28,854,000
16. PCAR	PACCAR Inc.	807,141,000	18,138,000
17. TNDM	Tandem Computers Incorporated	793,792,000	40,192,000
18. CPER	Consolidated Papers, Inc.	767,181,000	21,919,000
19. TCOMA	Telecommunications, Inc.	767,087,000	32,993,000
20. TRGA	Trust Company of Georgia	762,731,000	23,835,000
21. SBRU	Subaru of America, Inc.	693,712,000	6,085,000
22. SHON	Shoneys, Inc.	674,751,000	21,336,000
23. GBCO	Gulf Broadcast Company	673,271,000	43,437,000
24. CSFN	Corestates Financial Corporation	668,670,000	15,069,000
25. ALEX	Alexander & Baldwin, Inc.	662,519,000	18,403,000
26. PLOIY	Phillips (NV) Gloeilampen	658,719,000	42,498,000
27. SMED	Shared Medical Systems Corporation	658,638,000	24,170,000
28. SOVN	Sovran Financial Corporation	656,161,000	16,988,000
29. FUNC	First Union Corporation	646,489,000	18,876,000
30. APCI	Apollo Computer Inc.	622,277,000	31,114,000
31. CSGA	Citizens and Southern Georgia Corporation	621,414,000	32,073,000
32. KEMC	Kemper Corporation	621,118,000	14,238,000
33. MNED	Multimedia, Inc.	612,291,000	16,661,000
34. SMAS	Servicemaster Industries Inc.	585,954,000	21,307,000
35. MOLX	Molex Incorporated	579,304,000	19,976,000
36. NOBE	Nordstrom, Inc.	576,135,000	18,436,000
37. MLHR	Miller, Inc. (Herman)	566,121,000	16,529,000
38. FECC	First Executive Corporation	557,767,000	47,980,000
39. ACCOB	Adolph Coors Company	544,251,000	34,284,000
40. AMTR	Ameritrust Corporation	537,050,000	9,300,000
41. LIZC	Liz Claiborne, Inc.	535,805,000	21,220,000
42. WMTT	Willamette Industries, Inc.	533,505,000	15,135,000
43. SFIN	Southland Financial Corporation	526,081,000	17,391,000
44. PTCM	Pacific Telecom, Inc.	524,188,000	40,322,000
45. PICN	Pic 'N' Save Corporation	522,970,000	26,148,000
46. OCAS	Ohio Casualty Corporation	521,637,000	11,158,000
47. ROUS	Rouse Company (The)	518,636,000	15,033,000
48. LINB	Lin Broadcasting Corporation	518,052,000	21,474,000
49. GENE	Genentech, Inc.	514,352,000	15,240,000
50. BETZ	Betz Laboratories, Inc.	506,389,000	14,894,000

100 NASDAQ/NMS MARKET VALUE LEADERS 1984

Symbol	Company Name	Market Value	Shares Outstanding
51. NSCO	Network Systems Corporation	490,972,000	21,821,000
52. MILI	Millipore Corporation	485,076,000	14,215,000
53. VNCP	Valley National Corporation	483,280,000	16,737,000
54. DRAM	Micron Technology, Inc.	476,125,000	17,314,000
55. RBAN	Rainier Bancorporation	469,525,000	9,807,000
56. CITUB	Citizens Utilities Company	466,548,000	16,370,000
57. WYMN	Wyman - Gordon Company	466,176,000	18,835,000
58. MIDL	Midlantic Banks, Inc.	464,660,000	15,818,000
59. USHC	United States Health Care Systems, Inc.	461,373,000	14,142,000
60. YELL	Yellow Freight System, Inc. of Delaware	453,517,000	14,284,000
61. USBC	U. S. Bancorp	448,700,000	18,314,000
62. MICS	Micom Systems, Inc.	446,281,000	15,798,000
63. PMSC	Policy Management Systems Corporation	445,940,000	16,216,000
64. NCTY	National City Corporation	431,794,000	11,363,000
65. SONO	Sonoco Products Company	428,453,000	10,916,000
66. MACK	Mack Trucks, Inc.	425,236,000	30,648,000
67. WTHG	Worthington Industries, Inc.	422,970,000	18,490,000
68. UVBK	United Virginia Bankshares, Incorporated	412,068,000	11,944,000
69. MAXI	Maxicare Health Plans, Inc.	404,825,000	16,357,000
70. ELPA	El Paso Electric Company	404,558,000	30,823,000
71. KNDR	Kinder-Care Learning Centers, Inc.	404,190,000	27,403,000
72. LINV	Life Investors Inc.	395,163,000	9,409,000
73. HMOH	HealthAmerica Corporation	388,654,000	22,862,000
74. AVAK	Avantek, Inc.	387,267,000	18,891,000
75. MONC	Monarch Capital Corporation	386,270,000	8,680,000
76. HNAT	Hartford National Corporation	385,098,000	14,464,000
77. LOTS	Lotus Development Corporation	378,888,000	15,953,000
78. STBK	State Street Boston Corporation	378,350,000	8,225,000
79. SMCH	Service Merchandise Company, Inc.	375,342,000	31,944,000
80. DAZY	Daisy Systems Corporation	373,698,000	14,513,000
81. CHRS	Charming Shoppes, Inc.	368,184,000	21,500,000
82. FDLNE	Food Lion, Inc.	367,920,000	26,280,000
83. ECON	Economics Laboratory, Inc.	365,016,000	13,582,000
84. BRNO	Bruno's, Inc	362,858,000	17,809,000
85. FDLNA	Food Lion, Inc.	361,350,000	26,767,000
86. NOXLB	Noxell Corporation	359,420,000	8,054,000
87. HOOV	Hoover Company (The)	357,357,000	12,376,000
88. ANDW	Andrew Corporation	354,822,000	10,138,000
89. HAML	Hamilton Oil Corporation	354,130,000	25,295,000
90. CMCA	Comerica, Inc.	351,560,000	10,302,000
91. IMSI	I.M.S. International, Inc.	348,398,000	9,578,000
92. FFBK	First Florida Banks, Inc.	345,172,000	15,601,000
93. FNBF	Florida National Banks of Florida, Inc.	343,882,000	11,858,000
94. PAYN	Pay'n Save Corporation	342,765,000	15,234,000
95. MDNT	Maryland National Corporation	342,584,000	7,786,000
96. MCCRK	McCormick & Company, Incorporated	342,208,000	10,736,000
97. USTR	United Stationers Inc.	340,040,000	13,467,000
98. FABC	First Alabama Bancshares, Inc.	331,874,000	15,259,000
99. CHIC	Chi Chi's, Inc.	329,757,000	26,119,000
100. OGIL	Ogilvy & Mather International Inc.	329,650,000	9,157,000

**National Association of
Securities Dealers, Inc.**
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8000

February 1, 1985

Ms. Andrea "Andy" Bennett
State Auditor and "Ex-Officio"
Securities Commissioner
Mitchell Building
Post Office Box 4009
Helena, Montana 59604

Dear Andy:

Based on our understanding that your Department's 1985 legislative recommendations would include a proposed amendment to Section 30-10-104(13) of the Montana Code Annotated to grant exchange parity to NASDAQ/NMS securities, the NASD committed its strong support of your Department's undertaking and offered to appear at legislative hearings and marshal additional support from broker-dealers and NASDAQ issuers headquartered in Montana. Enclosed is a copy of Frank Wilson's December 27, 1984, letter to Rick Tucker.

There have been several developments since that time, at least one of which leaves us puzzled. We were advised by your staff that the American Stock Exchange (Amex) retained local counsel to challenge the proposal unless it is modified to restrict the exemption to the approximately 200 Tier I NASDAQ/NMS securities while leaving the approximately 1,100 Tier II NASDAQ/NMS securities out in the cold. Such modification would, in effect, render the proposal virtually meaningless. However, we are not aware of the existence of any written submission to this effect filed with your office by the Amex or its counsel which would confirm the Amex's rationale for suggesting such modification. We are aware of one written submission filed with your office by the Amex but it does not speak to this purported modification.

Perhaps we misunderstand the Amex's position. Whatever the case, an across the board exemption for NASDAQ/NMS securities is important to Montana-headquartered broker-dealers and NASDAQ/NMS issuers and, as you know, we have recently retained Doug James to protect the interests of our constituents and yours located within the State of Montana. Your securities staff, after careful consideration, determined as the State of Georgia recently did that a NASDAQ/NMS exemption would (1) serve the best interests of the investing public; (2) reduce unnecessary burdens imposed on legitimate high quality companies; (3) improve the climate for capital formation; and, (4) eliminate the invitation for local business to take its marketplace to Wall Street simply to avoid the burdens of complying with an unnecessary and outdated provision of the

Ms. Andrea "Andy" Bennett
February 1, 1985
Page 2

Montana law enacted before NASDAQ/NMS came into existence. I am also enclosing a copy of Georgia Secretary of State Max Cleland's December 6, 1984, press statement which you may find of interest. We remain firmly committed as stated in our December 27, 1984, letter.

The proposal currently pending in the state legislative counsel's office differs somewhat from our original understanding and is being reviewed by our staff. We plan to comment on it when our review has been completed. We believe a simpler approach may be available. Our paramount concern, however, relates to the short legislative session, the enormous work load imposed on state legislators and the minimum time allotted for input at Committee hearings. We are fearful that the proposal may hit a fast track in the legislature before we have had ample time to fully respond to any questions you or members of the legislature may have.

Similar NASDAQ/NMS proposals are currently underway in a number of other states, some of which have already hit a fast track. Nevertheless, we are available to meet with you in Helena on short notice to provide you and your staff any information you may need to insure the enactment of a NASDAQ/NMS exemption. Several individuals from the Montana financial community have offered to accompany us, should you desire to meet.

Please let Doug or myself know if we can be of any assistance. Doug can be reached at 248-7731. My telephone number is (202) 728-8248. I enjoyed meeting you at Sonny's recent retirement party and we at the NASD look forward to continuing our long and close working relationship with your Securities Department in fulfilling our mutual investor protection responsibilities.

Sincerely,



Raymond W. Cocchi
Vice President
Congressional and State Liaison

Enclosure

cc: Doug James
Rick Tucker
Frank Wilson

NASD

National Association of
Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8000

December 27, 1984

Mr. Richard G. Tucker
Chief Deputy Securities Commissioner
Mitchell Building
P.O. Box 4009
Helena, MT 59604

Dear Commissioner Tucker:

The National Association of Securities Dealers, Inc. (NASD) would like to take this opportunity to express its strong support for a proposed amendment to Section 30-10-104(13) of the Montana Code Annotated to extend the exemption from registration in the State of Montana now granted to securities listed on certain stock exchanges to securities which are a part of the NASDAQ National Market System (NASDAQ/NMS). The Association believes that the qualitative and quantitative similarities of the NASDAQ/NMS over-the-counter market to the currently exempted exchange markets and the protections afforded to the investing public with respect to both the securities quoted in NASDAQ/NMS, and with respect to the regulation of NASD member firms support the exemption of NASDAQ/NMS. The NASD believes that the securities and the participants in NASDAQ/NMS marketplace are the substantial equivalent of those of the approved exchanges.

As you are aware, the NASD is registered with the Securities and Exchange Commission as a national securities association pursuant to the provisions of the Securities Exchange Act of 1934 as amended. The NASD has as its primary purpose providing self-regulation for the over-the-counter securities market and it governs the activities of its 5,600 broker-dealer members through 13 administrative districts throughout the United States. The concept of self-regulation allows for regulation by the Association and the other self-regulatory organizations (which by definition in Section (3)(a)(26) of the Securities Exchange Act of 1934 includes the Association and all of the registered securities exchanges) under a pervasive pattern of coordination with and oversight by the Securities and Exchange Commission. The Association believes that its primary function as a regulator of a national securities market provides protections to investors which are the equivalent of those provided by the national securities exchanges.

The NASDAQ system which came into existence in 1971 and NASDAQ/NMS which has been in place since 1982 are both logical extensions of the Association's historical function as a self regulatory organization.

The NASDAQ System has brought a major segment of the over-the-counter market from the point where available OTC quotations were primarily written and outdated when made available, with very little public visibility, to a point where NASDAQ comprises the second largest securities market in the United States with share volume in 1983 at 75% of that of the New York Stock Exchange and 7.5 times that of the American Stock Exchange. Annual share volume for NASDAQ Securities stood at 15.9 billion shares in 1983 which represented almost a 90% increase over 1982 and a 336% increase in the past five years. The daily volume on NASDAQ reached a high of 122 million shares on August 3, 1984 and on seven days during 1983 it exceeded the share volume on the New York Stock Exchange. Dollar volume of trading has increased by in excess of 1000% from \$18.7 billion in 1974 to \$188.3 billion in 1983. The aggregate market value of securities in NASDAQ totals \$229.3 billion, an increase of more than 150% in the last five years. In addition, the NASDAQ composite index for 1983 exceeded the percentage gains for both the New York Stock Exchange composite and the Standard and Poors 500 indexes. There are now in excess 4,700 securities of approximately 4,100 companies quoted on the NASDAQ System with more than 120,000 quotation terminals around the world currently able to receive up to the second quotations on NASDAQ securities. NASDAQ quotations are now carried, on a daily basis, by over 130 newspapers throughout the United States. The number of NASDAQ companies has grown by 53% in the past five years while losses of 1% and 12% respectively were recorded on the New York and American stock exchanges, respectively.

The NASDAQ National Market System which you propose to designate along with those securities exchanges which currently enjoy exemption from registration in Montana is a segment of the NASDAQ System wherein, from the standpoint of investors, securities are truly on a par with those securities listed on the major securities exchanges. Designation as a NASDAQ/NMS security is made pursuant to criteria set forth in a rule promulgated by the Securities and Exchange Commission and subject to change only through the SEC rulemaking process. Any such change must comport with the mandates of Congress as embodied in the 1975 Amendments to the Securities Exchange Act which created the concept of a national market system for securities transactions. The Association believes that the listing criteria for NASDAQ/NMS are equal to and in some cases exceed the criteria for listing on the various securities exchanges. NASDAQ/NMS designation provides investors with last sale trade reporting similar to that found on the New York and American Stock Exchanges. A profile of those companies traded on NASDAQ/NMS which now exceed 1,000 in number

demonstrates that as of the end of 1983, the average price per share was in excess of \$20 and the average issuer had almost 8 million outstanding shares with a public float of 5.6 million shares and a market value in excess of \$150 million. The companies in the system had average assets of over \$500 million and equity in excess of \$75 million. Their revenues averaged \$172 million with net income of over \$8 million. In addition, those companies on NASDAQ/NMS had an average of ten market makers.

Additional evidence of the comparability of NASDAQ/NMS securities to those listed on registered securities exchanges comes from a recent action by the Federal Reserve Board. The Board, which is charged by Congress with regulating the extension of credit for the purchase of securities in the form of margin loans, has amended Regulation T effective November 13, 1984 to make securities automatically marginable upon their designation as a NASDAQ/NMS security. This action recognizes the comparability of NASDAQ/NMS stocks to those listed on an exchange in that until this time only exchange-listed securities enjoyed automatic marginability while those traded over-the-counter irrespective of their individual merit had to be designated as marginable on a case-by-case basis. Other NASDAQ securities must still be designated by the FRB in order to achieve margin status.


In addition to the basic qualitative criteria for designation as a NASDAQ/NMS security, all such securities are subject to both Securities and Exchange Commission and NASD disclosure and reporting requirements which are aimed at providing the public with that information which is material to making investment decisions. Further, the Association through its NASDAQ Operations Department closely monitors issuers' continued compliance with the listing standards and the Association's Market Surveillance staff utilizes state of the art computerized systems to monitor trading activity in the NASDAQ System. The Association has the ability, based upon its investigative activities to halt quotations in NASDAQ securities and to take appropriate disciplinary action against member firms found to have engaged in activities detrimental to the best interests of the investing public.

The Association believes that all of these factors result in a marketplace for NASDAQ/NMS securities which is fully the equivalent of that of the national securities exchanges and that the proposed amendment to Section 30-10-104(13) of the Montana Code is a progressive and forward thinking change which appropriately reflects the realities of national securities markets of 1984.

We will be happy to assist in any way you deem advisable in bringing the proposed statutory amendment to

fruition, including appearing at legislative hearings which may be held, and marshalling broker/dealer and NASDAQ issuer support in Montana.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Frank J. Wilson". The signature is fluid and cursive, with the first name "Frank" being more prominent.

Frank J. Wilson
Executive Vice President
and General Counsel

FJW/mbs

Amendment to SB 399

1. Page 30, line 18.

Following: line 17.

Strike: "30-10-201(1)"

Insert: "30-10-201(4)"

Amendment to SB 399

1. Page 30, line 18.

Following: line 17.

Strike: "30-10-201(1)"

Insert: "30-10-201(4)"

SENATE BILL 340

TESTIMONY OF JEFFRY M. KIRKLAND
VICE PRESIDENT-GOVERNMENTAL RELATIONS
MONTANA CREDIT UNIONS LEAGUE

BEFORE THE SENATE BUSINESS & INDUSTRY COMMITTEE
ON THURSDAY, 14 FEBRUARY 1985

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD I AM JEFF KIRKLAND, VICE PRESIDENT-GOVERNMENTAL RELATIONS FOR THE MONTANA CREDIT UNIONS LEAGUE. OUR LEAGUE IS A TRADE ASSOCIATION REPRESENTING 111 OF THE 114 CREDIT UNIONS IN MONTANA. WE STAND IN SUPPORT OF SENATE BILL 340.

SENATE BILL 340 IS A SIMPLE BILL, IN SPITE OF BEING 24 PAGES LONG. IT DOES ONE THING: IT WOULD ALLOW ALL FINANCIAL INSTITUTIONS IN THE STATE TO SERVE AS DEPOSITORIES FOR PUBLIC FUNDS OF THE STATE OF MONTANA, ITS AGENCIES, LOCAL GOVERNMENTS, AND OTHER POLITICAL SUBDIVISIONS OF THE STATE.

IT WOULD DO SO BY ALLOWING CREDIT UNIONS AND SAVINGS AND LOAN ASSOCIATIONS TO SERVE IN THE SAME CAPACITY AS COMMERCIAL BANKS AS POTENTIAL DEPOSITORIES FOR PUBLIC FUNDS.

IF PASSED BY THE LEGISLATURE, THE BILL WOULD REFLECT THE PHILOSOPHY THAT ALL TYPES OF FINANCIAL INSTITUTIONS DOING BUSINESS IN THE STATE OF MONTANA SHOULD BE LOOKED AT AS POTENTIAL DEPOSITORIES FOR PUBLIC FUNDS, NOT JUST COMMERCIAL BANKS AND, IN SOME SITUATIONS, SAVINGS AND LOAN ASSOCIATIONS.

THE BILL AMENDS FIVE TITLES OF STATE LAW--TITLE 7, LOCAL GOVERNMENT; TITLE 17, STATE FINANCE; TITLE 19, PUBLIC

RETIREMENT SYSTEMS; TITLE 20, EDUCATION; AND TITLE 85, WATER USE. IT DOES SO BY GOING INTO EACH STATUTE THAT CONTROLS HOW A PUBLIC UNIT CAN INVEST ITS SURPLUS OR OPERATING FUNDS AND INSERTING "CREDIT UNION" WHERE "BANK" IS LISTED.

IN KEEPING WITH OUR BELIEF THAT ALL FINANCIAL INSTITUTIONS SHOULD BE TREATED EQUALLY, WE HAVE ALSO INSERTED "SAVINGS AND LOAN ASSOCIATION" IN THOSE STATUTES WHERE SAVINGS AND LOANS ARE NOT ALREADY INCLUDED. THAT HAPPENS IN SECTION 6, PAGE 6, LINE 22; SECTION 8, PAGE 8, LINE 25; SECTION 9, PAGE 9, LINE 14; SECTION 17, PAGE 23, LINE 12; AND SECTION 18, PAGE 24, LINES 11 AND 12.

IN THOSE STATUTES THAT REFER TO THE DEPOSIT INSURING AGENCY--THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) AND FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION (FSLIC)--WE HAVE INSERTED "NATIONAL CREDIT UNION ADMINISTRATION," WHICH IS CREDIT UNIONS' DEPOSIT INSURING AGENCY. AND THAT'S ALL THERE IS TO THE BILL.

SENATE BILL 340, QUITE SIMPLY, WOULD SERVE A PUBLIC POLICY PURPOSE BY BROADENING THE INVESTMENT OPTIONS FOR VARIOUS PUBLIC FUNDS, NOT ONLY OF THE STATE BUT ALSO OF ITS AGENCIES AND POLITICAL SUBDIVISIONS. THAT COULD LEAD TO BETTER RATES EARNED ON INVESTMENTS BECAUSE OF INCREASED COMPETITION. EACH OF THE 18 SECTIONS OF THIS BILL SIMPLY MAKES REFERENCE TO CREDIT UNIONS AND THEIR FEDERAL DEPOSIT INSURING AGENCY WHENEVER THERE IS A REFERENCE TO BANKS AND THE FDIC AS A PERMISSIBLE INVESTMENT VEHICLE FOR PUBLIC UNIT FUNDS.

THESE AMENDMENTS TO CURRENT STATUTES MAKE IT POSSIBLE FOR THOSE RESPONSIBLE FOR THE INVESTMENT OF PUBLIC FUNDS TO LEGALLY INVEST THEM IN CREDIT UNIONS ON THE SAME BASIS AS THEY CAN CURRENTLY INVEST THEM IN BANKS AND SAVINGS AND LOANS.

CREDIT UNIONS, SHOULD THEY WISH TO BID FOR PUBLIC FUNDS, WOULD FOLLOW THE SAME SET OF STATUTORY GUIDELINES AND RULES AS FOLLOWED BY THE OTHER FINANCIAL INSTITUTIONS.

THE STATUTES CONTROLLING THE INVESTMENT OF PUBLIC FUNDS MANDATE THAT THE INVESTMENT BE SAFE. AND JUST AS PUBLIC FUNDS ARE INSURED BY BANKS AND S&LS UP TO \$100,000, PUBLIC FUNDS INVESTED IN EITHER FEDERAL OR STATE CREDIT UNIONS ARE INSURED UP TO \$100,000 BY THE NATIONAL CREDIT UNION ADMINISTRATION, AN AGENCY OF THE FEDERAL GOVERNMENT--AS ARE THE FDIC AND FSLIC.

IN ADDITION, AS PROVIDED FOR BY THE VARIOUS STATUTES, PUBLIC FUNDS IN EXCESS OF \$100,000 INVESTED IN ANY FINANCIAL INSTITUTION MUST BE AT LEAST 50% COLLATERALIZED BY THE PLEDGE OF SPECIFIC TYPES OF SECURITIES HELD BY THE FINANCIAL INSTITUTIONS IN THEIR INVESTMENT PORTFOLIOS. CREDIT UNIONS WOULD HAVE TO PLAY BY THOSE SAME RULES.

FINALLY, SHOULD ANYONE THINK THERE IS NO PRECEDENT FOR THIS TYPE OF LEGISLATION, IN 1984 ALONE WISCONSIN, ARIZONA, NEW JERSEY, PENNSYLVANIA, IOWA, AND KENTUCKY LEGISLATURES PASSED LEGISLATION ALLOWING CREDIT UNIONS TO SERVE AS DEPOSITORIES OF PUBLIC FUNDS. AND DURING THE 1983 SESSION, MONTANA'S LEGISLATURE PASSED LEGISLATION ALLOWING CREDIT UNIONS TO SERVE AS PERMISSIBLE INVESTMENTS FOR BOTH THE STATE BOARD OF INVEST-

MENTS AND THE ECONOMIC DEVELOPMENT BOARD (17-6-211, MCA; PAGE 16, LINES 5 AND 6). SO CREDIT UNIONS--IN A LIMITED CAPACITY--ARE ALREADY PUBLIC FUNDS DEPOSITORIES. SENATE BILL 340 COMPLETES THE JOB.

IF THE BILL IS REALLY SO SIMPLE, HOWEVER, AND SERVES THE PUBLIC POLICY PURPOSE OF OPENING UP THE INVESTMENT OPTIONS FOR THE VARIOUS PUBLIC FUNDS AND AGENCIES OF GOVERNMENT, WHY WOULD THERE BE ANY OPPOSITION TO THE BILL?

THERE ARE THOSE WHO WOULD TELL YOU THAT IF THIS LEGISLATION IS PASSED, CREDIT UNIONS WILL BE ONE STEP FURTHER TOWARD BECOMING BANKS. HOWEVER, AS THE CONGRESS IS FINDING OUT, ON THE FEDERAL LEVEL THERE IS ONE SIMPLE TEST FOR DETERMINING IF A FINANCIAL INSTITUTION IS A BANK. DOES IT HAVE DEMAND DEPOSITS (CHECKING ACCOUNTS) AND DOES IT MAKE COMMERCIAL LOANS? IF SO IT IS A BANK. IF IT ONLY DOES ONE OF THE TWO, IT IS NOT A BANK. IT IS A NON-BANK BANK.

NOWHERE IN ANY STATUTE THAT I AM AWARE OF DOES IT STATE THAT SERVING AS A DEPOSITORY FOR PUBLIC FUNDS IS A PROPRIETARY ACTIVITY FOR BANKS AND THAT ONLY "BANKS" BY DEFINITION CAN BE SUCH DEPOSITORIES.

LOOKING AT THE STATE STATUTE DEFINING "BANK," THERE ARE SIX ACTIVITIES A FINANCIAL INSTITUTION HAS TO BE ABLE TO DO TO BE A BANK. ACCEPTING PUBLIC FUNDS DEPOSITS IS NOT ONE OF THOSE SIX. HOW THEN, IF SERVING AS A PUBLIC FUNDS DEPOSITORY IS NOT A CONDITION FOR BEING A BANK, CAN THE BANKING COMMUNITY SAY

THAT A NON-BANK FINANCIAL INSTITUTION SEEKING THE SAME AUTHORITY IS BECOMING A BANK?

CERTAINLY, COMMERCIAL BANKS HAVE THE LONGEST HISTORY OF ACCEPTING PUBLIC FUNDS DEPOSITS. BUT THAT HARDLY MAKES IT BANKING'S PROPRIETARY ACTIVITY. IF A CREDIT UNION--OR SAVINGS AND LOAN ASSOCIATION FOR THAT MATTER--ACCEPTS PUBLIC FUNDS DEPOSITS, THERE IS NO WAY THAT SUCH ACTIVITY CAN BE CONSTRUED AS GETTING INTO "BANKING" AS DEFINED BY EITHER FEDERAL OR STATE LAW.

ANOTHER ARGUMENT THAT HAS BEEN USED TO PREVENT CREDIT UNIONS FROM SERVING AS PUBLIC FUNDS DEPOSITORIES IS THAT CREDIT UNIONS, AS FINANCIAL COOPERATIVES, DON'T PAY CORPORATE INCOME TAX. AND SINCE PUBLIC FUNDS ARE TYPICALLY TAX MONEY, WHY SHOULD CREDIT UNIONS HAVE ACCESS TO TAX MONIES?

IT IS TRUE THAT, AS COOPERATIVES, CREDIT UNIONS DON'T PAY CORPORATE INCOME TAX. HOWEVER, FOR THE PUBLIC POLICY PURPOSE OF BROADENING THE VARIOUS PUBLIC UNITS' INVESTMENT OPTIONS, I DON'T THINK THE TAXATION ARGUMENT IS GERMANE TO THE QUESTION.

BUT IF THE TAXATION ARGUMENT DOES INFLUENCE SOME, THERE ARE TWO SITUATIONS THAT NEED EXPLAINING. FIRST, CREDIT UNIONS DO PAY PROPERTY TAXES ON THEIR BUILDINGS, FURNITURE, AND FIXTURES JUST LIKE ANY OTHER CORPORATE ENTITY. AND MUCH OF THE PUBLIC MONIES INVESTED ARE GENERATED FROM PROPERTY TAXES IN ADDITION TO INCOME TAXES. HOW DOES THE TAXATION ARGUMENT WORK IN THIS CASE?

TOO, DO THE CALIFORNIA SAVINGS AND LOAN ASSOCIATIONS THAT AT LEAST ONE MONTANA COUNTY INVESTS IN PAY TAXES TO THE STATE OF MONTANA? DO THE OUT-OF-STATE AND FOREIGN CORPORATIONS THAT THE STATE BOARD OF INVESTMENTS INVESTS TAX MONIES IN PAY TAXES TO THE STATE OF MONTANA? IT HARDLY SEEMS FAIR THAT THE STATE'S CREDIT UNIONS DON'T HAVE THE SAME TREATMENT AS OUT-OF-STATE INSTITUTIONS AND THAT THEY BE TREATED AS SECOND-CLASS CITIZENS.

SOMETIMES OPPONENTS USE THE ARGUMENT THAT CREDIT UNIONS AREN'T INSURED, THAT PUBLIC FUNDS IN CREDIT UNIONS CANNOT BE INSURED, OR THAT CREDIT UNIONS' FEDERAL INSURING AGENCY IS NOT AS STRONG AS THOSE OF BANKS AND SAVINGS AND LOANS.

CREDIT UNIONS ARE INSURED. THEY HAVE TO BE OR THEY CAN'T DO BUSINESS IN THE STATE OF MONTANA. PUBLIC FUNDS IN CREDIT UNIONS ARE INSURED, UP TO \$100,000 UNDER THE SAME TERMS AND CONDITIONS AS THEY ARE INSURED IN BANKS AND SAVINGS AND LOANS.

CURRENTLY, THE NATIONAL CREDIT UNION SHARE INSURANCE FUND IS THE BEST-RESERVED OF THE THREE DEPOSIT INSURANCE FUNDS. EVERY \$100 IN SAVINGS IN FEDERALLY-INSURED CREDIT UNIONS IS BACKED WITH \$1.24 IN INSURANCE. COMPARABLE FIGURES FOR THE FDIC AND FSLIC RESPECTIVELY ARE 94 CENTS AND 77 CENTS PER \$100.

IN SUMMARY, SENATE BILL 340 WOULD GRANT MONTANA'S CREDIT UNIONS PARITY OF TREATMENT WITH OTHER TYPES OF FINANCIAL INSTITUTIONS DOING BUSINESS BOTH IN AND OUT-OF-STATE BY ALLOW-

ING THEM TO BE INCLUDED AS PERMISSIBLE INVESTMENT VEHICLES FOR PUBLIC FUNDS.

IT WOULD ALSO SERVE TO BROADEN THE INVESTMENT POTENTIAL FOR THE VARIOUS PUBLIC UNITS AND PUBLIC FUNDS THROUGHOUT THE STATE. CREDIT UNIONS BELIEVE THAT SENATE BILL 340 WILL ALLOW THE VARIOUS PUBLIC UNITS TO OBTAIN THE BEST RETURNS ON THEIR SURPLUS AND OPERATING FUNDS BY CREATING MORE RATE COMPETITION.

IN THE PAST SEVERAL YEARS, A NUMBER OF MONTANA CREDIT UNIONS HAVE RECEIVED INQUIRIES FROM COUNTIES, MUNICIPALITIES, AND SCHOOL DISTRICTS ASKING WHETHER THEY COULD PLACE FUNDS IN THE CREDIT UNION. CREDIT UNIONS HAVE HAD TO TELL THEM NO. SENATE BILL 340 WILL REMEDY THAT SITUATION.

WE WOULD APPRECIATE YOUR CAREFUL CONSIDERATION OF THIS BILL AND RESPECTFULLY URGE THIS COMMITTEE TO RECOMMEND THAT SENATE BILL 340 "DO PASS."

Mr. Chairman and Members of the Committee, for the record I am Gene Rice, Chairman of Treasure State Corporate Central Credit Union and Treasurer Manager of State Capitol Employees Credit Union here in Helena with a branch office in Bozeman. I too stand in support of Senate Bill 340.

Senate Bill 340 addresses an inequity in the present Act as it does not include credit unions as one of those financial institutions eligible to recieve deposits of public funds. Because of this exclusion, the Act provides no authority for a Credit Union to "act as fiscal agents for and recieve deposits from the State or any agency or political subdivision thereof".

The intent of the passing of the Depository Institutions Deregulation and Monetary Control Act of 1980 was to place all financial institutions on a "level playing field" - equal competition in the financial marketplace. With the inclusion of Credit Unions into the act it would provide the avenue for Credit Unions to compete in the bidding process for public funds.

What are public funds? They are the operating funds of counties, municipalities, school districts, water districts and other types of public entities.

In today's marketplace, County Treasurers, City Commissions, School Boards and the officials of the other public entities have to maximize their earnings on those public funds entrusted

to them. In many counties and towns throughout Montana there is only one authorized financial institution in which to deposit these funds: consequently, no competition and probably a smaller return to the investing agency. With the inclusion of Credit Unions into the Act, a greater return is possible as it would provide for greater competition.

There are 110 federal and state charter credit unions serving all the counties within the state inclusive of the cities and school districts. Many of these credit unions are of sufficient size to bid aggressively for school funds and funds of municipalities - thus a greater return. Many credit unions, such as the ones I manage here in Helena and Bozeman, own their own buildings and pay taxes to these counties, cities and school districts, so we do have a vested interest in public funds.

During the 1983 Legislative session, "credit unions" were amended into the list of permissible investment vehicles for public funds coming under the authority of the State Board of Investments. However, that still leaves those public units noted before, unable to utilize credit unions as a permissible investment vehicle.

Even though a credit union might not be awarded a bid, state and federal credit unions being able to bid on and accept these funds would create more competition. This might allow these various public units to earn more on their funds than they do where they deal in most cases with only one other financial institution.

Mr. Chairman and Members of the Committee, this overview for your considerations and concerns is presented from a Credit Union Manager's viewpoint. Thank you for this opportunity to testify in support of Senate Bill 340 and I urge the Committee to recommend that the Bill do pass.

NAME Gene Rice Bill No. 340
ADDRESS 1820 11th Ave. DATE 2/14/85
WHOM DO YOU REPRESENT State Capitol Employ. Credit Union
SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SENATE BUSINESS & INDUSTRY COMMITTEE

SENATE BILL 340

TESTIMONY BY JOHN CADBY, EVP
MONTANA BANKERS ASSOCIATION

February 14, 1985

The Montana Bankers Association represents 95% or 160 banks in Montana. We appear in their behalf today.

Credit unions are organized to serve "member" groups who have a common bond of employment, association, or interest; or groups within a well-defined neighborhood, community, or rural district. The State of Montana hardly falls within this description of a common bond, nor would a city or county.

Only members can invest in shares of a credit union or borrow from it. How then could a public entity qualify as an investor in a credit union? Present Montana law does not give state credit unions the power to accept deposits as such.

It is true that credit unions can borrow from any source up to 50% of total assets less notes payable. Perhaps a credit union could "borrow" from a public entity, but this creates two problems: public treasurers are not authorized to lend public funds, and notes payable by a credit union are not insured by The National Credit Union Administration.

Credit unions are cooperatives, and are owned by their members. Earnings are distributed to shareholders. There is no "interest" paid on investments by members. Therefore, how could a credit union guarantee a fixed interest rate return on public funds, as is required by public treasurer's when they ask for bids on public funds.

Even if all these legal hurdles are somehow overcome, it is certainly not in the best interest of all individuals members of a credit union to have their dividends on shares restricted to earnings while a preferred investor received a substantially higher return.

Credit unions are by law exempt from paying income taxes, both state and federal. This factor should be considered by any public official in determining placement of taxpayer funds.

Credit unions historically were designed to encourage natural person members to save and to provide a source of credit at a fair and reasonable rate of interest. Credit unions give their members an opportunity to use and control their own money in order to improve their economic and social condition. This is a paraphrase of the second section of Montana's Credit Union Law, section 32-3-102.

Chapter Cross-References

Credit Transactions and Relationships, Title
31.
Insurance premium finance companies, Title
33, ch. 14.

Discrimination prohibited in financial trans-
actions, 49-2-101, 49-2-305, 49-2-307, 49-3-206.
Uniform Gifts to Minors Act — definitions,
72-26-102.

Part 1**General Provisions**

32-3-101. Short title. This chapter shall be known and may be cited as the "Montana Credit Union Act".

History: En. 14-601 by Sec. 1, Ch. 38, L. 1975; R.C.M. 1947, 14-601.

32-3-102. Definition and purposes. A credit union is a cooperative, nonprofit association, incorporated under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

History: En. 14-602 by Sec. 2, Ch. 38, L. 1975; R.C.M. 1947, 14-602.

Cross-References

Trust company defined — purposes for which
may be formed, 32-1-107.

Investment company defined — purposes for
which may be formed, 32-1-108.

Building and loan associations — purpose,
32-2-101.

32-3-103. Use of name exclusive. With the exception of a credit union organized under the provisions of this chapter or of any other credit union act or an association of credit unions or a recognized chapter thereof, any person, corporation, partnership, or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be fined not more than \$500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from using such words in its name.

History: En. 14-606 by Sec. 6, Ch. 38, L. 1975; R.C.M. 1947, 14-606.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Business corporations — corporate name,
35-1-301.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-3-104. Office facilities. (1) A credit union may change its place of business within this state upon written notice to the department of commerce.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(3) A credit union may maintain, upon prior written notice to the department, additional offices at locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish service to its members.

(4) The department shall approve any additional office unless a compelling reason for disapproval is found by the department. Competition with

SENATE BILL 349
AMENDMENTS TO MEDB LAWS

This Bill includes three separate, but related amendments to the Board's existing legislation for issuing Pooled Industrial Revenue Bonds to finance loans to small businesses.

Loans are limited to one million dollars and the Board has issued in December its first Bond under the program for \$3,650,000 to fund loans to seven businesses.

The Board anticipates selling its second Pooled Industrial Revenue Bond in May for six million dollars for loans to ten to twelve Montana businesses and expects to have funded 37 million by the end of the biennium.

The program has been well received by banks and businesses from all parts of the state and is providing long-term fixed rate financing to Montana businesses as it was designed to do by the 1983 Legislature.

In working with the laws as approved by the 1983 Legislature, the Board has identified three areas where their program would benefit from amendments. The amendments in the order they are contained in the Bill include:

- Section 1 - clarifies without increasing the bonding ceiling for the
Boards Industrial Revenue Bond Program
- Section 2 & 3 - authorizes the Board to place a portion of the Board's Instate Investment Fund in the guarantee fund or reserve fund that
backs the Pooled Industrial Revenue Bonds issued by the Board
- Section 4 - authorize the Board to use Board fees and a portion of interest to establish a loan loss reserve fund to protect the Instate Investment Fund from loss.

Section 1

Section 1 is required because the 1983 Legislature passed two separate bills granting bonding authority to the Board (\$25 million in HB 700 and \$50 million in HB 871.) This amendment would simply combine the two statements of authority into one \$75 million authority.

PROPOSED LEGISLATION AUTHORIZING USE
OF IN-STATE INVESTMENT FUND
TO GUARANTEE POOLED IDBs

Why is a funded guarantee necessary?

The Montana Economic Development Board (MEDB) is authorized by statute to "guarantee" industrial development bonds that it issues, but the 1983 Legislature did not clearly authorize that the Board could use the In-State Investment Fund (Coal Tax Trust Funds) to back the Board's guarantee of industrial development bonds. (It was not requested to do so.)

The bonds currently can be marketed in Montana as the equivalent of an "A" rated bond, but a rating from a national service is necessary to market the bonds successfully outside of Montana. The Board needs access to the national market, because bond buyers in Montana will not be able to absorb the total anticipated issuance of \$37.6 million in bonds by the end of the 1987 biennium.

A funded guarantee or five years of experience is necessary to obtain an "A" rating on the bonds from a national bond rating service such as Moody's or Standard and Poor's.

Such a funded guarantee of the Board's "Pooled IDB Program" would greatly strengthen the program and provide lower interest rates to businesses who participate in the program.

A guarantee fund equal to 10 percent of outstanding bonds would be sufficient to increase the credit rating of the bonds. For each dollar of coal tax pledged, \$10 of business loans could be financed by the selling of pooled bonds. This leveraging of the In-State Investment Fund would increase the number of businesses that would benefit from the fund. Only \$3.7 million of the \$40 million that will be deposited in the In-State Investment Fund would be necessary to back the estimated \$37.6 million in pooled IDB bonds.

At least 15 states have similar programs for guaranteeing industrial development bonds.

The proposed law authorizes the MEDB to use a portion of the In-State Investment Fund to guarantee industrial development revenue bonds. Use of coal tax funds to guarantee pooled IDB bonds will greatly strengthen the credit of IDBs, make them more attractive to the bond market and therefore provide lower interest rates to small businesses participating in the program.

Summary of Benefits:

2

A funded reserve is necessary for the MEDB to secure an investment grade rating on its Pooled Industrial Revenue Bond Program. Such a rating will provide three benefits:

First, if activity in the program reaches the currently anticipated volume, a rating will be a necessity simply for Program continuation. This is because the bonds will need to be marketed by a diversified underwriting group both within and outside the State of Montana. This cannot be practically accomplished without a bond rating.

Second, a funded guarantee will permit an "A" rating on the bonds which will provide a direct interest rate savings to small Montana businesses participating in the program of around .25 to .4 percent.

Third, a fund reserve or guarantee would provide financial protection for the "moral obligation pledge" under the current program.

Is a guarantee an investment or appropriation of funds?

A guarantee for a fee paid by the business benefiting from the guarantee and secured by mortgage on real estate is an investment comparable to other investments authorized by the MEDB, and does not constitute an appropriation of funds or creation of a state debt.

Is a 3/4 vote required?

No. For the above reasons, the guarantee is an investment of public funds (the In-State Investment Fund), not an appropriation of public funds.

How is the inviolability of the Coal Tax Trust Fund protected?

The guarantee is secured with mortgages on the property financed. The guarantee fees collected from the financed businesses will be placed in the guarantee fund and used before the trust is used to back the guarantee. Finally, if there is an actual reduction in the principal of the trust, the bill creates a loan loss reserve fund to replace the loss of principal with fees and interest from the Board's coal tax loans.

Why does the bill also refer to the Pooled Municipal Bond law and Health Facilities law?

The Board would have the discretion of guaranting projects under either program for a fee to be paid by the borrower. Such a guarantee would increase the marketability of such bond issues.

Section 4

Establishment of a loan loss reserve fund is a standard banking practice. It is the Board's judgment that a loan loss reserve should be established as a prudent safeguard against any loss to the Instate Investment Fund.

Although every precaution will be taken in evaluating loans, no matter how carefull the decisions on loans are, changes in the economy or other unforeseen circumstances can cause a good loan to go bad. The Board is protected by personal guarantee and collateral, but also feels that it is prudent to establish a loan loss reserve from it's fees and a small portion of interest on the loans.

MONTANA ECONOMIC DEVELOPMENT BOARD
POOLED INDUSTRIAL REVENUE BOND PROGRAM

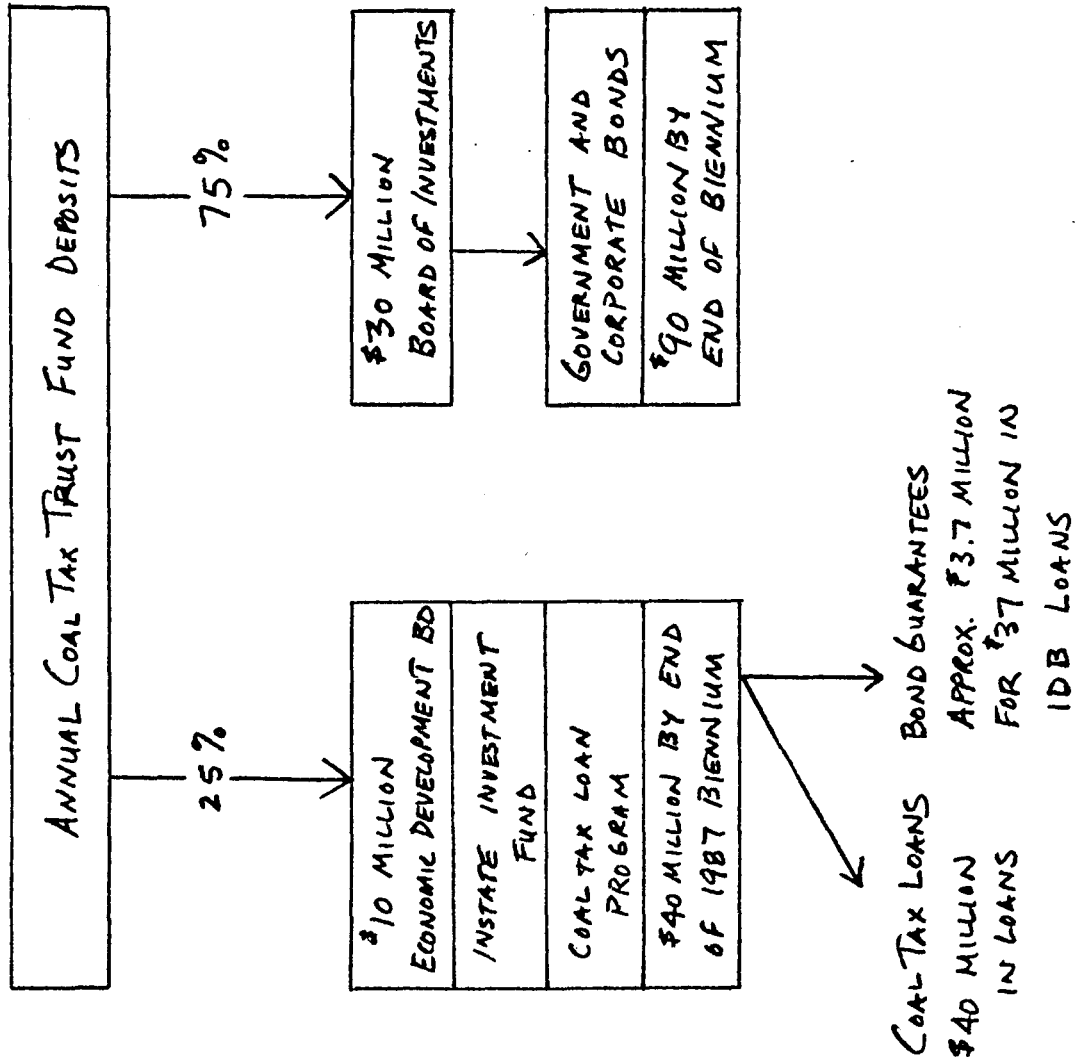
PROTECTION TO FUNDED GUARANTEE

	<u>MINIMUM</u>		<u>ACTUAL</u> *
EQUITY CONTRIBUTION TO BORROWER:	10%		21%
BANK LETTER OF CREDIT	35%		35%
GUARANTEE FUND FROM BORROWER CONTRIBUTIONS **			
- APPROX. 5% OF TOTAL LOANS OUTSTANDING	@ 15%	@	15%
- APPROX. 33% OF AVERAGE LOAN			
TOTALS:	<u>60%</u>		<u>71%</u>
REQUIRED LIQUIDATION RECOVERY AT COST:	<u>40%</u>		<u>29%</u>
(Appraised value generally exceeds cost)			

In addition, each bond issue includes a 15% capitalized reserve account, which may also be used to make payments on the bonds until assets are liquidated.

* BASED ON THE MEDB'S FIRST POOLED ISSUE IN DECEMBER, 1984

** FUNDED BY A .5% INTEREST RATE OVERRIDE PAID BY BORROWERS;
AVERAGE BALANCE IN FUND FOR THE BOARD'S DECEMBER 1984 ISSUE OVER FIRST
THREE YEARS IS \$140,000.



Amendment to Senate Bill 349, Introduced Bill

1. Page 5, line 4
Strike: lines 4 through 8

NAME Steve Browning Bill No. SB 349
ADDRESS P.O. Box 162 Helena, MT 59624 DATE 2/14/85
WHOM DO YOU REPRESENT Miller Schroeder Municipals, Inc.
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Miller Schroeder is serving as the designer of a bond guarantee-oriented Montana business program for the Montana Board of Investments. The preliminary design envisions extensive reliance upon the bonding program of the Montana Economic Development Board. MEDB's structure powers and restrictions need clarification with respect to the guaranteeing of bonds. Further, absent an adequate loan loss reserve fund, it is unlikely that the bonds issued and/or guaranteed will obtain a rating by appropriate agencies that will allow attractive interest rates for Montana development.

Mr Richard Graves and/or Mr James Casserly who are the V.P.s at Miller Schroeder working with the Bd of Inv. would have testified at the hearing today in support of SB 349 but time was too short. They will be submitting written testimony on this bill at a later date.

Amendments to Senate Bill 349, Introduced Bill

1. Page 5, line 5

Following: "17-5-1529

Strike: "whose cost or appraised value"

Insert: "for which the financing to be provided by the board"

STANDING COMMITTEE REPORT

February 14

85

19.....

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on.....

having had under consideration..... SENATE BILL No. 350

first reading copy (white)
color

IMPOSITION OF FINES FOR VIOLATIONS OF MONTANA SECURITIES ACT

Respectfully report as follows: That..... SENATE BILL No. 350

be amended as follows:

1. Page 8, line 25.

Following: "a"

Strike: "first"

2. Page 11, line 3.

Following: "a"

Strike: "first"

AND AS AMENDED

DO PASS

~~XXXXXXXXXX~~

Mike Halligan

Chairman.

STANDING COMMITTEE REPORT

February 14 1985

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on.....

having had under consideration..... SENATE BILL 399 No.....

first reading copy (white)
color

GENERAL REVISION OF SECURITIES LAWS

Respectfully report as follows: That..... SENATE BILL 399 No.....

be amended as follows:

1. Page 30, line 18.
Following: line 17
Strike: "30-10-201(1)"
Insert: "30-10-201(4)"

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

Mike Halligan.....
Chairman.