SENATE BILL NO. 202

INTRODUCED BY WEEDING

BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER

	IN THE SENATE
JANUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
JANUARY 31, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 2, 1987	PRINTING REPORT.
FEBRUARY 4, 1987	SECOND READING, DO PASS.
FEBRUARY 5, 1987	ENGROSSING REPORT.
FEBRUARY 6, 1987	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.
	IN THE HOUSE
FEBRUARY 11, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
MARCH 10, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 13, 1987	SECOND READING, CONCURRED IN.
MARCH 14, 1987	THIRD READING, CONCURRED IN. AYES, 93; NOES, 1.
	RETURNED TO SENATE WITH AMENDMENTS.
	IN THE SENATE
MARCH 20, 1987	RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS

CONCURRED IN.

MARCH 21, 1987

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

1	State BILL NO. 202
2	INTRODUCED BY What
3	BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE SECURITIES
6	LAWS TO SIMPLIFY AND CLARIFY THEIR ENFORCEMENT WITH RESPECT
7	TO COMMODITY INVESTMENT CONTRACTS AND COMMODITY OPTIONS; AND
8	AMENDING SECTIONS 30-10-103 AND 30-10-105, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 30-10-103, MCA, is amended to read:
12	"30-10-103. Definitions. When used in parts 1 through
13	3 of this chapter, unless the context requires otherwise,
14	the following definitions apply:
15	(1) "Commissioner" means securities commissioner of
16	this state.
17	(2) "Salesman" means any individual other than a
18	broker-dealer who represents a broker-dealer or issuer in
19	effecting or attempting to effect sales of securities. A
20	partner, officer, or director of a broker-dealer or issuer
21	is a salesman only if he otherwise comes within this
22	definition. "Salesman" does not include an individual who
23	represents an issuer in:
24	(a) effecting a transaction in a security exempted by
25	subsections (1), (2), (3), (9), (10), (11), or (12) of

3	(c) effecting transactions with existing employees,
4	partners, or directors of the issuer if no commission or
5	other remuneration is paid or given directly or indirectly
6	for soliciting any person in this state.
7	(3) "Broker-dealer" means any person engaged in the
8	business of effecting transactions in securities for the
9	account of others or for his own account. "Broker-dealer"
10	does not include:
11	(a) a salesman, issuer, bank, savings institution,
12	trust company, or insurance company; or
13	(b) a person who has no place of business in this

(b) effecting transactions exempted by 30-10-105; or

30-10-104;

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with or through the issuers of the securities involved in 15 16 the transactions, other broker-dealers, or banks, savings 17 institutions, trust companies, insurance 18 investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other 19 20 financial institutions or institutional buyers, whether acting for themselves or as trustee. 21 (4) "Registered broker-dealer" means a broker-dealer 22

state if he effects transactions in this state exclusively

- 22 (4) "Registered broker-dealer" means a broker-dealer
 23 registered pursuant to 30-10-201.
- 24 (5) (a) "Commodity" means, except as otherwise
 25 specified by rule or order of the commissioner:

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1	(1) any agricultural, grain, or livestock product of
2	byproduct;
3	(ii) any metal or mineral, including a precious metal
4	or any gem or gem stone, whether characterized as precious
5	semiprecious, or otherwise;
6	(iii) any fuel, whether liquid, gaseous, or otherwise
7	(iv) foreign currency; and
8	(v) all other goods, articles, products, or items of
9	any kind.
0.	(b) Commodity does not include:
1	(i) a numismatic coin with a fair market value at
2	least 15% higher than the value of the metal it contains;
3	(ii) real property or any timber, agricultural, or
4	livestock product grown or raised on real property and
.5	offered and sold by the owner or lessee of such real
6	property; or
7	(iii) any work of art offered or sold by an art dealer
8	at public auction or offered or sold through a private sale
9	by the owner.
0	(6) "Commodity Exchange Act" means the federal statute
1	of that name as amended on the effective date of this
2	subsection.
3	(7) "Commodity futures trading commission" means the
4	independent regulatory agency established by congress to
5	administer the Commodity Exchange Act.

1	(8) (a) "Commodity investment contract" means any
2	account, agreement, or contract for the purchase or sale,
3	primarily for speculation or investment purposes and not for
4	use or consumption by the offeree or purchaser, of one or
5	more commodities, whether for immediate or subsequent
6	delivery or whether delivery is intended by the parties, and
7	whether characterized as a cash contract, deferred shipment
8	or deferred delivery contract, forward contract, futures
9	contract, installment or margin contract, leverage contract,
10	or otherwise. Any commodity investment contract offered or
11	sold, in the absence of evidence to the contrary, is
12	presumed to be offered or sold for speculation or investment
13	purposes.
14	(b) A commodity investment contract does not include a
15	contract or agreement that requires, and under which the
16	purchaser receives, within 28 calendar days after the
17	payment in good funds of any portion of the purchase price,
18	physical delivery of the total amount of each commodity to
19	be purchased under the contract or agreement.
20	(9) (a) "Commodity option" means any account,
21	agreement, or contract giving a party to the account,
22	agreement, or contract the right but not the obligation to
23	purchase or sell one or more commodities or one or more
24	commodity contracts, whether characterized as an option,
25	privilege, indemnity, bid, offer, put, call, advance

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quaranty, decline quaranty, or otherwise.

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- 2 (b) The term does not include an option traded on a
 3 national securities exchange registered with the U.S.
 4 securities and exchange commission.
- (5) (10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.
- 7 +6+(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, R 9 either directly or through publications or writings, as to the value of securities or as to the advisability of 10 11 investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or 12 13 promulgates analyses or reports concerning securities. 14 "Investment adviser" does not include:
- (a) a bank, savings institution, trust company, or insurance company;
- 17 (b) a lawyer, accountant, engineer, or teacher whose
 18 performance of these services is solely incidental to the
 19 practice of his profession;
 - (c) a broker-dealer;
- 21 (d) a publisher of any bona fide newspaper, news 22 magazine, or business or financial publication of general, 23 regular, and paid circulation;
- 24 (e) a person whose advice, analyses, or reports relate 25 only to securities exempted by 30-10-104(1);

- 1 (f) a person who has no place of business in this
 2 state if his only clients in this state are other investment
 3 advisers, broker-dealers, banks, savings institutions, trust
 4 companies, insurance companies, investment companies as
 5 defined in the Investment Company Act of 1940, pension or
 6 profit-sharing trusts, or other financial institutions or
 7 institutional buyers, whether acting for themselves or as
 8 trustees: or
- 9 (g) such other persons not within the intent of this
 10 subsection (5) (11) as the commissioner may by rule or order
 11 designate.
- +7+(12) "Issuer" means any person who issues or 12 proposes to issue any security, except that with respect to 13 certificates of deposit, voting-trust certificates, or 14 collateral-trust certificates or with respect 15 certificates of interest or shares in an unincorporated 16 investment trust not having a board of directors (or persons 17 performing similar functions) or of the fixed, restricted 18 management, or unit type, the term "issuer" means the person 19 or persons performing the acts and assuming the duties of 20 depositor or manager pursuant to the provisions of the trust 21 or other agreement or instrument under which the security is 22 issued. 23
- 24 (θ) "Nonissuer" means not directly or indirectly 25 for the benefit of the issuer.

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1 (9)(14) "Person", for the purpose of parts 1 through 3
2 of this chapter, means an individual, a corporation, a
3 partnership, an association, a joint-stock company, a trust
4 where the interests of the beneficiaries are evidenced by a
5 security, an unincorporated organization, a government, or a
6 political subdivision of a government.

- 7 (15) "Precious metal" means the following, in coin,
 8 bullion, or other form:
- 9 (a) silver;
- 10 (b) gold;
- 11 (c) platinum;
- 12 (d) palladium;
- (e) copper; and
- 14 <u>(f) such other items as the commissioner may by rule</u> 15 or order specify.
- 16 ti0j(16) (a) "Sale" or "sell" includes every contract
 17 of sale of, contract to sell, or disposition of a security
 18 or interest in a security for value.
- (b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.
- 22 (c) Any security given or delivered with or as a bonus
 23 on account of any purchase of securities or any other thing
 24 is considered to constitute part of the subject of the
 25 purchase and to have been offered and sold for value. A

purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

9 (11)(17) "Securities Act of 1933", "Securities Exchange
10 Act of 1934", "Public Utility Holding Company Act of 1935",
11 and "Investment Company Act of 1940" mean the federal
12 statutes of those names as amended before or after July 1,
13 1961.

the first (18) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or

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interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

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(13)(19) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico."

Section 2. Section 30-10-105, MCA, is amended to read:
"30-10-105. Exempt transactions. Except as in this
section expressly provided, 30-10-201 through 30-10-207
shall not apply to any of the following transactions:

- 15 (1) any nonissuer isolated transaction, whether 16 effected through a broker-dealer or not;
- 17 (2) (a) any nonissuer distribution of an outstanding 18 security by a broker-dealer registered pursuant to 30-10-201 19 if:
 - (i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by

the commissioner by rule; or

- 2 (ii) the security has a fixed maturity or a fixed
 3 interest or dividend provision and there has been no default
 4 during the current fiscal year or within the 3 preceding
 5 fiscal years, or during the existence of the issuer and any
 6 predecessors if less than 3 years, in the payment of
 7 principal, interest, or dividends on the security.
- (b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the 10 commissioner shall promptly notify all registered 11 broker-dealers that it has been entered and of the reasons 12 13 therefor and that within 15 days of the receipt of a written 1.4 request the matter will be set down for hearing. If no hearing is requested and none is ordered by the 15 commissioner, the order will remain in effect until it is 16 17 modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and 18 19 opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final 20 21 determination. No order under this subsection may operate retroactively. No person may be considered to have violated 22 23 parts 1 through 3 of this chapter by reason of any offer or 24 sale effected after the entry of an order under this 25 subsection if he sustains the burden of proof that he did

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not know and in the exercise of reasonable care could not have known of the order.

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- (3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;
- 9 (4) any transaction between the issuer or other person 10 on whose behalf the offering is made and an underwriter or 11 among underwriters;
 - (5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;
 - (6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;
 - (7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

- 1 (8) (a) any transaction pursuant to an offer made in 2 this state directed by the offeror to not more than 10 3 persons (other than those designated in subsection (7)) 4 during any period of 12 consecutive months, if:
- (i) the seller reasonably believes that all the buyers are purchasing for investment; and
- 7 (ii) no commission or other remuneration is paid or 8 given directly or indirectly for soliciting any prospective 9 buyer; provided, however, that a commission may be paid to a 10 registered broker-dealer if the securities involved are 11 registered with the United States securities and exchange 12 commission under the federal Securities Act of 1933, as 13 amended.
 - (b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- 21 (9) any offer or sale of a preorganization certificate 22 or subscription if:
- 23 (a) no commission or other remuneration is paid or 24 given directly or indirectly for soliciting any prospective 25 subscriber:

- (b) the number of subscribers does not exceed 10; and
 - (c) no payment is made by any subscriber;

- (10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:
- (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
- (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;
- (11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;
- (12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

- 1 (13) the issuance of any stock dividend, whether the
 2 corporation distributing the dividend is the issuer of the
 3 stock or not, if nothing of value is given by stockholders
 4 for the distribution other than the surrender of a right to
 5 a cash dividend where the stockholder can elect to take a
 6 dividend in cash or stock;
 - (14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets:
 - (15) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102; or
 - (16) any transaction pursuant to the Montana Capital Company Act, Title 90, chapter 8, provided that a Montana capital company must first file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing or deposit.
- 21 (17) the sale of a commodity investment contract traded
 22 on a commodities exchange recognized by the commissioner at
 23 the time of sale;
- 24 (18) transaction within the exclusive jurisdiction of 25 the commodity futures trading commission as granted under

1	the Commodity Exchange Act;
2	(19) a transaction that:
3	(a) involves the purchase of one or more precious
4	metals; and
5	(b) requires, and under which the purchaser receives
6	within 7 calendar days after payment in good funds of any
7	portion of the purchase price, physical delivery of the
8	quantity of the precious metals purchased. For the purposes
9	of this subsection, physical delivery is considered to have
10	occurred if, within the 7-day period, the quantity of
11	precious metals, whether in specifically segregated or
12	fungible bulk, purchased by such payment is delivered into
13	the possession of a depository (other than the seller) that:
14	(i) (A) is a financial institution (meaning a bank,
15	savings institution, or trust company organized under or
16	supervised pursuant to the laws of the United States or of
17	this state);
18	(B) is a depository the warehouse receipts of which
19	are recognized for delivery purposes for any commodity on a
20	contract market designated by the commodity futures trading
21	commission; or
22	(C) is a storage facility licensed by the United
23	States or any agency of the United States; and

evidencing that such quantity of precious metals has been 1 delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than: (A) liens of the purchaser; (B) tax liens; 6 (C) liens agreed to by the purchaser; or (D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser. (20) a transaction involving a commodity investment 10 contract solely between persons engaged in producing, 11 processing, using commercially, or handling as merchants 12 each commodity subject to the contract or any byproduct of 13 14 the commodity." NEW SECTION. Section 3. Extension of authority. Any 15 existing authority of the securities commissioner to make 16 rules on the subject of the provisions of this act is 17

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extended to the provisions of this act.

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(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument

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STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB202, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to amend the Securities Laws to simplify and clarify their enforcement with respect to commodity Investment Contracts and Commodity Options.

ASSUMPTIONS:

- 1. No additional revenue is expected.
- 2. No additional expenditures anticipated.

FISCAL IMPACT:

None.

DAVID L. HUNTER, HUDGET DIRECTOR
Office of Budget and Program Planning

CECIL WEEDING, PRIMARY SPONSOR

Fiscal Note for SB202, as introduced

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APPROVED BY COMM. ON BUSINESS & INDUSTRY

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2	INTRODUCED BY White
3	BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER
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21	is a salesman only if he otherwise comes within this
22	definition. "Salesman" does not include an individual who
23	represents an issuer in:
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subsections (1), (2), (3), (9), (10), (11), or (12) of

partners, or directors of the issuer if no commission or
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business of effecting transactions in securities for the
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the transactions, other broker-dealers, or banks, savings
institutions, trust companies, insurance companies,
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Act of 1940, pension or profit-sharing trusts, or other
financial institutions or institutional buyers, whether
acting for themselves or as trustee.
(4) "Registered broker-dealer" means a broker-dealer
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(5) (a) "Commodity" means, except as otherwise

specified by rule or order of the commissioner:

SECOND READING

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(b) effecting transactions exempted by 30-10-105; or (c) effecting transactions with existing employees,

30-10-104;

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ı	(i) any agricultural, grain, or livestock product or
2	byproduct;
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4	or any gem or gem stone, whether characterized as precious,
5	semiprecious, or otherwise;
6	(iii) any fuel, whether liquid, gaseous, or otherwise;
7	(iv) foreign currency; and
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10	(b) Commodity does not include:
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12	least 15% higher than the value of the metal it contains;
13	(ii) real property or any timber, agricultural, or
14	livestock product grown or raised on real property and
15	offered and sold by the owner or lessee of such real
16	property; or
17	(iii) any work of art offered or sold by an art dealer
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- 1 (8) (a) "Commodity investment contract" means any 2 account, agreement, or contract for the purchase or sale, 3 primarily for speculation or investment purposes and not for 4 use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and 7 whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures 9 contract, installment or margin contract, leverage contract, 10 or otherwise. Any commodity investment contract offered or 11 sold, in the absence of evidence to the contrary, is 12 presumed to be offered or sold for speculation or investment 13 purposes. 14 (b) A commodity investment contract does not include a 15 contract or agreement that requires, and under which the 16
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- 7 (6)(11) "Investment adviser" means any person who, or
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- 9 either directly or through publications or writings, as to
- 10 the value of securities or as to the advisability of
- 11 investing in, purchasing, or selling securities or who, for
- 12 compensation and as a part of a regular business, issues or
- 13 promulgates analyses or reports concerning securities.
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- 18 performance of these services is solely incidental to the
- 19 practice of his profession;
 - (c) a broker-dealer;
- 21 (d) a publisher of any bona fide newspaper, news
- 22 magazine, or business or financial publication of general,
- 23 regular, and paid circulation;
- 24 (e) a person whose advice, analyses, or reports relate
- only to securities exempted by 30-10-104(1);

- 1 (f) a person who has no place of business in this
 2 state if his only clients in this state are other investment
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 4 companies, insurance companies, investment companies as
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- 9 (g) such other persons not within the intent of this
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trustees: or

- (9)(14) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.
- 7 (15) "Precious metal" means the following, in coin, 8 bullion, or other form:
- 9 (a) silver;
- 10 (b) gold;

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- 11 (c) platinum;
- 12 (d) palladium;
- (e) copper; and
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- 16 ti0; (16) (a) "Sale" or "sell" includes every contract
 17 of sale of, contract to sell, or disposition of a security
 18 or interest in a security for value.
 - (b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.
- 22 (c) Any security given or delivered with or as a bonus
 23 on account of any purchase of securities or any other thing
 24 is considered to constitute part of the subject of the
 25 purchase and to have been offered and sold for value. A

- purported gift of assessable stock is considered to involve
 an offer and sale. Every sale or offer of a warrant or right
 to purchase or subscribe to another security of the same or
 another issuer, as well as every sale or offer of a security
 which gives the holder a present or future right or
 privilege to convert into another security of the same or
 another issuer, is considered to include an offer of the
 other security.
- 9 (11)(17) "Securities Act of 1933", "Securities Exchange
 10 Act of 1934", "Public Utility Holding Company Act of 1935",
 11 and "Investment Company Act of 1940" mean the federal
 12 statutes of those names as amended before or after July 1,
 13 1961.
- 14 (12)(18) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity 15 option; debenture; evidence of indebtedness; certificate of 16 interest or participation in any profit-sharing agreement; 17 collateral-trust certificate; preorganization certificate or 18 19 subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a 20 security; certificate of interest or participation in an 21 22 oil, gas, or mining title or lease or in payments out of 23 production under such a title or lease; or, in general, any 24 interest or instrument commonly known as a security or any 25 certificate of interest or participation in, temporary or

- interim certificate for, receipt for, guarantee of, or
 warrant or right to subscribe to or purchase any of the
 foregoing. "Security" does not include any insurance or
 endowment policy or annuity contract under which an
 insurance company promises to pay a sum of money either in a
 lump sum or periodically for life or some other specified
 period.
- 8 (±3)(19) "State" means any state, territory, or
 9 possession of the United States, as well as the District of
 10 Columbia and Puerto Rico."
- Section 2. Section 30-10-105, MCA, is amended to read:

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

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- (1) any nonissuer isolated transaction, whether effected through a broker-dealer or not;
- 17 (2) (a) any nonissuer distribution of an outstanding 18 security by a broker-dealer registered pursuant to 30-10-201 19 if:
 - (i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by

- the commissioner by rule; or
- 2 (ii) the security has a fixed maturity or a fixed
 3 interest or dividend provision and there has been no default
 4 during the current fiscal year or within the 3 preceding
 5 fiscal years, or during the existence of the issuer and any
 6 predecessors if less than 3 years, in the payment of
 7 principal, interest, or dividends on the security.
- (b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a 10 specific security. Upon the entry of such an order, the 11 commissioner shall promptly notify all registered 12 broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written 13 request the matter will be set down for hearing. If no 14 15 hearing is requested and none is ordered by the 16 commissioner, the order will remain in effect until it is 17 modified or vacated by the commissioner. If a hearing is 18 requested or ordered, the commissioner, after notice of and 19 opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final 20 determination. No order under this subsection may operate 21 22 retroactively. No person may be considered to have violated 23 parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this 24 25 subsection if he sustains the burden of proof that he did

not know and in the exercise of reasonable care could not have known of the order.

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- (3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period:
- (4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;
- (5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;
- (6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;
- (7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

- (8) (a) any transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:
- (i) the seller reasonably believes that all the buyersare purchasing for investment; and
 - (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.
 - (b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- 21 (9) any offer or sale of a preorganization certificate 22 or subscription if:
- 23 (a) no commission or other remuneration is paid or 24 given directly or indirectly for soliciting any prospective 25 subscriber;

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- (b) the number of subscribers does not exceed 10; and
 - (c) no payment is made by any subscriber;

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- (10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable with not more than 90 days of their issuance, if:
- (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
- (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;
- (11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;
- (12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

- (13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;
- (14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets:
- 12 (15) any transaction in compliance with such rules as 13 the commissioner in his discretion may adopt to serve the 14 purposes of 30-10-102; or
 - (16) any transaction pursuant to the Montana Capital Company Act, Title 90, chapter 8, provided that a Montana capital company must first file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing or deposit.
- 21 (17) the sale of a commodity investment contract traded 22 on a commodities exchange recognized by the commissioner at 23 the time of sale;
- 24 (18) transaction within the exclusive jurisdiction of 25 the commodity futures trading commission as granted under

2	(19) a transaction that:
3	(a) involves the purchase of one or more precious
4	metals; and
5	(b) requires, and under which the purchaser receives
6	within 7 calendar days after payment in good funds of any
7	portion of the purchase price, physical delivery of the
8	quantity of the precious metals purchased. For the purposes
9	of this subsection, physical delivery is considered to have
10	occurred if, within the 7-day period, the quantity of
11	precious metals, whether in specifically segregated or
12	fungible bulk, purchased by such payment is delivered into
13	the possession of a depository (other than the seller) that:
14	(i) (A) is a financial institution (meaning a bank,
15	savings institution, or trust company organized under or
16	supervised pursuant to the laws of the United States or of
17	this state);
18	(B) is a depository the warehouse receipts of which
19	are recognized for delivery purposes for any commodity on a
20	contract market designated by the commodity futures trading

the Commodity Exchange Act;

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commission; or

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2	delivered to the depository and is being and will continu
3	to be held on the purchaser's behalf, free and clear of al
4	liens and encumbrances other than:
5	(A) liens of the purchaser;
6	(B) tax liens;
7	(C) liens agreed to by the purchaser; or
8	(D) liens of the depository for fees and expenses tha
9	previously have been disclosed to the purchaser.
10	(20) a transaction involving a commodity investmen
11	contract solely between persons engaged in producing
12	processing, using commercially, or handling as merchant
13	each commodity subject to the contract or any byproduct o
14	the commodity."
15	NEW SECTION. Section 3. Extension of authority. An
16	existing authority of the securities commissioner to mak
17	rules on the subject of the provisions of this act i
18	extended to the provisions of this act.

-End-

document of title, confirmation, or other instrument

States or any agency of the United States; and

(C) is a storage facility licensed by the United

(ii) issues, and the purchaser receives, a certificate,

this state.

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-	Service State Inc. Add
2	INTRODUCED BY Western
3	BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE SECURITIES
6	LAWS TO SIMPLIFY AND CLARIFY THEIR ENFORCEMENT WITH RESPECT
7	TO COMMODITY INVESTMENT CONTRACTS AND COMMODITY OPTIONS; AND
8	AMENDING SECTIONS 30-10-103 AND 30-10-105, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 30-10-103, MCA, is amended to read:
12	"30-10-103. Definitions. When used in parts 1 through
13	3 of this chapter, unless the context requires otherwise,
14	the following definitions apply:
15	(1) "Commissioner" means securities commissioner of

A ARTIC NO 34

- (2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:
- 24 (a) effecting a transaction in a security exempted by 25 subsections (1), (2), (3), (9), (10), (11), or (12) of
 - Montana Legislative Council

- 30-10-104;
- (b) effecting transactions exempted by 30-10-105; or
- 3 (c) effecting transactions with existing employees,
- 4 partners, or directors of the issuer if no commission or
- other remuneration is paid or given directly or indirectly
- 6 for soliciting any person in this state.
- 7 (3) "Broker-dealer" means any person engaged in the
- 8 business of effecting transactions in securities for the
 - account of others or for his own account. "Broker-dealer"
- 10 does not include:
- 11 (a) a salesman, issuer, bank, savings institution,
- 12 trust company, or insurance company; or
- 13 (b) a person who has no place of business in this
- 14 state if he effects transactions in this state exclusively
- 15 with or through the issuers of the securities involved in
- 16 the transactions, other broker-dealers, or banks, savings
- 17 institutions, trust companies, insurance companies
- 18 investment companies as defined in the Investment Company
- 19 Act of 1940, pension or profit-sharing trusts, or other
- 20 financial institutions or institutional buyers, whether
- 21 acting for themselves or as trustee.
- 22 (4) "Registered broker-dealer" means a broker-dealer
- 23 registered pursuant to 30-10-201.
- 24 (5) (a) "Commodity" means, except as otherwise
- 25 specified by rule or order of the commissioner:

1	(i) any agricultural, grain, or livestock product or
2	byproduct;
3	(ii) any metal or mineral, including a precious metal,
4	or any gem or gem stone, whether characterized as precious,
5	semiprecious, or otherwise;
6	(iii) any fuel, whether liquid, gaseous, or otherwise;
7	(iv) foreign currency; and
В	(v) all other goods, articles, products, or items of
9	any kind.
10	(b) Commodity does not include:
11	(i) a numismatic coin with a fair market value at
12	least 15% higher than the value of the metal it contains;
13	(ii) real property or any timber, agricultural, or
14	livestock product grown or raised on real property and
15	offered and sold by the owner or lessee of such real
16	property; or
17	(iii) any work of art offered or sold by an art dealer
18	at public auction or offered or sold through a private sale
19	by the owner.
20	(6) "Commodity Exchange Act" means the federal statute
21	of that name as amended on the effective date of this
22	subsection.
23	(7) "Commodity futures trading commission" means the

1	(8) (a) "Commodity investment contract" means any
2	account, agreement, or contract for the purchase or sale,
3	primarily for speculation or investment purposes and not for
4	use or consumption by the offeree or purchaser, of one or
5	more commodities, whether for immediate or subsequent
6	delivery or whether delivery is intended by the parties, and
7	whether characterized as a cash contract, deferred shipment
8	or deferred delivery contract, forward contract, futures
9	contract, installment or margin contract, leverage contract,
10	or otherwise. Any commodity investment contract offered or
11	sold, in the absence of evidence to the contrary, is
12	presumed to be offered or sold for speculation or investment
13	purposes.
14	(b) A commodity investment contract does not include a
15	contract or agreement that requires, and under which the
16	purchaser receives, within 28 calendar days after the
1 7	payment in good funds of any portion of the purchase price,
18	physical delivery of the total amount of each commodity to
19	be purchased under the contract or agreement.
20	(9) (a) "Commodity option" means any account,
21	agreement, or contract giving a party to the account,
22	agreement, or contract the right but not the obligation to
23	purchase or sell one or more commodities or one or more
24	commodity contracts, whether characterized as an option,
25	privilege, indemnity, bid, offer, but, call, advance

administer the Commodity Exchange Act.

independent regulatory agency established by congress to

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- guaranty, decline guaranty, or otherwise.
- 2 (b) The term does not include an option traded on a
 3 national securities exchange registered with the U.S.
 4 securities and exchange commission.
- 5 (5)(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.
 - (6)(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
- 15 (a) a bank, savings institution, trust company, or
 16 insurance company;
 - (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
 - (c) a broker-dealer;

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- (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- 24 (e) a person whose advice, analyses, or reports relate 25 only to securities exempted by 30-10-104(1);

- 1 (f) a person who has no place of business in this
 2 state if his only clients in this state are other investment
 3 advisers, broker-dealers, banks, savings institutions, trust
 4 companies, insurance companies, investment companies as
 5 defined in the Investment Company Act of 1940, pension or
 6 profit-sharing trusts, or other financial institutions or
 7 institutional buyers, whether acting for themselves or as
 8 trustees; or
- 9 (g) such other persons not within the intent of this 10 subsection (5) (11) as the commissioner may by rule or order 11 designate.
- 12 (7)(12) "Issuer" means any person who issues or 13 proposes to issue any security, except that with respect to 14 certificates of deposit, voting-trust certificates, or 15 collateral-trust certificates or with respect certificates of interest or shares in an unincorporated 16 investment trust not having a board of directors (or persons 17 performing similar functions) or of the fixed, restricted 18 management, or unit type, the term "issuer" means the person 19 or persons performing the acts and assuming the duties of 20 depositor or manager pursuant to the provisions of the trust 21 22 or other agreement or instrument under which the security is
- 24 (θ) "Nonissuer" means not directly or indirectly 25 for the benefit of the issuer.

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issued.

- 1 (9)(14) "Person", for the purpose of parts 1 through 3
 2 of this chapter, means an individual, a corporation, a
 3 partnership, an association, a joint-stock company, a trust
 4 where the interests of the beneficiaries are evidenced by a
 5 security, an unincorporated organization, a government, or a
 6 political subdivision of a government.
- 7 (15) "Precious metal" means the following, in coin, bullion, or other form:
 - (a) silver;
- 10 (b) gold;

- 11 (c) platinum;
- 12 (d) palladium;
- (e) copper; and
- 14 (f) such other items as the commissioner may by rule
 15 or order specify.
- tiθ (16) (a) "Sale" or "sell" includes every contract
 of sale of, contract to sell, or disposition of a security
 or interest in a security for value.
- 19 (b) "Offer" or "offer to sell" includes every attempt 20 or offer to dispose of or solicitation of an offer to buy a 21 security or interest in a security for value.
- 22 (c) Any security given or delivered with or as a bonus
 23 on account of any purchase of securities or any other thing
 24 is considered to constitute part of the subject of the
 25 purchase and to have been offered and sold for value. A

- purported gift of assessable stock is considered to involve
 an offer and sale. Every sale or offer of a warrant or right
 to purchase or subscribe to another security of the same or
 another issuer, as well as every sale or offer of a security
 which gives the holder a present or future right or
 privilege to convert into another security of the same or
 another issuer, is considered to include an offer of the
 other security.
- 9 fttt (17) "Securities Act of 1933", "Securities Exchange
 10 Act of 1934", "Public Utility Holding Company Act of 1935",
 11 and "Investment Company Act of 1940" mean the federal
 12 statutes of those names as amended before or after July 1,
 13 1961.
- 14 (12)(18) "Security" means any note; stock; treasury bond; commodity investment contract; commodity 15 stock; option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; 17 collateral-trust certificate; preorganization certificate or 18 19 subscription; transferable shares; investment contract; 20 voting-trust certificate; certificate of deposit for a 21 security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of 22 23 production under such a title or lease; or, in general, any 24 interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or

- 1 interim certificate for, receipt for, quarantee of, or 2 warrant or right to subscribe to or purchase any of the 3 foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an 4 5 insurance company promises to pay a sum of money either in a б lump sum or periodically for life or some other specified 7 period.
- 8 +13+(19) "State" means any state, territory, or 9 possession of the United States, as well as the District of Columbia and Puerto Rico." 10
- Section 2. Section 30-10-105, MCA, is amended to read: 11 "30-10-105. Exempt transactions. Except as in this 12 section expressly provided, 30-10-201 through 30-10-207 13 shall not apply to any of the following transactions: 14
- (1) any nonissuer isolated transaction, whether 15 effected through a broker-dealer or not;
- (2) (a) any nonissuer distribution of an outstanding 17 security by a broker-dealer registered pursuant to 30-10-201 18 19 if:

(i) quotations for the securities to be offered or 20 sold (or the securities issuable upon exercise of any 21 warrant or right to purchase or subscribe to such 22 23 securities) are reported by the automated quotations system operated by the national association of securities dealers, 24 25 inc., (NASDAQ) or by any other quotation system approved by

1 the commissioner by rule: or

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- (ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default 3 during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.
- (b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a 10 specific security. Upon the entry of such an order, the 11 shall promptly notify all registered commissioner 12 broker-dealers that it has been entered and of the reasons 13 therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no 14 15 hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is 16 17 modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and 18 opportunity for hearing to all interested persons, may 19 20 modify or vacate the order or extend it until final determination. No order under this subsection may operate 21 22 retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or 23 sale effected after the entry of an order under this 24

subsection if he sustains the burden of proof that he did

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not know and in the exercise of reasonable care could not have known of the order.

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- (3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;
- 9 (4) any transaction between the issuer or other person 10 on whose behalf the offering is made and an underwriter or 11 among underwriters;
- 12 (5) any transaction by an executor, administrator,
 13 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
 14 or conservator in the performance of his official duties as
 15 such:
- 16 (6) any transaction executed by a bona fide pledgee 17 without any purpose of evading parts 1 through 3 of this 18 chapter;
 - (7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

- 1 (8) (a) any transaction pursuant to an offer made in 2 this state directed by the offeror to not more than 10 3 persons (other than those designated in subsection (7)) 4 during any period of 12 consecutive months, if:
- 5 (i) the seller reasonably believes that all the buyers6 are purchasing for investment; and
 - (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.
 - (b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- 21 (9) any offer or sale of a preorganization certificate
 22 or subscription if:
- 23 (a) no commission or other remuneration is paid or 24 given directly or indirectly for soliciting any prospective 25 subscriber;

2	(c) no payment is made by any subscriber;
3	(10) any transaction pursuant to an offer to existing
4	security holders of the issuer, including persons who at the
5	time of the transaction are holders of convertible
6	securities, nontransferable warrants, or transferable
7	warrants exercisable within not more than 90 days of their
8	issuance, if:
9	(a) no commission or other remuneration (other than a
0 1	standby commission) is paid or given directly or indirectly
11	for soliciting any security holder in this state; or
L 2	(b) the issuer first files a notice specifying the
13	terms of the offer and the commissioner does not by order
14	disallow either (a) or (b) of this subsection;
15	(11) any offer (but not a sale) of a security for which
16	registration statements have been filed under both parts l
17	through 3 of this chapter and the Securities Act of 1933 if
8	no stop order or refusal order is in effect and no public

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

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pending under either law;

days of such filing;

1	(13) the issuance of any stock dividend, whether the
2	corporation distributing the dividend is the issuer of the
3	stock or not, if nothing of value is given by stockholders
4	for the distribution other than the surrender of a right to
5	a cash dividend where the stockholder can elect to take a
6	dividend in cash or stock;
7	(14) any transaction incident to a right of conversion
8	or a statutory or judicially approved reclassification,
9	recapitalization, reorganization, quasi-reorganization,
10	stock split, reverse stock split, merger, consolidation, or
11	sale of assets;
12	(15) any transaction in compliance with such rules as
13	the commissioner in his discretion may adopt to serve the
14	purposes of 30-10-102; or
15	(16) any transaction pursuant to the Montana Capital
16	Company Act, Title 90, chapter 8, provided that a Montana
17	capital company must first file all disclosure documents,
18	along with a consent to service of process, with the state
19	securities commissioner. The commissioner may not charge a

fee for the filing or deposit.

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(17) the sale of a commodity investment contract traded

on a commodities exchange recognized by the commissioner at

proceeding or examination looking toward such an order is

a registration statement has been filed under parts 1

through 3 of this chapter and the commissioner in his

discretion does not disallow the offer in writing within 10

(12) any offer (but not a sale) of a security for which

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1	the Commodity Exchange Act;
2	(19) a transaction that:
3	(a) involves the purchase of one or more precious
4	metals; and
5	(b) requires, and under which the purchaser receives
6	within 7 calendar days after payment in good funds of any
7	portion of the purchase price, physical delivery of the
8	quantity of the precious metals purchased. For the purposes
9	of this subsection, physical delivery is considered to have
10	occurred if, within the 7-day period, the quantity of
11	precious metals, whether in specifically segregated or
L 2	fungible bulk, purchased by such payment is delivered into
L 3	the possession of a depository (other than the seller) that:
L 4i	(i) (A) is a financial institution (meaning a bank,
15	savings institution, or trust company organized under or
16	supervised pursuant to the laws of the United States or of
١7	this state);
L 8	(B) is a depository the warehouse receipts of which
L9	are recognized for delivery purposes for any commodity on a
20	contract market designated by the commodity futures trading
21	commission; or
22	(C) is a storage facility licensed by the United
23	States or any agency of the United States; and
24	(ii) issues, and the purchaser receives, a certificate,
) E	document of hitle confirmation or other intermed

1 evidencing that such quantity of precious metals has been 2 delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all 3 4 liens and encumbrances other than: (A) liens of the purchaser; 6 (B) tax liens; 7 (C) liens agreed to by the purchaser; or 8 (D) liens of the depository for fees and expenses that 9 previously have been disclosed to the purchaser. 10 (20) a transaction involving a commodity investment 11 contract solely between persons engaged in producing, 12 processing, using commercially, or handling as merchants 13 each commodity subject to the contract or any byproduct of 14 the commodity." 15 NEW SECTION. Section 3. Extension of authority. Any 16 existing authority of the securities commissioner to make 17 rules on the subject of the provisions of this act is

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extended to the provisions of this act.

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1	SENATE BILL NO. 202
2	INTRODUCED BY WEEDING
3	BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE SECURITIES
6	LAWS TO SIMPLIFY AND CLARIFY THEIR ENFORCEMENT WITH RESPECT
7	TO COMMODITY INVESTMENT CONTRACTS AND COMMODITY OPTIONS; AND
8	AMENDING SECTIONS 30-10-103 AND 30-10-105, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 30-10-103, MCA, is amended to read:
12	"30-10-103. Definitions. When used in parts 1 through
13	3 of this chapter, unless the context requires otherwise,
14	the following definitions apply:
15	(1) "Commissioner" means securities commissioner of
16	this state.
17	(2) "Salesman" means any individual other than a
18	broker-dealer who represents a broker-dealer or issuer in
19	effecting or attempting to effect sales of securities.
20	partner, officer, or director of a broker-dealer or issuer
21	is a salesman only if he otherwise comes within this
22	definition. "Salesman" does not include an individual who
23	represents an issuer in:

(a) effecting a transaction in a security exempted by

subsections (1), (2), (3), (9), (10), (11), or (12) of

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

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

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to

administer the Commodity Exchange Act.

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2	account, agreement, or contract for the purchase or sale
3	primarily for speculation or investment purposes and not for
4	use or consumption by the offeree or purchaser, of one or
5	more commodities, whether for immediate or subsequen
6	delivery or whether delivery is intended by the parties, and
7	whether characterized as a cash contract, deferred shipment
8	or deferred delivery contract, forward contract, futures
9	contract, installment or margin contract, leverage contract,
10	or otherwise. Any commodity investment contract offered or
11	sold, in the absence of evidence to the contrary, is
12	presumed to be offered or sold for speculation or investment
13	purposes.
l 4	(b) A commodity investment contract does not include
15	contract or agreement that requires, and under which the
16	purchaser receives, within 28 calendar days after the
17	payment in good funds of any portion of the purchase price
18	physical delivery of the total amount of each commodity to
19	be purchased under the contract or agreement.
20	(9) (a) "Commodity option" means any account
21	agreement, or contract giving a party to the account
22	agreement, or contract the right but not the obligation to
23	purchase or sell one or more commodities or one or more
24	commodity contracts, whether characterized as an option
25	privilege, indemnity, bid, offer, put, call, advance

(8) (a) "Commodity investment contract" means

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l guaranty, decline guaranty, or otherwise.

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- (b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.
- 5 (5)(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.
 - #67(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.
 "Investment adviser" does not include:
- 15 (a) a bank, savings institution, trust company, or
 16 insurance company;
- 17 (b) a lawyer, accountant, engineer, or teacher whose 18 performance of these services is solely incidental to the 19 practice of his profession;
 - (c) a broker-dealer;
- 21 (d) a publisher of any bona fide newspaper, news 22 magazine, or business or financial publication of general, 23 regular, and paid circulation;
- 24 (e) a person whose advice, analyses, or reports relate 25 only to securities exempted by 30-10-104(1);

1 (f) a person who has no place of business in this
2 state if his only clients in this state are other investment
3 advisers, broker-dealers, banks, savings institutions, trust
4 companies, insurance companies, investment companies as
5 defined in the Investment Company Act of 1940, pension or
6 profit-sharing trusts, or other financial institutions or
7 institutional buyers, whether acting for themselves or as
8 trustees; or

9 (g) such other persons not within the intent of this
10 subsection (5) (11) as the commissioner may by rule or order
11 designate.

ff)(12) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

24 (8)(13) "Nonissuer" means not directly or indirectly
25 for the benefit of the issuer.

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- (9)(14) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.
- 7 (15) "Precious metal" means the following, in coin, 8 bullion, or other form:
- 9 (a) silver;
- 10 (b) gold;

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- 11 (c) platinum;
- 12 (d) palladium;
- 13 (e) copper; and
- 14 (f) such other items as the commissioner may by rule
 15 or order specify.
- 16 f#0; (16) (a) "Sale" or "sell" includes every contract
 17 of sale of, contract to sell, or disposition of a security
 18 or interest in a security for value.
- 19 (b) "Offer" or "offer to sell" includes every attempt 20 or offer to dispose of or solicitation of an offer to buy a 21 security or interest in a security for value.
- 22 (c) Any security given or delivered with or as a bonus
 23 on account of any purchase of securities or any other thing
 24 is considered to constitute part of the subject of the
 25 purchase and to have been offered and sold for value. A

- purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- 9 (ii) (17) "Securities Act of 1933", "Securities Exchange
 10 Act of 1934", "Public Utility Holding Company Act of 1935",
 11 and "Investment Company Act of 1940" mean the federal
 12 statutes of those names as amended before or after July 1,
 13 1961.
 - the first stock; "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or

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interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

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++++++ (19) "State" means any state, territory, or
possession of the United States, as well as the District of
Columbia and Puerto Rico."

Section 2. Section 30-10-105, MCA, is amended to read:
"30-10-105. Exempt transactions. Except as in this
section expressly provided, 30-10-201 through 30-10-207
shall not apply to any of the following transactions:

- (1) any nonissuer isolated transaction, whether effected through a broker-dealer or not;
- 17 (2) (a) any nonissuer distribution of an outstanding 18 security by a broker-dealer registered pursuant to 30-10-201 19 if:
 - (i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by

the commissioner by rule; or

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

(b) The commissioner may by order deny or revoke the 9 exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the 10 1.3 commissioner shall promptly notify all registered 12 broker-dealers that it has been entered and of the reasons 1.3 therefor and that within 15 days of the receipt of a written 14 request the matter will be set down for hearing. If no 15 hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is 16 17 modified or vacated by the commissioner. If a hearing is 18 requested or ordered, the commissioner, after notice of and 19 opportunity for hearing to all interested persons, may 20 modify or vacate the order or extend it until final determination. No order under this subsection may operate 21 22 retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or 23 24 sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did

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not know and in the exercise of reasonable care could not have known of the order.

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- (3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;
- 9 (4) any transaction between the issuer or other person 10 on whose behalf the offering is made and an underwriter or among underwriters; 11
- (5) any transaction by an executor, administrator, 13 sheriff, marshal, receiver, trustee in bankruptcy, quardian. or conservator in the performance of his official duties as such;
- 16 (6) any transaction executed by a bona fide pledgee 17 without any purpose of evading parts 1 through 3 of this 18 chapter;
 - (7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

- 1 . (8) (a) any transaction pursuant to an offer made in 2 this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if: 4
 - (i) the seller reasonably believes that all the buyers are purchasing for investment; and
 - (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.
 - (b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- (9) any offer or sale of a preorganization certificate 21 22 or subscription if:
- 23 (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective 24 25 subscriber:

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(b) the number of subscribers does not exceed 10; an										
ib) the number of subscribers dues not exceed to; an	(b)	the	number	ο£	subscribers	does	not	exceed	10:	and

(c) no payment is made by any subscriber;

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- 3 (10) any transaction pursuant to an offer to existing
 4 security holders of the issuer, including persons who at the
 5 time of the transaction are holders of convertible
 6 securities, nontransferable warrants, or transferable
 7 warrants exercisable within not more than 90 days of their
 8 issuance, if:
 - (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or
 - (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;
 - (11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;
 - (12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

- (13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock:
- (14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
- (15) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102; or
- 15 (16) any transaction pursuant to the Montana Capital
 16 Company Act, Title 90, chapter 8, provided that a Montana
 17 capital company must first file all disclosure documents,
 18 along with a consent to service of process, with the state
 19 securities commissioner. The commissioner may not charge a
 20 fee for the filing or deposit.
- 21 (17) the sale of a commodity investment contract traded
 22 on a commodities exchange recognized by the commissioner at
 23 the time of sale;
- 24 (18) transaction within the exclusive jurisdiction of 25 the commodity futures trading commission as granted under

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1	the Commodity Exchange Act;
2	(19) a transaction that:
3	(a) involves the purchase of one or more precious
4	metals; and
5	(b) requires, and under which the purchaser receives
6	within 7 calendar days after payment in good funds of any
7	portion of the purchase price, physical delivery of the
8	quantity of the precious metals purchased. For the purposes
9	of this subsection, physical delivery is considered to have
10	occurred if, within the 7-day period, the quantity of
11	precious metals, whether in specifically segregated or
12	fungible bulk, purchased by such payment is delivered into
13	the possession of a depository (other than the seller) that:
14	(i) (A) is a financial institution (meaning a bank,
15	savings institution, or trust company organized under or
16	supervised pursuant to the laws of the United States or of
17	this state);
18	(B) is a depository the warehouse receipts of which
19	are recognized for delivery purposes for any commodity on a
20	contract market designated by the commodity futures trading
21	commission; or
22	(C) is a storage facility licensed by the United
23	States or any agency of the United States; and
24	(ii) issues, and the purchaser receives, a certificate,
25	document of <u>title</u> , confirmation, or other instrument

evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than: (A) liens of the purchaser; (B) tax liens; (C) liens agreed to by the purchaser; or (D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser. (20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity." NEW SECTION. Section 3. Extension of authority. Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is

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extended to the provisions of this act.

STANDING COMMITTEE REPORT

HOUSE			MARCH 10	19_87
Mr. Speaker: We, the com	mittee onBUS	INESS AN	ID LABOR	
report	SENATE BILL NO. 202			
☐ do pass ☐ do not pass		\	☑ as amended ☐ statement of	d of intent attached
		REP.	LES KITSELMAN	Chairman
AMENDMENT AS I	FOLLOWS:			
	<u>eans</u> " on line 24 emainder of line 24 a	nd line	25	

Rep. Ray Brandewie to sponsor.

THIRD reading copy (BLUE)