

HOUSE BILL NO. 464

INTRODUCED BY FISHER, KENNEDY, STRIZICH
BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

FEBRUARY 4, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT. FIRST READING.
FEBRUARY 12, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1993	PRINTING REPORT. SECOND READING, DO PASS.
FEBRUARY 15, 1993	ENGROSSING REPORT.
FEBRUARY 16, 1993	THIRD READING, PASSED. AYES, 99; NOES, 0.
FEBRUARY 17, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY. FIRST READING.
MARCH 10, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1993	SECOND READING, CONCURRED IN.
MARCH 12, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0. RETURNED TO HOUSE.

IN THE HOUSE

MARCH 13, 1993	RECEIVED FROM SENATE. SENT TO ENROLLING. REPORTED CORRECTLY ENROLLED.
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1 House BILL NO. 464 Bo X
 2 INTRODUCED BY M. Helen Kennedy
 3 BY REQUEST OF THE STATE AUDITOR

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE ANTIFRAUD
 6 PROVISIONS OF THE SECURITIES LAWS BY MODIFYING THE
 7 DEFINITION OF AN INVESTMENT ADVISER; ELIMINATING THE DUAL
 8 REGISTRATION REQUIREMENT FOR BROKER-DEALERS AND INVESTMENT
 9 ADVISERS WHO ARE SOLE PROPRIETORS EMPLOYING NO OTHER
 10 SALESPERSONS, INVESTMENT ADVISERS, OR INVESTMENT ADVISER
 11 REPRESENTATIVES; AND AMENDING SECTIONS 30-10-103 AND
 12 30-10-201, MCA."

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

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

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

19 (1) "Broker-dealer" means any person engaged in the
 20 business of effecting transactions in securities for the
 21 account of others or for his the person's own account.

22 "Broker-dealer" does not include:

23 (a) a ~~salesman~~ salesperson, issuer, bank, savings
 24 institution, trust company, or insurance company; or

25 (b) a person who has--no does not have a place of

1 business in this state if he the person effects transactions
 2 in this state exclusively with or through the issuers of the
 3 securities involved in the transactions, other
 4 broker-dealers, or banks, savings institutions, trust
 5 companies, insurance companies, investment companies as
 6 defined in the Investment Company Act of 1940, pension or
 7 profit-sharing trusts, or other financial institutions or
 8 institutional buyers, whether acting for themselves or as
 9 trustee.

10 (2) "Commissioner" means securities commissioner of
 11 this state.

12 (3) (a) "Commodity" means:

13 (i) any agricultural, grain, or livestock product or
 14 byproduct;

15 (ii) any metal or mineral, including a precious metal,
 16 or any gem or gem stone, whether characterized as precious,
 17 semiprecious, or otherwise;

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

19 (iv) foreign currency; and

20 (v) all other goods, articles, products, or items of
 21 any kind.

22 (b) Commodity does not include:

23 (i) a numismatic coin with a fair market value at least
 24 15% higher than the value of the metal it contains;

25 (ii) real property or any timber, agricultural, or

1 livestock product grown or raised on real property and
2 offered and sold by the owner or lessee of such the real
3 property; or

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

7 (4) "Commodity Exchange Act" means the federal statute
8 of that name as amended on the effective date of this
9 subsection.

10 (5) "Commodity futures trading commission" means the
11 independent regulatory agency established by congress to
12 administer the Commodity Exchange Act.

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

1 (b) A commodity investment contract does not include a
2 contract or agreement that requires, and under which the
3 purchaser receives, within 28 calendar days after the
4 payment in good funds of any portion of the purchase price,
5 physical delivery of the total amount of each commodity to
6 be purchased under the contract or agreement. The purchaser
7 is not considered to have received physical delivery of the
8 total amount of each commodity to be purchased under the
9 contract or agreement when the commodity or commodities are
10 held as collateral for a loan or are subject to a lien of
11 any person when the loan or lien arises in connection with
12 the purchase of each commodity or commodities.

13 (7) (a) "Commodity option" means any account,
14 agreement, or contract giving a party to the account,
15 agreement, or contract the right but not the obligation to
16 purchase or sell one or more commodities or one or more
17 commodity contracts, whether characterized as an option,
18 privilege, indemnity, bid, offer, put, call, advance
19 guaranty, decline guaranty, or otherwise.

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

23 (8) "Guaranteed" means guaranteed as to payment of
24 principal, interest, or dividends.

25 (9) (a) "Investment adviser" means any person who, for

1 compensation, engages in the business of advising others,
2 either directly or through publications or writings, as to
3 the value of securities or as to the advisability of
4 investing in, purchasing, or selling securities or who, for
5 compensation and as a part of a regular business, issues or
6 promulgates analyses or reports concerning securities.

7 (b) The term includes a financial planner or other
8 person who:

9 (i) as an integral component of other financially
10 related services, provides the investment advisory services
11 described in subsection (9)(a) to others for compensation,
12 as part of a business; or

13 (ii) represents himself-as-providing to the public that
14 the person provides the investment advisory services
15 described in subsection (9)(a) to others for compensation.

16 (c) Investment adviser does not include:

17 (i) an investment adviser representative;

18 (ii) a bank, savings institution, trust company, or
19 insurance company;

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

23 (iv) a registered broker-dealer whose performance of
24 services described in subsection (9)(a) is solely incidental
25 to the conduct of business and for which the broker-dealer

1 does not receive special compensation;

2 (v) a publisher of any newspaper, news column,
3 newsletter, news magazine, or business or financial
4 publication or service, whether communicated in hard copy
5 form or by electronic means or otherwise, that does not
6 consist of the rendering of advice on the basis of the
7 specific investment situation of each client;

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

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

13 (10) (a) "Investment adviser representative" means any
14 partner of, officer of, director of, or a person occupying a
15 similar status or performing similar functions, or other
16 individual employed by or associated with an investment
17 adviser, except clerical or ministerial personnel, who:

18 (i) makes any recommendation or otherwise renders
19 advice regarding securities to clients;

20 (ii) manages accounts or portfolios of clients;

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

23 (iv) supervises employees who perform any of the
24 foregoing.

25 (b) investment-adviser-representative-does-not--include

1 ~~an individual registered as a salesman pursuant to~~
 2 ~~30-10-201.~~ A salesperson registered pursuant to 30-10-201(1)
 3 who performs services described in subsection 10(a) shall
 4 also register as an investment adviser representative.

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

16 (12) "Nonissuer" means not directly or indirectly for
 17 the benefit of the issuer.

18 (13) "Person", for the purpose of parts 1 through 3 of
 19 this chapter, means an individual, a corporation, a
 20 partnership, an association, a joint-stock company, a trust
 21 where the interests of the beneficiaries are evidenced by a
 22 security, an unincorporated organization, a government, or a
 23 political subdivision of a government.

24 (14) "Precious metal" means the following, in coin,
 25 bullion, or other form:

1 (a) silver;
 2 (b) gold;
 3 (c) platinum;
 4 (d) palladium;
 5 (e) copper; and
 6 (f) such other items as the commissioner may by rule or
 7 order specify.

8 (15) "Registered broker-dealer" means a broker-dealer
 9 registered pursuant to 30-10-201.

10 (16) (a) "Sale" or "sell" includes every contract of
 11 sale of, contract to sell, or disposition of a security or
 12 interest in a security for value.

13 (b) "Offer" or "offer to sell" includes every attempt
 14 or offer to dispose of or solicitation of an offer to buy a
 15 security or interest in a security for value.

16 (c) Any security given or delivered with or as a bonus
 17 on account of any purchase of securities or any other thing
 18 is considered to constitute part of the subject of the
 19 purchase and to have been offered and sold for value. A
 20 purported gift of assessable stock is considered to involve
 21 an offer and sale. Every sale or offer of a warrant or right
 22 to purchase or subscribe to another security of the same or
 23 another issuer, as well as every sale or offer of a security
 24 which gives the holder a present or future right or
 25 privilege to convert into another security of the same or

1 another issuer, is considered to include an offer of the
2 other security.

3 (17) "Salesman" "Salesperson" means any individual other
4 than a broker-dealer who represents a broker-dealer or
5 issuer in effecting or attempting to effect sales of
6 securities. A partner, officer, or director of a
7 broker-dealer or issuer is a salesman salesperson only if he
8 the person otherwise comes within this definition.
9 "Salesman" Salesperson does not include an individual who
10 represents an issuer in:

11 (a) effecting a transaction in a security exempted by
12 subsection (1), (2), (3), (8), (9), (10), or (11) of
13 30-10-104;

14 (b) effecting transactions exempted by 30-10-105 except
15 when registration as a salesman salesperson, pursuant to
16 30-10-201, is required by 30-10-105 or by any rule
17 promulgated under 30-10-105; or

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

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

1 amended before or after July 1, 1961.

2 (19) "Security" means any note; stock; treasury stock;
3 bond; commodity investment contract; commodity option;
4 debenture; evidence of indebtedness; certificate of interest
5 or participation in any profit-sharing agreement;
6 collateral-trust certificate; preorganization certificate or
7 subscription; transferable shares; investment contract;
8 voting-trust certificate; certificate of deposit for a
9 security; certificate of interest or participation in an
10 oil, gas, or mining title or lease or in payments out of
11 production under such a title or lease; or, in general, any
12 interest or instrument commonly known as a security, any
13 put, call, straddle, option, or privilege on any security,
14 certificate of deposit, or group or index of securities,
15 including any interest in a security or based on the value
16 of a security, or any certificate of interest or
17 participation in, temporary or interim certificate for,
18 receipt for, guarantee of, or warrant or right to subscribe
19 to or purchase any of the foregoing. "Security" does not
20 include any insurance or endowment policy or annuity
21 contract under which an insurance company promises to pay a
22 fixed sum of money either in a lump sum or periodically for
23 life or some other specified period.

24 (20) "State" means any state, territory, or possession
25 of the United States, as well as the District of Columbia

1 and Puerto Rico.

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

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

6 "30-10-201. Registration of broker-dealers, ~~salesmen~~
7 salespersons, investment advisers, and investment adviser
8 representatives. (1) It is unlawful for a person to transact
9 business in this state as a broker-dealer or ~~salesman~~
10 salesperson, except as provided in 30-10-105, unless he the
11 person is registered under parts 1 through 3 of this
12 chapter.

13 (2) It is unlawful for a broker-dealer or issuer to
14 employ a ~~salesman~~ salesperson to represent him the
15 broker-dealer or issuer in this state, except in
16 transactions exempt under 30-10-105, unless the ~~salesman~~
17 salesperson is registered under parts 1 through 3 of this
18 chapter.

19 (3) It is unlawful for any person to transact business
20 in this state as an investment adviser or as an investment
21 adviser representative unless:

22 (a) he the person is so registered under parts 1
23 through 3 of this chapter;

24 (b) he the person is registered as a broker-dealer
25 under parts 1 through 3 of this chapter;

1 (c) ~~his~~ the person's only clients in this state are:

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

4 (ii) other investment advisers;

5 (iii) broker-dealers;

6 (iv) banks;

7 (v) trust companies;

8 (vi) savings and loan associations;

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

11 (viii) governmental agencies or instrumentalities,
12 whether acting for themselves or as trustees with investment
13 control; or

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

16 (d) ~~he has no~~ the person does not have a place of
17 business in this state and during any 12 consecutive months
18 does not direct business communications in this state in any
19 manner to more than five present or prospective clients,
20 other than those specified in subsection (3)(c), whether or
21 not he the person or any of the persons to whom the
22 communications are directed are then present in this state.

23 (4) A broker-dealer or a ~~salesman~~ salesperson, acting
24 as an agent for an issuer or as an agent for a broker-dealer
25 in the offer or sale of securities for an issuer, or an

1 investment adviser or investment adviser representative may
 2 apply for registration by filing an application in such the
 3 form as the commissioner prescribes and payment of the fee
 4 prescribed in 30-10-209. A ~~salesman~~ salesperson acting as
 5 agent for an issuer or broker-dealer who is not currently in
 6 compliance with the financial responsibility requirements
 7 prescribed by the Securities Exchange Act of 1934 and by
 8 regulations adopted under it, may, in the discretion of the
 9 commissioner, be required to file with the commissioner a
 10 bond of a surety company duly authorized to transact
 11 business in this state. The bond shall be in an amount
 12 determined by the commissioner, payable to the state of
 13 Montana and conditioned upon the faithful compliance with
 14 the provisions of parts 1 through 3 of this chapter, and
 15 provide that upon failure to so comply, the ~~salesman-shall~~
 16 be salesperson is liable to any and all persons who may
 17 suffer loss by reason thereof.

18 (5) The application shall contain whatever information
 19 the commissioner requires. No A registration application of
 20 a broker-dealer, ~~salesman~~ salesperson, investment adviser,
 21 or investment adviser representative may not be withdrawn
 22 before the commissioner approves or denies such the
 23 registration, without the express written consent of the
 24 commissioner.

25 (6) When the registration requirements are met, the

1 commissioner shall make the registration effective. No An
 2 effective registration of a broker-dealer, ~~salesman~~
 3 salesperson, investment adviser, or investment adviser
 4 representative may not be withdrawn or terminated without
 5 the express written consent of the commissioner.

6 (7) Except as provided in subsection (6), registration
 7 of a broker-dealer, ~~salesman~~ salesperson, investment
 8 adviser, or investment adviser representative:

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

12 (b) may be renewed.

13 (8) The registration of a ~~salesman~~ salesperson is not
 14 effective during any period when he the salesperson is not
 15 associated with an issuer or a registered broker-dealer
 16 specified in his the application. When a ~~salesman~~
 17 salesperson begins or terminates a connection with an issuer
 18 or registered broker-dealer, the ~~salesman~~ salesperson and
 19 the issuer or broker-dealer shall promptly notify the
 20 commissioner.

21 (9) The registration of an investment adviser
 22 representative is not effective during any period when he
 23 the person is not associated with an investment adviser
 24 registered under this act and specified in the application.
 25 When an investment adviser representative begins or

1 terminates a connection with an investment adviser, the
2 investment adviser shall promptly notify the commissioner.

3 (10) Registration of a broker-dealer, ~~salesman~~
4 salesperson, investment adviser, or investment adviser
5 representative may be renewed by filing, prior to the
6 expiration thereof of the registration, an application
7 containing such information as the commissioner may require
8 to indicate any material change in the information contained
9 in the original application or any renewal application for
10 registration as a broker-dealer, ~~salesman~~ salesperson,
11 investment adviser, or investment adviser representative
12 filed by the applicant, payment of the prescribed fee, and,
13 in the case of a broker-dealer who is not a member of NASD,
14 inc., by filing a financial statement showing the financial
15 condition of ~~such the~~ broker-dealer as of a date within 90
16 days. A registered broker-dealer or investment adviser may
17 file an application for registration of a successor, to
18 become effective upon approval of the commissioner.

19 (11) Every registered broker-dealer and investment
20 adviser shall make and keep such accounts and other records,
21 except with respect to securities exempt under 30-10-104(1),
22 as may be prescribed by the commissioner. All required
23 ~~records so--required--shall~~ must be preserved for 3 years
24 unless the commissioner prescribes otherwise for particular
25 types of records. All the records of a registered

1 broker-dealer or investment adviser are subject at any time
2 or from time to time to such reasonable periodic, special,
3 or other examinations, within or without outside this state,
4 by representatives of the commissioner, as the commissioner
5 considers necessary or appropriate in the public interest or
6 for the protection of investors.

7 (12) The commissioner may by order deny, suspend, or
8 revoke registration of any broker-dealer, ~~salesman~~
9 salesperson, investment adviser, or investment adviser
10 representative if he the commissioner finds that the order
11 is in the public interest and that the applicant or
12 registrant or, in the case of a broker-dealer or investment
13 adviser, any partner, officer, director, person occupying a
14 similar status or performing similar functions, or person
15 directly or indirectly controlling the broker-dealer or
16 investment adviser:

17 (a) has filed an application for registration under
18 this section which, as of its effective date or as of any
19 date after filing in the case of an order denying
20 effectiveness, was incomplete in any material respect or
21 contained any statement which was, in the light of the
22 circumstances under which it was made, false or misleading
23 with respect to any material fact;

24 (b) has willfully violated or willfully failed to
25 comply with any provision of parts 1 through 3 of this

1 chapter or a predecessor law or any rule or order under
2 parts 1 through 3 of this chapter or a predecessor law;

3 (c) has been convicted of any misdemeanor involving a
4 security or any aspect of the securities business or any
5 felony;

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

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

14 (f) is the subject of an adjudication or determination,
15 within the past 5 years, by a securities or commodities
16 agency or administrator of another state or a court of
17 competent jurisdiction, that the person has violated the
18 Securities Act of 1933, the Securities Exchange Act of 1934,
19 the Investment Advisors Act of 1940, the Investment Company
20 Act of 1940, or the Commodity Exchange Act or the securities
21 or commodities law of any other state;

22 (g) has engaged in dishonest or unethical practices in
23 the securities business;

24 (h) is insolvent, either in the sense that his the
25 person's liabilities exceed his the person's assets or in

1 the sense that he the person cannot meet his obligations as
2 they mature, but the commissioner may not enter an order
3 against a broker-dealer or investment adviser under this
4 subsection ~~(h)~~ (12) without a finding of insolvency as to
5 the broker-dealer or investment adviser;

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

10 (j) has failed to pay the proper filing fee, but the
11 commissioner may enter only a denial order under this
12 subsection ~~(j)~~ (12), and he the commissioner shall vacate
13 any such order when the deficiency has been corrected; or

14 (k) has failed to reasonably supervise his the person's
15 salesmen salespersons or employees or his investment adviser
16 representatives or employees to assure their compliance with
17 this act.

18 (13) The commissioner may not institute a suspension or
19 revocation proceeding on the basis of a fact or transaction
20 known to him the commissioner when registration became
21 effective unless the proceeding is instituted within 30 days
22 after the date on which the registration became effective.

23 (14) The commissioner may by order summarily postpone or
24 suspend registration pending final determination of any
25 proceeding under this section.

1 (15) Upon the entry of the order under subsection (12)
 2 of this section, the commissioner shall promptly notify the
 3 applicant or registrant, as well as the employer or
 4 prospective employer if the applicant or registrant is a
 5 salesman salesperson or investment adviser representative,
 6 that it has been entered and of the reasons therefor for the
 7 order and that if requested by the applicant or registrant
 8 within 15 days after the receipt of the commissioner's
 9 notification the matter will be promptly set down for
 10 hearing. If no a hearing is not requested within 15 days and
 11 none is ordered by the commissioner, the order will remain
 12 in effect until it is modified or vacated by the
 13 commissioner. If a hearing is requested or ordered, the
 14 commissioner, after notice of and opportunity for hearing,
 15 may modify or vacate the order or extend it until final
 16 determination.

17 (16) If the commissioner finds that any registrant or
 18 applicant for registration is no longer in existence or has
 19 ceased to do business as a broker-dealer, salesman
 20 salesperson, investment adviser, or investment adviser
 21 representative or is subject to an adjudication of mental
 22 incompetence or to the control of a committee, conservator,
 23 or guardian or cannot be located after reasonable search,
 24 the commissioner may by order cancel the registration or
 25 application.

1 (17) The commissioner may, after suspending or revoking
 2 registration of any broker-dealer, salesman salesperson,
 3 investment adviser, or investment adviser representative,
 4 impose a fine not to exceed \$5,000 upon such the
 5 broker-dealer, salesman salesperson, investment adviser, or
 6 investment adviser representative. The fine is in addition
 7 to all other penalties imposed by the laws of this state and
 8 must be collected by the commissioner in the name of the
 9 state of Montana and deposited in the general fund.
 10 Imposition of any fine under this subsection is an order
 11 from which an appeal may be taken pursuant to 30-10-308. If
 12 any broker-dealer, salesman salesperson, investment adviser,
 13 or investment adviser representative fails to pay a fine
 14 referred to in this subsection, the amount of the fine is a
 15 lien upon all of the assets and property of such the
 16 broker-dealer, salesman salesperson, investment adviser, or
 17 investment adviser representative in this state and may be
 18 recovered by suit by the commissioner and deposited in the
 19 general fund. Failure of a broker-dealer, salesman
 20 salesperson, investment adviser, or investment adviser
 21 representative to pay a fine also constitutes a forfeiture
 22 of his the right to do business in this state under parts 1
 23 through 3 of this chapter.

24 (18) A sole proprietor registered as a broker-dealer or
 25 investment adviser who does not employ other salespersons or

1 investment adviser representatives, other than the sole
2 proprietor, is not required to register as both a
3 broker-dealer and a salesperson or as an investment adviser
4 and an investment adviser representative if the sole
5 proprietor meets the examination requirements established by
6 the commissioner by rule."

7 NEW SECTION. Section 3. Registration of previous
8 filing. A registered salesperson who has filed with the
9 commissioner as an investment adviser as of October 1, 1993,
10 shall register as an investment adviser representative by
11 October 1, 1994.

12 NEW SECTION. Section 4. Code commissioner instruction.
13 Wherever the term "salesman" or its equivalent appears in
14 Title 30, chapter 10, parts 1 through 3, or in legislation
15 enacted by the 1993 legislature, the code commissioner shall
16 substitute the term "salesperson" or its equivalent and make
17 any necessary grammatical changes to reflect the name
18 change.

-End-

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 464

INTRODUCED BY FISHER, KENNEDY, STRIZICH

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE ANTIFRAUD PROVISIONS OF THE SECURITIES LAWS BY MODIFYING THE DEFINITION OF AN INVESTMENT ADVISER; ELIMINATING THE DUAL REGISTRATION REQUIREMENT FOR BROKER-DEALERS AND INVESTMENT ADVISERS WHO ARE SOLE PROPRIETORS EMPLOYING NO OTHER SALESPERSONS, INVESTMENT ADVISERS, OR INVESTMENT ADVISER REPRESENTATIVES; AND AMENDING SECTIONS 30-10-103 AND 30-10-201, MCA."

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

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

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

(1) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his the person's own account.

"Broker-dealer" does not include:

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

(b) a person who has--no does not have a place of

business in this state if he the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

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

(3) (a) "Commodity" means:

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

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

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

(iv) foreign currency; and

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

(b) Commodity does not include:

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

(ii) real property or any timber, agricultural, or

1 livestock product grown or raised on real property and
2 offered and sold by the owner or lessee of such the real
3 property; or

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

7 (4) "Commodity Exchange Act" means the federal statute
8 of that name as amended on the effective date of this
9 subsection.

10 (5) "Commodity futures trading commission" means the
11 independent regulatory agency established by congress to
12 administer the Commodity Exchange Act.

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

1 (b) A commodity investment contract does not include a
2 contract or agreement that requires, and under which the
3 purchaser receives, within 28 calendar days after the
4 payment in good funds of any portion of the purchase price,
5 physical delivery of the total amount of each commodity to
6 be purchased under the contract or agreement. The purchaser
7 is not considered to have received physical delivery of the
8 total amount of each commodity to be purchased under the
9 contract or agreement when the commodity or commodities are
10 held as collateral for a loan or are subject to a lien of
11 any person when the loan or lien arises in connection with
12 the purchase of each commodity or commodities.

13 (7) (a) "Commodity option" means any account,
14 agreement, or contract giving a party to the account,
15 agreement, or contract the right but not the obligation to
16 purchase or sell one or more commodities or one or more
17 commodity contracts, whether characterized as an option,
18 privilege, indemnity, bid, offer, put, call, advance
19 guaranty, decline guaranty, or otherwise.

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

23 (8) "Guaranteed" means guaranteed as to payment of
24 principal, interest, or dividends.

25 (9) (a) "Investment adviser" means any person who, for

compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (9)(a) to others for compensation, as part of a business; or

(ii) represents himself--as-providing to the public ANY PERSON that the FINANCIAL PLANNER OR OTHER person provides the investment advisory services described in subsection (9)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

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

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

(iv) a registered broker-dealer whose performance of services described in subsection (9)(a) is solely incidental

to the conduct of business and for which the broker-dealer does not receive special compensation;

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

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

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

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

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

(ii) manages accounts or portfolios of clients;

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

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

1 (b) ~~Investment--adviser--representative--does--not--include~~
 2 ~~an--individual--registered--as--a--salesman--pursuant--to~~
 3 ~~30-10-201. A INVESTMENT ADVISER REPRESENTATIVE DOES NOT~~
 4 ~~INCLUDE A salesperson registered pursuant to 30-10-201(1)~~
 5 ~~who--performs WHOSE PERFORMANCE OF THE services described in~~
 6 ~~subsection (10)(a) shall--also--register--as--an IS SOLELY~~
 7 ~~INCIDENTAL TO THE CONDUCT OF BUSINESS AS A SALESPERSON AND~~
 8 ~~FOR WHICH THE SALESPERSON DOES NOT RECEIVE SPECIAL~~
 9 ~~COMPENSATION OTHER THAN FEES RELATING TO THE SOLICITATION OR~~
 10 ~~OFFERING OF INVESTMENT ADVISORY SERVICES OF A REGISTERED~~
 11 ~~investment adviser representative.~~

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

23 (12) "Nonissuer" means not directly or indirectly for
 24 the benefit of the issuer.

25 (13) "Person", for the purpose of parts 1 through 3 of

1 this chapter, means an individual, a corporation, a
 2 partnership, an association, a joint-stock company, a trust
 3 where the interests of the beneficiaries are evidenced by a
 4 security, an unincorporated organization, a government, or a
 5 political subdivision of a government.

6 (14) "Precious metal" means the following, in coin,
 7 bullion, or other form:

- 8 (a) silver;
- 9 (b) gold;
- 10 (c) platinum;
- 11 (d) palladium;
- 12 (e) copper; and

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

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

17 (16) (a) "Sale" or "sell" includes every contract of
 18 sale of, contract to sell, or disposition of a security or
 19 interest in a security for value.

20 (b) "Offer" or "offer to sell" includes every attempt
 21 or offer to dispose of or solicitation of an offer to buy a
 22 security or interest in a security for value.

23 (c) Any security given or delivered with or as a bonus
 24 on account of any purchase of securities or any other thing
 25 is considered to constitute part of the subject of the

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.

(17) "Salesman" "Salesperson" 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 salesperson only if he the person otherwise comes within this definition. "Salesman" Salesperson does not include an individual who represents an issuer in:

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

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

(c) effecting transactions with existing employees,

partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

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

(19) "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, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any 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 fixed sum of money either in a lump sum or periodically for life or some other specified period.

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

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

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

"30-10-201. Registration of broker-dealers, salesmen salespersons, investment advisers, and investment adviser representatives. (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesman salesperson, except as provided in 30-10-105, unless he the person is registered under parts 1 through 3 of this chapter.

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

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

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

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

(c) his the person's only clients in this state are:

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

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

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

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

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

(d) ~~he has no~~ the person does not have a place of business in this state and during any 12 consecutive months does not direct business communications in this state in any

1 manner to more than five present or prospective clients,
2 other than those specified in subsection (3)(c), whether or
3 not he the person or any of the persons to whom the
4 communications are directed are then present in this state.

5 (4) A broker-dealer or a salesman salesperson, acting
6 as an agent for an issuer or as an agent for a broker-dealer
7 in the offer or sale of securities for an issuer, or an
8 investment adviser or investment adviser representative may
9 apply for registration by filing an application in such the
10 form as the commissioner prescribes and payment of the fee
11 prescribed in 30-10-209. A salesman salesperson acting as
12 agent for an issuer or broker-dealer who is not currently in
13 compliance with the financial responsibility requirements
14 prescribed by the Securities Exchange Act of 1934 and by
15 regulations adopted under it, may, in the discretion of the
16 commissioner, be required to file with the commissioner a
17 bond of a surety company duly authorized to transact
18 business in this state. The bond shall be in an amount
19 determined by the commissioner, payable to the state of
20 Montana and conditioned upon the faithful compliance with
21 the provisions of parts 1 through 3 of this chapter, and
22 provide that upon failure to so comply, the ~~salesman~~ shall
23 be salesperson is liable to any and all persons who may
24 suffer loss by reason thereof.

25 (5) The application shall contain whatever information

1 the commissioner requires. No A registration application of
2 a broker-dealer, salesman salesperson, investment adviser,
3 or investment adviser representative may not be withdrawn
4 before the commissioner approves or denies such the
5 registration, without the express written consent of the
6 commissioner.

7 (6) When the registration requirements are met, the
8 commissioner shall make the registration effective. No An
9 effective registration of a broker-dealer, salesman
10 salesperson, investment adviser, or investment adviser
11 representative may not be withdrawn or terminated without
12 the express written consent of the commissioner.

13 (7) Except as provided in subsection (6), registration
14 of a broker-dealer, salesman salesperson, investment
15 adviser, or investment adviser representative:

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

19 (b) may be renewed.

20 (8) The registration of a salesman salesperson is not
21 effective during any period when he the salesperson is not
22 associated with an issuer or a registered broker-dealer
23 specified in his the application. When a salesman
24 salesperson begins or terminates a connection with an issuer
25 or registered broker-dealer, the salesman salesperson and

1 the issuer or broker-dealer shall promptly notify the
2 commissioner.

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

10 (10) Registration of a broker-dealer, salesman
11 salesperson, investment adviser, or investment adviser
12 representative may be renewed by filing, prior to the
13 expiration thereof of the registration, an application
14 containing such information as the commissioner may require
15 to indicate any material change in the information contained
16 in the original application or any renewal application for
17 registration as a broker-dealer, salesman salesperson,
18 investment adviser, or investment adviser representative
19 filed by the applicant, payment of the prescribed fee, and,
20 in the case of a broker-dealer who is not a member of NASD,
21 inc., by filing a financial statement showing the financial
22 condition of such the broker-dealer as of a date within 90
23 days. A registered broker-dealer or investment adviser may
24 file an application for registration of a successor, to
25 become effective upon approval of the commissioner.

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

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

24 (a) has filed an application for registration under
25 this section which, as of its effective date or as of any

1 date after filing in the case of an order denying
2 effectiveness, was incomplete in any material respect or
3 contained any statement which was, in the light of the
4 circumstances under which it was made, false or misleading
5 with respect to any material fact;

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

10 (c) has been convicted of any misdemeanor involving a
11 security or any aspect of the securities business or any
12 felony;

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

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

21 (f) is the subject of an adjudication or determination,
22 within the past 5 years, by a securities or commodities
23 agency or administrator of another state or a court of
24 competent jurisdiction, that the person has violated the
25 Securities Act of 1933, the Securities Exchange Act of 1934,

1 the Investment Advisors Act of 1940, the Investment Company
2 Act of 1940, or the Commodity Exchange Act or the securities
3 or commodities law of any other state;

4 (g) has engaged in dishonest or unethical practices in
5 the securities business;

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

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

17 (j) has failed to pay the proper filing fee, but the
18 commissioner may enter only a denial order under this
19 subsection ~~{j}~~ (12), and he the commissioner shall vacate
20 any such order when the deficiency has been corrected; or

21 (k) has failed to reasonably supervise his the person's
22 salesmen salespersons or employees or his investment adviser
23 representatives or employees to assure their compliance with
24 this act.

25 (13) The commissioner may not institute a suspension or

1 revocation proceeding on the basis of a fact or transaction
 2 known to him the commissioner when registration became
 3 effective unless the proceeding is instituted within 30 days
 4 after the date on which the registration became effective.

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

8 (15) Upon the entry of the order under subsection (12)
 9 of this section, the commissioner shall promptly notify the
 10 applicant or registrant, as well as the employer or
 11 prospective employer if the applicant or registrant is a
 12 salesman salesperson or investment adviser representative,
 13 that it has been entered and of the reasons therefor for the
 14 order and that if requested by the applicant or registrant
 15 within 15 days after the receipt of the commissioner's
 16 notification the matter will be promptly set down for
 17 hearing. If no a hearing is not requested within 15 days and
 18 none is ordered by the commissioner, the order will remain
 19 in effect until it is modified or vacated by the
 20 commissioner. If a hearing is requested or ordered, the
 21 commissioner, after notice of and opportunity for hearing,
 22 may modify or vacate the order or extend it until final
 23 determination.

24 (16) If the commissioner finds that any registrant or
 25 applicant for registration is no longer in existence or has

1 ceased to do business as a broker-dealer, salesman
 2 salesperson, investment adviser, or investment adviser
 3 representative or is subject to an adjudication of mental
 4 incompetence or to the control of a committee, conservator,
 5 or guardian or cannot be located after reasonable search,
 6 the commissioner may by order cancel the registration or
 7 application.

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

1 general fund. Failure of a broker-dealer, salesman
2 salesperson, investment adviser, or investment adviser
3 representative to pay a fine also constitutes a forfeiture
4 of his the right to do business in this state under parts 1
5 through 3 of this chapter.

6 (18) A sole proprietor registered as a broker-dealer or
7 investment adviser who does not employ other salespersons or
8 investment adviser representatives, other than the sole
9 proprietor, is not required to register as both a
10 broker-dealer and a salesperson or as an investment adviser
11 and an investment adviser representative if the sole
12 proprietor meets the examination requirements established by
13 the commissioner by rule."

14 NEW SECTION. Section 3. Registration of previous
15 filing. A registered salesperson who has filed with the
16 commissioner as an investment adviser REPRESENTATIVE as of
17 October 1, 1993, shall register as an investment adviser
18 representative by October 1, 1994.

19 NEW SECTION. Section 4. Code commissioner instruction.
20 Wherever the term "salesman" or its equivalent appears in
21 Title 30, chapter 10, parts 1 through 3, or in legislation
22 enacted by the 1993 legislature, the code commissioner shall
23 substitute the term "salesperson" or its equivalent and make
24 any necessary grammatical changes to reflect the name
25 change.

-End-

1 HOUSE BILL NO. 464

2 INTRODUCED BY FISHER, KENNEDY, STRIZICH

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE ANTIFRAUD
6 PROVISIONS OF THE SECURITIES LAWS BY MODIFYING THE
7 DEFINITION OF AN INVESTMENT ADVISER; ELIMINATING THE DUAL
8 REGISTRATION REQUIREMENT FOR BROKER-DEALERS AND INVESTMENT
9 ADVISERS WHO ARE SOLE PROPRIETORS EMPLOYING NO OTHER
10 SALESPERSONS, INVESTMENT ADVISERS, OR INVESTMENT ADVISER
11 REPRESENTATIVES; AND AMENDING SECTIONS 30-10-103 AND
12 30-10-201, MCA."

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

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

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

19 (1) "Broker-dealer" means any person engaged in the
20 business of effecting transactions in securities for the
21 account of others or for his the person's own account.

22 "Broker-dealer" does not include:

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

25 (b) a person who has--no does not have a place of

1 business in this state if he the person effects transactions
2 in this state exclusively with or through the issuers of the
3 securities involved in the transactions, other
4 broker-dealers, or banks, savings institutions, trust
5 companies, insurance companies, investment companies as
6 defined in the Investment Company Act of 1940, pension or
7 profit-sharing trusts, or other financial institutions or
8 institutional buyers, whether acting for themselves or as
9 trustee.

10 (2) "Commissioner" means securities commissioner of
11 this state.

12 (3) (a) "Commodity" means:

13 (i) any agricultural, grain, or livestock product or
14 byproduct;

15 (ii) any metal or mineral, including a precious metal,
16 or any gem or gem stone, whether characterized as precious,
17 semiprecious, or otherwise;

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

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

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7 profit-sharing trusts, or other financial institutions or
8 institutional buyers, whether acting for themselves or as
9 trustee.

10 (2) "Commissioner" means securities commissioner of
11 this state.

12 (3) (a) "Commodity" means:

13 (i) any agricultural, grain, or livestock product or
14 byproduct;

15 (ii) any metal or mineral, including a precious metal,
16 or any gem or gem stone, whether characterized as precious,
17 semiprecious, or otherwise;

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

19 (iv) foreign currency; and

20 (v) all other goods, articles, products, or items of
21 any kind.

22 (b) Commodity does not include:

23 (i) a numismatic coin with a fair market value at least
24 15% higher than the value of the metal it contains;

25 (ii) real property or any timber, agricultural, or

1 livestock product grown or raised on real property and
2 offered and sold by the owner or lessee of such the real
3 property; or

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

7 (4) "Commodity Exchange Act" means the federal statute
8 of that name as amended on the effective date of this
9 subsection.

10 (5) "Commodity futures trading commission" means the
11 independent regulatory agency established by congress to
12 administer the Commodity Exchange Act.

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20 or deferred delivery contract, forward contract, futures
21 contract, installment or margin contract, leverage contract,
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10 held as collateral for a loan or are subject to a lien of
11 any person when the loan or lien arises in connection with
12 the purchase of each commodity or commodities.

13 (7) (a) "Commodity option" means any account,
14 agreement, or contract giving a party to the account,
15 agreement, or contract the right but not the obligation to
16 purchase or sell one or more commodities or one or more
17 commodity contracts, whether characterized as an option,
18 privilege, indemnity, bid, offer, put, call, advance
19 guaranty, decline guaranty, or otherwise.

20 (b) The term does not include an option traded on a
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22 securities and exchange commission.

23 (8) "Guaranteed" means guaranteed as to payment of
24 principal, interest, or dividends.

25 (9) (a) "Investment adviser" means any person who, for

1 compensation, engages in the business of advising others,
2 either directly or through publications or writings, as to
3 the value of securities or as to the advisability of
4 investing in, purchasing, or selling securities or who, for
5 compensation and as a part of a regular business, issues or
6 promulgates analyses or reports concerning securities.

7 (b) The term includes a financial planner or other
8 person who:

9 (i) as an integral component of other financially
10 related services, provides the investment advisory services
11 described in subsection (9)(a) to others for compensation,
12 as part of a business; or

13 (ii) represents himself--as-providing to the-public ANY
14 PERSON that the FINANCIAL PLANNER OR OTHER person provides
15 the investment advisory services described in subsection
16 (9)(a) to others for compensation.

17 (c) Investment adviser does not include:

18 (i) an investment adviser representative;

19 (ii) a bank, savings institution, trust company, or
20 insurance company;

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

24 (iv) a registered broker-dealer whose performance of
25 services described in subsection (9)(a) is solely incidental

1 to the conduct of business and for which the broker-dealer
2 does not receive special compensation;

3 (v) a publisher of any newspaper, news column,
4 newsletter, news magazine, or business or financial
5 publication or service, whether communicated in hard copy
6 form or by electronic means or otherwise, that does not
7 consist of the rendering of advice on the basis of the
8 specific investment situation of each client;

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

11 (vii) such other persons not within the intent of this
12 subsection (9) as the commissioner may by rule or order
13 designate.

14 (10) (a) "Investment adviser representative" means any
15 partner of, officer of, director of, or a person occupying a
16 similar status or performing similar functions, or other
17 individual employed by or associated with an investment
18 adviser, except clerical or ministerial personnel, who:

19 (i) makes any recommendation or otherwise renders
20 advice regarding securities to clients;

21 (ii) manages accounts or portfolios of clients;

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

24 (iv) supervises employees who perform any of the
25 foregoing.

(b) ~~investment--adviser-representative-does-not-include an--individual--registered--as--a--salesman--pursuant--to 30-10-201: A INVESTMENT ADVISER REPRESENTATIVE DOES NOT INCLUDE A salesperson registered pursuant to 30-10-201(1) who--performs~~ WHOSE PERFORMANCE OF THE services described in subsection (10)(a) shall--also--register--as--an IS SOLELY INCIDENTAL TO THE CONDUCT OF BUSINESS AS A SALESPERSON AND FOR WHICH THE SALESPERSON DOES NOT RECEIVE SPECIAL COMPENSATION OTHER THAN FEES RELATING TO THE SOLICITATION OR OFFERING OF INVESTMENT ADVISORY SERVICES OF A REGISTERED investment adviser representative.

(11) "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.

(12) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(13) "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.

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

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

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

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

(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.

(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.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the

1 purchase and to have been offered and sold for value. A
 2 purported gift of assessable stock is considered to involve
 3 an offer and sale. Every sale or offer of a warrant or right
 4 to purchase or subscribe to another security of the same or
 5 another issuer, as well as every sale or offer of a security
 6 which gives the holder a present or future right or
 7 privilege to convert into another security of the same or
 8 another issuer, is considered to include an offer of the
 9 other security.

10 (17) "Salesman" "Salesperson" means any individual other
 11 than a broker-dealer who represents a broker-dealer or
 12 issuer in effecting or attempting to effect sales of
 13 securities. A partner, officer, or director of a
 14 broker-dealer or issuer is a salesman salesperson only if he
 15 the person otherwise comes within this definition.
 16 "Salesman" Salesperson does not include an individual who
 17 represents an issuer in:

18 (a) effecting a transaction in a security exempted by
 19 subsection (1), (2), (3), (8), (9), (10), or (11) of
 20 30-10-104;

21 (b) effecting transactions exempted by 30-10-105 except
 22 when registration as a salesman salesperson, pursuant to
 23 30-10-201, is required by 30-10-105 or by any rule
 24 promulgated under 30-10-105; or

25 (c) effecting transactions with existing employees,

1 partners, or directors of the issuer if no commission or
 2 other remuneration is paid or given directly or indirectly
 3 for soliciting any person in this state.

4 (18) "Securities Act of 1933", "Securities Exchange Act
 5 of 1934", "Public Utility Holding Company Act of 1935",
 6 "Investment Advisors Act of 1940", and "Investment Company
 7 Act of 1940" mean the federal statutes of those names as
 8 amended before or after July 1, 1961.

9 (19) "Security" means any note; stock; treasury stock;
 10 bond; commodity investment contract; commodity option;
 11 debenture; evidence of indebtedness; certificate of interest
 12 or participation in any profit-sharing agreement;
 13 collateral-trust certificate; preorganization certificate or
 14 subscription; transferable shares; investment contract;
 15 voting-trust certificate; certificate of deposit for a
 16 security; certificate of interest or participation in an
 17 oil, gas, or mining title or lease or in payments out of
 18 production under such a title or lease; or, in general, any
 19 interest or instrument commonly known as a security, any
 20 put, call, straddle, option, or privilege on any security,
 21 certificate of deposit, or group or index of securities,
 22 including any interest in a security or based on the value
 23 of a security, or any certificate of interest or
 24 participation in, temporary or interim certificate for,
 25 receipt for, guarantee of, or warrant or right to subscribe

1 to or purchase any of the foregoing. "Security" does not
2 include any insurance or endowment policy or annuity
3 contract under which an insurance company promises to pay a
4 fixed sum of money either in a lump sum or periodically for
5 life or some other specified period.

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

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

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

13 "30-10-201. Registration of broker-dealers, salesmen
14 salespersons, investment advisers, and investment adviser
15 representatives. (1) It is unlawful for a person to transact
16 business in this state as a broker-dealer or salesman
17 salesperson, except as provided in 30-10-105, unless he the
18 person is registered under parts 1 through 3 of this
19 chapter.

20 (2) It is unlawful for a broker-dealer or issuer to
21 employ a salesman salesperson to represent him the
22 broker-dealer or issuer in this state, except in
23 transactions exempt under 30-10-105, unless the salesman
24 salesperson is registered under parts 1 through 3 of this
25 chapter.

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

4 (a) he the person is so registered under parts 1
5 through 3 of this chapter;

6 (b) he the person is registered as a broker-dealer
7 under parts 1 through 3 of this chapter;

8 (c) his the person's only clients in this state are:

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

11 (ii) other investment advisers;

12 (iii) broker-dealers;

13 (iv) banks;

14 (v) trust companies;

15 (vi) savings and loan associations;

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

18 (viii) governmental agencies or instrumentalities,
19 whether acting for themselves or as trustees with investment
20 control; or

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

23 (d) he-has-no the person does not have a place of
24 business in this state and during any 12 consecutive months
25 does not direct business communications in this state in any

1 manner to more than five present or prospective clients,
 2 other than those specified in subsection (3)(c), whether or
 3 not he the person or any of the persons to whom the
 4 communications are directed are then present in this state.

5 (4) A broker-dealer or a salesman salesperson, acting
 6 as an agent for an issuer or as an agent for a broker-dealer
 7 in the offer or sale of securities for an issuer, or an
 8 investment adviser or investment adviser representative may
 9 apply for registration by filing an application in such the
 10 form as the commissioner prescribes and payment of the fee
 11 prescribed in 30-10-209. A salesman salesperson acting as
 12 agent for an issuer or broker-dealer who is not currently in
 13 compliance with the financial responsibility requirements
 14 prescribed by the Securities Exchange Act of 1934 and by
 15 regulations adopted under it, may, in the discretion of the
 16 commissioner, be required to file with the commissioner a
 17 bond of a surety company duly authorized to transact
 18 business in this state. The bond shall be in an amount
 19 determined by the commissioner, payable to the state of
 20 Montana and conditioned upon the faithful compliance with
 21 the provisions of parts 1 through 3 of this chapter, and
 22 provide that upon failure to so comply, the salesman-shall
 23 be salesperson is liable to any and all persons who may
 24 suffer loss by reason thereof.

25 (5) The application shall contain whatever information

1 the commissioner requires. No A registration application of
 2 a broker-dealer, salesman salesperson, investment adviser,
 3 or investment adviser representative may not be withdrawn
 4 before the commissioner approves or denies such the
 5 registration, without the express written consent of the
 6 commissioner.

7 (6) When the registration requirements are met, the
 8 commissioner shall make the registration effective. No An
 9 effective registration of a broker-dealer, salesman
 10 salesperson, investment adviser, or investment adviser
 11 representative may not be withdrawn or terminated without
 12 the express written consent of the commissioner.

13 (7) Except as provided in subsection (6), registration
 14 of a broker-dealer, salesman salesperson, investment
 15 adviser, or investment adviser representative:

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

19 (b) may be renewed.

20 (8) The registration of a salesman salesperson is not
 21 effective during any period when he the salesperson is not
 22 associated with an issuer or a registered broker-dealer
 23 specified in his the application. When a salesman
 24 salesperson begins or terminates a connection with an issuer
 25 or registered broker-dealer, the salesman salesperson and

1 the issuer or broker-dealer shall promptly notify the
2 commissioner.

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

10 (10) Registration of a broker-dealer, salesman
11 salesperson, investment adviser, or investment adviser
12 representative may be renewed by filing, prior to the
13 expiration thereof of the registration, an application
14 containing such information as the commissioner may require
15 to indicate any material change in the information contained
16 in the original application or any renewal application for
17 registration as a broker-dealer, salesman salesperson,
18 investment adviser, or investment adviser representative
19 filed by the applicant, payment of the prescribed fee, and,
20 in the case of a broker-dealer who is not a member of NASD,
21 inc., by filing a financial statement showing the financial
22 condition of such the broker-dealer as of a date within 90
23 days. A registered broker-dealer or investment adviser may
24 file an application for registration of a successor, to
25 become effective upon approval of the commissioner.

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

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

24 (a) has filed an application for registration under
25 this section which, as of its effective date or as of any

1 date after filing in the case of an order denying
2 effectiveness, was incomplete in any material respect or
3 contained any statement which was, in the light of the
4 circumstances under which it was made, false or misleading
5 with respect to any material fact;

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

10 (c) has been convicted of any misdemeanor involving a
11 security or any aspect of the securities business or any
12 felony;

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

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

21 (f) is the subject of an adjudication or determination,
22 within the past 5 years, by a securities or commodities
23 agency or administrator of another state or a court of
24 competent jurisdiction, that the person has violated the
25 Securities Act of 1933, the Securities Exchange Act of 1934,

1 the Investment Advisors Act of 1940, the Investment Company
2 Act of 1940, or the Commodity Exchange Act or the securities
3 or commodities law of any other state;

4 (g) has engaged in dishonest or unethical practices in
5 the securities business;

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

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

17 (j) has failed to pay the proper filing fee, but the
18 commissioner may enter only a denial order under this
19 subsection {j} (12), and he the commissioner shall vacate
20 any such order when the deficiency has been corrected; or

21 (k) has failed to reasonably supervise his the person's
22 salesmen salespersons or employees or his investment adviser
23 representatives or employees to assure their compliance with
24 this act.

25 (13) The commissioner may not institute a suspension or

1 revocation proceeding on the basis of a fact or transaction
 2 known to him the commissioner when registration became
 3 effective unless the proceeding is instituted within 30 days
 4 after the date on which the registration became effective.

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

8 (15) Upon the entry of the order under subsection (12)
 9 of this section, the commissioner shall promptly notify the
 10 applicant or registrant, as well as the employer or
 11 prospective employer if the applicant or registrant is a
 12 salesman salesperson or investment adviser representative,
 13 that it has been entered and of the reasons therefor for the
 14 order and that if requested by the applicant or registrant
 15 within 15 days after the receipt of the commissioner's
 16 notification the matter will be promptly set down for
 17 hearing. If no a hearing is not requested within 15 days and
 18 none is ordered by the commissioner, the order will remain
 19 in effect until it is modified or vacated by the
 20 commissioner. If a hearing is requested or ordered, the
 21 commissioner, after notice of and opportunity for hearing,
 22 may modify or vacate the order or extend it until final
 23 determination.

24 (16) If the commissioner finds that any registrant or
 25 applicant for registration is no longer in existence or has

1 ceased to do business as a broker-dealer, salesman
 2 salesperson, investment adviser, or investment adviser
 3 representative or is subject to an adjudication of mental
 4 incompetence or to the control of a committee, conservator,
 5 or guardian or cannot be located after reasonable search,
 6 the commissioner may by order cancel the registration or
 7 application.

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

1 general fund. Failure of a broker-dealer, salesman
2 salesperson, investment adviser, or investment adviser
3 representative to pay a fine also constitutes a forfeiture
4 of his the right to do business in this state under parts 1
5 through 3 of this chapter.

6 (18) A sole proprietor registered as a broker-dealer or
7 investment adviser who does not employ other salespersons or
8 investment adviser representatives, other than the sole
9 proprietor, is not required to register as both a
10 broker-dealer and a salesperson or as an investment adviser
11 and an investment adviser representative if the sole
12 proprietor meets the examination requirements established by
13 the commissioner by rule."

14 NEW SECTION. Section 3. Registration of previous
15 filing. A registered salesperson who has filed with the
16 commissioner as an investment adviser REPRESENTATIVE as of
17 October 1, 1993, shall register as an investment adviser
18 representative by October 1, 1994.

19 NEW SECTION. Section 4. Code commissioner instruction.
20 Wherever the term "salesman" or its equivalent appears in
21 Title 30, chapter 10, parts 1 through 3, or in legislation
22 enacted by the 1993 legislature, the code commissioner shall
23 substitute the term "salesperson" or its equivalent and make
24 any necessary grammatical changes to reflect the name
25 change.

-End-