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INTRODUCED BY Benedict SENATE BILL NO. 317

BY REQUEST OF THE COMMITTEE ON BUSINESS AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE EXCLUSION OF LAWYERS AND ACCOUNTANTS FROM THE DEFINITION OF INVESTMENT ADVISER; AND AMENDING SECTION 30-10-103, 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) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. ~~"Broker-dealer"~~

(b) The term does not include:

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

~~(b)~~ (ii) a person who does not have a place of business in this state if 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 the 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.

1 (b) Commodity does not include:

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

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

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

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

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

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

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

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

30 (b) The term does not include an option traded on a national securities exchange registered with

1 the U.S. securities and exchange commission.

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

3 (9) (a) "Investment adviser" means ~~any~~ a person who, for compensation, engages in the business
4 of advising others, either directly or through publications or writings, as to the value of securities or as to
5 the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of
6 a regular business, issues or promulgates analyses or reports concerning securities.

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

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

10 (ii) represents to any person that the financial planner or other person provides the investment
11 advisory services described in subsection (9)(a) to others for compensation.

12 (c) Investment adviser does not include:

13 (i) an investment adviser representative;

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

15 (iii) a lawyer, or accountant, ~~engineer, or teacher~~ whose performance of these services is solely
16 incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly,
17 any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities
18 by a client, does not recommend the purchase or sale of specific securities, and does not have custody of
19 client funds or securities for investment purposes;

20 (iv) a registered broker-dealer whose performance of services described in subsection (9)(a) is
21 solely incidental to the conduct of business and for which the broker-dealer does not receive special
22 compensation;

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

27 (vi) a person whose advice, analyses, or reports relate only to securities exempted by
28 30-10-104(1); ~~or~~

29 (vii) an engineer or teacher whose performance of the services described in subsection (9)(a) is
30 solely incidental to the practice of the person's profession; or

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

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

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

7 (ii) manages accounts or portfolios of clients;

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

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

10 (b) Investment adviser representative does not include a salesperson registered pursuant to
11 30-10-201(1) whose performance of the services described in subsection (10)(a) is solely incidental to the
12 conduct of business as a salesperson and for which the salesperson does not receive special compensation
13 other than fees relating to the solicitation or offering of investment advisory services of a registered
14 investment adviser.

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

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

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

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

27 (a) silver;

28 (b) gold;

29 (c) platinum;

30 (d) palladium;

1 (e) copper; and

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

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

4 (16) (a) "Sale" or "sell" includes ~~every~~ each contract of sale of, contract to sell, or disposition of
5 a security or interest in a security for value.

6 (b) "Offer" or "offer to sell" includes ~~every~~ each attempt or offer to dispose of or solicitation of an
7 offer to buy a security or interest in a security for value.

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

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

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

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

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

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

28 (19) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract;
29 commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any
30 profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable

1 shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of
2 interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title
3 or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle,
4 option, or privilege on any security, certificate of deposit, or group or index of securities, including any
5 interest in a security or based on the value of a security, or any certificate of interest or participation in,
6 temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase
7 any of the foregoing.

8 (b) ~~"Security"~~ Security does not include ~~any an~~ insurance or endowment policy or annuity contract
9 under which an insurance company promises to pay a fixed sum of money either in a lump sum or
10 periodically for life or some other specified period.

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

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

15 -END-

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SENATE BILL NO. 317

INTRODUCED BY Benedict

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

(b) The term does not include:

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

~~(b)~~(ii) a person who does not have a place of business in this state if 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 the 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.

1 (b) Commodity does not include:

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

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

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

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

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

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

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

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

30 (b) The term does not include an option traded on a national securities exchange registered with

1 the U.S. securities and exchange commission.

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

3 (9) (a) "Investment adviser" means ~~any~~ a person who, for compensation, engages in the business
4 of advising others, either directly or through publications or writings, as to the value of securities or as to
5 the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of
6 a regular business, issues or promulgates analyses or reports concerning securities.

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

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

10 (ii) represents to any person that the financial planner or other person provides the investment
11 advisory services described in subsection (9)(a) to others for compensation.

12 (c) Investment adviser does not include:

13 (i) an investment adviser representative;

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

15 (iii) ~~a lawyer, or accountant, engineer, or teacher~~ whose performance of these services is solely
16 incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly,
17 any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities
18 by a client, does not recommend the purchase or sale of specific securities, and does not have custody of
19 client funds or securities for investment purposes;

20 (iv) a registered broker-dealer whose performance of services described in subsection (9)(a) is
21 solely incidental to the conduct of business and for which the broker-dealer does not receive special
22 compensation;

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

27 (vi) a person whose advice, analyses, or reports relate only to securities exempted by
28 30-10-104(1); ~~or~~

29 (vii) an engineer or teacher whose performance of the services described in subsection (9)(a) is
30 solely incidental to the practice of the person's profession; or

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

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

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

7 (ii) manages accounts or portfolios of clients;

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

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

10 (b) Investment adviser representative does not include a salesperson registered pursuant to
11 30-10-201(1) whose performance of the services described in subsection (10)(a) is solely incidental to the
12 conduct of business as a salesperson and for which the salesperson does not receive special compensation
13 other than fees relating to the solicitation or offering of investment advisory services of a registered
14 investment adviser.

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

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

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

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

27 (a) silver;

28 (b) gold;

29 (c) platinum;

30 (d) palladium;

- 1 (e) copper; and
- 2 (f) other items as the commissioner may by rule or order specify.
- 3 (15) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.
- 4 (16) (a) "Sale" or "sell" includes ~~every~~ each contract of sale of, contract to sell, or disposition of
- 5 a security or interest in a security for value.
- 6 (b) "Offer" or "offer to sell" includes ~~every~~ each attempt or offer to dispose of or solicitation of an
- 7 offer to buy a security or interest in a security for value.
- 8 (c) Any security given or delivered with or as a bonus on account of any purchase of securities or
- 9 any other thing is considered to constitute part of the subject of the purchase and to have been offered and
- 10 sold for value. A purported gift of assessable stock is considered to involve an offer and sale. ~~Every~~ Each
- 11 sale or offer of a warrant or right to purchase or subscribe to another security of the same or another
- 12 issuer, as well as ~~every~~ each sale or offer of a security ~~which~~ that gives the holder a present or future right
- 13 or privilege to convert into another security of the same or another issuer, is considered to include an offer
- 14 of the other security.
- 15 (17) "Salesperson" means ~~any~~ an individual other than a broker-dealer who represents a
- 16 broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director
- 17 of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.
- 18 Salesperson does not include an individual who represents an issuer in:
- 19 (a) effecting a transaction in a security exempted by ~~subsection (1), (2), (3), (8), (9), (10), or (11)~~
- 20 ~~of 30-10-104~~ (1), (2), (3), (8), (9), (10), or (11);
- 21 (b) effecting transactions exempted by 30-10-105, except when registration as a salesperson,
- 22 pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or
- 23 (c) effecting transactions with existing employees, partners, or directors of the issuer if no
- 24 commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.
- 25 (18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company
- 26 Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the
- 27 federal statutes of those names as amended before or after July 1, 1961.
- 28 (19) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract;
- 29 commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any
- 30 profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable

1 shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of
2 interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title
3 or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle,
4 option, or privilege on any security, certificate of deposit, or group or index of securities, including any
5 interest in a security or based on the value of a security, or any certificate of interest or participation in,
6 temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase
7 any of the foregoing.

8 (b) ~~"Security"~~ Security does not include ~~any an~~ insurance or endowment policy or annuity contract
9 under which an insurance company promises to pay a fixed sum of money either in a lump sum or
10 periodically for life or some other specified period.

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

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

15 -END-

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INTRODUCED BY Benedict SENATE BILL NO. 317

BY REQUEST OF THE COMMITTEE ON BUSINESS AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE EXCLUSION OF LAWYERS AND ACCOUNTANTS FROM THE DEFINITION OF INVESTMENT ADVISER; AND AMENDING SECTION 30-10-103, MCA."

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

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

1 SENATE BILL NO. 317

2 INTRODUCED BY BENEDICT

3 BY REQUEST OF THE COMMITTEE ON BUSINESS AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE EXCLUSION OF LAWYERS AND
6 ACCOUNTANTS FROM THE DEFINITION OF INVESTMENT ADVISER; AND AMENDING SECTION
7 30-10-103, MCA."

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

12 "30-10-103. **Definitions.** When used in parts 1 through 3 of this chapter, unless the context
13 requires otherwise, the following definitions apply:

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

16 (b) The term does not include:

17 ~~(a)(i)~~ a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

18 ~~(b)(ii)~~ a person who does not have a place of business in this state if the person effects
19 transactions in this state exclusively with or through the issuers of the securities involved in the
20 transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies,
21 investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts,
22 or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

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

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

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

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

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

29 (iv) foreign currency; and

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

1 (b) Commodity does not include:

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

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

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

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

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

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

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

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27 account, agreement, or contract the right but not the obligation to purchase or sell one or more
28 commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity,
29 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

30 (b) The term does not include an option traded on a national securities exchange registered with

1 the U.S. securities and exchange commission.

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

3 (9) (a) "Investment adviser" means ~~any~~ a person who, for compensation, engages in the business
4 of advising others, either directly or through publications or writings, as to the value of securities or as to
5 the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of
6 a regular business, issues or promulgates analyses or reports concerning securities.

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

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

10 (ii) represents to any person that the financial planner or other person provides the investment
11 advisory services described in subsection (9)(a) to others for compensation.

12 (c) Investment adviser does not include:

13 (i) an investment adviser representative;

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

15 (iii) ~~a lawyer, or accountant, engineer, or teacher~~ whose performance of these services is solely
16 incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly,
17 any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities
18 by a client, does not recommend the purchase or sale of specific securities, and does not have custody of
19 client funds or securities for investment purposes;

20 (iv) a registered broker-dealer whose performance of services described in subsection (9)(a) is
21 solely incidental to the conduct of business and for which the broker-dealer does not receive special
22 compensation;

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

27 (vi) a person whose advice, analyses, or reports relate only to securities exempted by
28 30-10-104(1); ~~or~~

29 (vii) an engineer or teacher whose performance of the services described in subsection (9)(a) is
30 solely incidental to the practice of the person's profession; or

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

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

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

7 (ii) manages accounts or portfolios of clients;

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

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

10 (b) Investment adviser representative does not include a salesperson registered pursuant to
11 30-10-201(1) whose performance of the services described in subsection (10)(a) is solely incidental to the
12 conduct of business as a salesperson and for which the salesperson does not receive special compensation
13 other than fees relating to the solicitation or offering of investment advisory services of a registered
14 investment adviser.

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

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

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

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

27 (a) silver;

28 (b) gold;

29 (c) platinum;

30 (d) palladium;

1 (e) copper; and

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

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

4 (16) (a) "Sale" or "sell" includes ~~every~~ each contract of sale of, contract to sell, or disposition of
5 a security or interest in a security for value.

6 (b) "Offer" or "offer to sell" includes ~~every~~ each attempt or offer to dispose of or solicitation of an
7 offer to buy a security or interest in a security for value.

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

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

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

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

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

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

28 (19) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract;
29 commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any
30 profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable

1 shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of
2 interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title
3 or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle,
4 option, or privilege on any security, certificate of deposit, or group or index of securities, including any
5 interest in a security or based on the value of a security, or any certificate of interest or participation in,
6 temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase
7 any of the foregoing.

8 (b) ~~"Security"~~ Security does not include ~~any an~~ insurance or endowment policy or annuity contract
9 under which an insurance company promises to pay a fixed sum of money either in a lump sum or
10 periodically for life or some other specified period.

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

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

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