BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New Rules I and II, the amendment of ARM 6.10.101, 6.10.102 securities regulation; 6.10.208, 6.10.209, 6.10.210 for filings, 6.10.302, 6.10.305, 6.10.306 securities exemptions, 6.10.401, 6.10.402 fraudulent and unethical practices, 6.10.501, 6.10.503, 6.10.504, 6.10.506, 6.10.507, and 6.10.510 broker-dealers and investment advisers, and the transfer of ARM 6.10.608 transactional exemption	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND TRANSFER

TO: All Concerned Persons

1. On May 21, 2020, at 10:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing via teleconference in the 2nd floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana, to consider the proposed adoption, amendment, and transfer of the above-stated rules.

2. Due to the guidance issued by the Governor of the State of Montana on March 26, 2020, regarding the coronavirus pandemic, no in-person attendance will be permitted. The public hearing will be available via electronic and/or telephonic means and will be recorded. You will need to register in advance with Zoom.us so you can join in the hearing by going to:

https://us02web.zoom.us/meeting/register/v5UpduypqDoitb7hkVlEivQhv-60QwOa8A

After registering, you will receive a confirmation email containing information about joining the meeting.

3. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on May 11, 2020, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

4. The new rules as proposed to be adopted are as follows:

NEW RULE I NOTICE FILING RULE FOR REGULATION A-TIER 2 OFFERINGS (1) An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following at least 21 days prior to the initial sale in this state:

(a) a completed Regulation A-Tier 2 notice filing form or copies of all documents filed with the Securities and Exchange Commission;

(b) a consent to service of process on Form U-2 if not filing on the Regulation A-Tier 2 notice filing form; and

(c) the filing fee prescribed in 30-10-209(1)(a), MCA.

(2) The initial filing shall remain effective for twelve months from the date of filing.

(3) For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing the following on or before the expiration of the notice filing:

(a) the Regulation A-Tier 2 notice filing form marked "renewal" and/or cover letter or other document requesting renewal; and

(b) the renewal fee prescribed by 30-10-209(1)(b), MCA.

(4) An issuer may increase the amount of securities offered in this state by submitting a Regulation A-Tier 2 notice filing form marked "amendment" or other document describing the transaction and a fee calculated pursuant to 30-10-209(1)(a), MCA, to cover the increase in the amount of securities being offered prior to selling additional securities in this state.

AUTH: 30-10-107, MCA
IMP: 30-10-202, 30-10-211, MCA

REASON: The CSI proposes a new rule to adopt the North American Securities Administrators Association model notice filing rule for Regulation A-Tier 2 Offerings. The new rule is necessary to remain current with updated federal and model rules. Additionally, the new rule is necessary to ensure Montana remains current with the federal exemptions, which allow for these filings to be made. The rule creates the form for people to use so there is no confusion as to when and how they can file notice with the CSI.

NEW RULE II MERGER AND ACQUISITION BROKER EXEMPTION (1) In this rule:

(a) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who:

(i) is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

(ii) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

(iii) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

(b) "Eligible privately held company" means a company meeting both of the following conditions:

(i) the company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 781, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and

(ii) in the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting needs of the company):

(A) the earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000; and

(B) the gross revenues of the company are less than $250,000,000.

(c) "Merger and Acquisition Broker" means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company:

(i) if the broker reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(ii) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

(d) "Public shell company" means a company that at the time of a transaction with an eligible privately held company:

(i) has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12, 15 U.S.C. 78o(d); and

(ii) has no or nominal operations; and

(iii) has no or nominal assets; assets consisting solely of cash and cash equivalents; or assets consisting of any amount of cash and cash equivalents and nominal other assets.

(2) Except as provided in (3) and (4), a merger and acquisition broker shall be exempt from registration pursuant to 30-10-202, MCA, under this section.

(3) A merger and acquisition broker is not exempt from registration under this rule if such broker does any of the following:

(a) directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

(b) engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15 subsection (d), 15 U.S.C. 78o(d); or

(c) engages on behalf of any party in a transaction involving a public shell company.

(4) A merger and acquisition broker is not exempt from registration under this rule if such broker is subject to:

(a) suspension or revocation of registration under Section 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4);

(b) a statutory disqualification described in section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39);

(c) a disqualification under the rules adopted by the United States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note); or

(d) a final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(H).

(5) Nothing in this rule shall be construed to limit any other authority of the commissioner to exempt any person, or any class of persons, from any provision of ARM Title 6, chapter 10, or from any provision of any rule or regulation therein.

(6) On the date that is five years after the date of adoption of this rule, and every five years thereafter, each dollar amount in section (1)(b)(2) shall be adjusted by:

(a) dividing the annual value of the Employment Cost Index for Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2012; and

(b) multiplying the dollar amount by the quotient obtained under (6)(a).

(7) Each dollar amount determined under (6) shall be rounded to the nearest multiple of $100,000.

AUTH: 30-10-105, 30-10-107, MCA
IMP: 30-10-105, MCA

REASON: The CSI proposes adoption of the Model Rule Exempting Certain Merger & Acquisition Brokers (M&A Brokers) from registration as adopted September 29, 2015 by the North America Securities Administrators Association. This new rule should be designated ARM 6.10.308. The new rule is necessary to remain current with updated federal and model rules. Moreover, the rule increases clarity in merger registration requirements and exemptions so that persons involved the trades know exactly what characteristics the CSI is looking for when contemplating an exemption.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

6.10.101 APPLICABILITY OF CHAPTER ~~SUBCHAPTER~~ (1) This chapter applies to the securities and transactions involving securities, subject to the Securities Act of Montana, Title 30, chapter 10, parts 1 through 3, MCA; and to restitution assistance provided subject to the Securities Restitution Assistance Fund Act of Montana, Title 30, chapter 10, part 10, MCA.

AUTH: 30-10-107, MCA
IMP: 30-10-107, MCA

REASON: The CSI proposes to amend the rule to reflect the prior adoption of the rules in subchapter 7. That subchapter was adopted in 2012, several years after the most recent amendment to ARM 6.10.101. Subchapter 7 implements the Securities Restitution Assistance Fund Act of Montana, which though related falls outside the scope of the Securities Act of Montana. This change is necessary to reflect that ARM Title 6, chapter 10 now contains content applicable to circumstances subject to Title 30, chapter 10, part 10, MCA.

6.10.102 DEFINITIONS As used in this subchapter, unless the context indicates otherwise:

(1) through (4) remain the same.

(5) "Investment adviser" means a person who is:

(a) an insurance agent who, for a fee, provides investment advice to a client and who must be licensed as an investment adviser or investment adviser representative;

(b) an insurance agent, who, for a fee, performs an analysis of a client's estate and who must be licensed as an investment adviser or investment adviser representative.

(c) an insurance agent who receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold and who must be licensed as an investment adviser or investment adviser representative;

(d) an insurance agent or other person who advertises or otherwise holds themselves out as a provider of investment advice.

(5) through (8) remain the same but are renumbered (6) through (9).

(10) "Resident" is defined as a person who has physically resided in Montana at the person's primary home for 180 consecutive days and who meets the following criteria immediately before making application for any license:

(a) the person's principal or primary home is in Montana;

(b) the person files Montana state income tax returns as a resident (if required to file);

(c) the person licenses and titles in Montana any vehicles that the person owns and operates in Montana; and

(d) if the person registers to vote, the person registers only in Montana.

~~(9)~~(11) "Sales material" means an advertisement, display, pamphlet, brochure, form letter, article, or communication published in a newspaper, magazine, periodical, internet or electronic communication network, or a script, recording, radio or television announcement, broadcast, or commercial to be used or circulated in connection with the offer or sale of a security to a person in this state.

(10) and (11) remain the same but are renumbered (12) and (13).

AUTH: 30-10-107, MCA
IMP: 30-10-104, 30-10-107, MCA

REASON: The CSI proposes to amend this rule to update the definition of "sales material." Since this rule was previously amended, the CSI has increasingly seen issuers utilize new forms of media, especially electronic media, in connection with the offer and sale of products. This change is necessary to ensure these newer forms of media are held to the same regulatory standard as information transmitted using more traditional methods. Additionally, the CSI proposes to amend this rule to explicitly add a definition of Montana resident for the purposes of additions to ARM 6.10.501 due to Legislative amendments to 30-10-209, MCA. Additionally, the CSI proposes to amend this rule to clarify an insurance agent who, for a fee, provides investment advice; analyzes a client's estate and recommends that a client either purchase or sell either specific securities or specific types of securities; or receives a commission from the sale of insurance the insurance agent recommended to be sold; must be licensed as an investment adviser or investment adviser representative. Additionally, the CSI proposes to clarify that one who advertises or otherwise holds oneself out as a provider of investment advice must be registered as an investment adviser or investment adviser representative.

6.10.208 NOTICE FILINGS FOR OFFERINGS OF INVESTMENT COMPANY SECURITIES (1) through (6) remain the same.

(7) Any filing or renewal required under ARM Title 6, chapter 10, subchapter 2 must be submitted to the commissioner through the Electronic Filing Depository (EFD), or other CSI-approved filing system, and must comply with the following:

(a) all filing or renewal fees shall likewise be submitted through the EFD or CSI-approved filing system;

(b) a person duly authorized by the issuer shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing through the EFD, or other CSI-approved filing system, which

shall constitute irrefutable evidence of legal signature by the individual whose name is typed on the filing; and

(c) any documents or fees required under (1) to be filed with the commissioner that are not permitted to be filed with, or cannot be accepted by, the EFD, or other CSI-approved filing system must be filed directly with the commissioner, and must be accompanied by a statement from the issuer providing the date the filing was attempted through the EFD, or other CSI-approved filing system.

AUTH: 30-10-107, MCA
IMP: 30-10-202, 30-10-211, MCA

REASON: It is reasonably necessary to amend this rule for notice filings because the use of the EFD has expanded to cover more than 506 offerings. Moreover, the rule allows flexibility should an alternative electronic filing system be made available and which is acceptable to the commissioner. The changes are not substantive and will streamline the filing process for industry.

6.10.209 NOTICE FILINGS FOR OFFERINGS OF FEDERAL COVERED SECURITIES UNDER 18(b)(3) OR (4) OF THE SECURITIES ACT OF 1933

(1) through (3) remain the same.

(4) Any filing or renewal required under ARM Title 6, chapter 10, subchapter 2 must be submitted to the commissioner through the Electronic Filing Depository (EFD), or other CSI-approved filing system, and must comply with the following:

(a) All filing or renewal fees shall likewise be submitted through the EFD or CSI-approved filing system;

(b) A person duly authorized by the issuer shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing through the EFD, or other CSI-approved filing system, which shall constitute irrefutable evidence of legal signature by the individual whose name is typed on the filing; and

(c) Any documents or fees required under (1) to be filed with the commissioner that are not permitted to be filed with, or cannot be accepted by, the EFD, or other CSI-approved filing system must be filed directly with the commissioner, and must be accompanied by a statement from the issuer providing the date the filing was attempted through the EFD, or other CSI-approved filing system.

AUTH: 30-10-107, MCA
IMP: 30-10-107, 30-10-201, MCA

REASON: It is reasonably necessary to amend this rule for notice filings because the use of the EFD has expanded. Moreover, the rule allows flexibility should an alternative electronic filing system be made available and which is acceptable to the commissioner. The changes are not substantive and will streamline the filing process for industry.

6.10.210 NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS

(1) and (2) remain the same.

(3) Any Form D filing or renewal required under (1) must be submitted to the commissioner through the Electronic Filing Depository (EFD), or other CSI-approved filing system ~~operated by the North American Securities Administrators Association, Inc.~~, and must comply with the following:

(a) All filing or renewal fees shall likewise be submitted through the EFD or other CSI-approved filing system;

(b) A person duly authorized by the issuer shall affix his or her electronic signature to the Form D filing by typing his or her name in the appropriate fields and submitting the filing through the EFD, or other CSI-approved filing system, which shall constitute irrefutable evidence of legal signature by the individual whose name is typed on the filing; and

(c) Any documents or fees required under (1) to be filed with the commissioner that are not permitted to be filed with, or cannot be accepted by, the EFD, or other CSI-approved filing system, must be filed directly with the commissioner, and must be accompanied by a statement from the issuer providing the date the filing was attempted through the EFD, or other CSI-approved filing system.

AUTH: 30-10-107, MCA
IMP: 30-10-202, 30-10-211, MCA

REASON: It is reasonably necessary to amend this rule because the commissioner should have flexibility if other methods of electronic filing besides the EFD become available for notice filings. The commissioner is still required to approve that system, but it is not necessary that it be limited to the EFD. The changes are not substantive and will streamline the filing process for industry.

6.10.302 FOREIGN SAVINGS AND LOAN ASSOCIATION EXEMPTION

(1) and (1)(a) remain the same.

(b) the issuer is a member of the federal deposit insurance corporation; or

(c) remains the same.

AUTH: 30-10-105, 30-10-107, MCA
IMP: 30-10-105, MCA

REASON: The CSI proposes to amend this rule to resolve a potential ambiguity relating to the listed exemption requirements. As written, the list of transactional exemption requirements is neither conjunctive nor disjunctive; in other words, it is unclear whether all three must be satisfied to qualify for an exemption, or whether each constitutes an independent ground for exemption. The amendment resolves this ambiguity by making clear the list is disjunctive; satisfying any of the requirements is sufficient to qualify for an exemption.

6.10.305 FOREIGN SECURITY EXEMPTION (1) through (1)(a)(ii) remain the same.

(A) The most recent edition of Mergent's Manual or Standard & Poor's Corporation Records, or the periodic supplements to such publications, as well as all commonly recognized formats of the manuals including ~~CD-ROM and~~ electronic dissemination over the internet, contains a description of the issuer's business or operations, the names of the issuer's officers and directors (or their corporate equivalents in the issuer's country of domicile), an externally audited balance sheet of the issuer as of a date within 18 months of the date of the transaction and audited profit and loss statements for each of the issuer's two fiscal years immediately preceding the date of such balance sheet (such statements to be prepared in accordance with U.S. or foreign GAAP); or

(B) through (iii)(D) remain the same.

(E) For the issuer's securities in the United States, there are at least two market makers who are registered broker-dealers under the Securities Exchange Act of 1934 and who ~~has~~ have an excess net capital of a least U.S. $10,000,000.

(b) remains the same.

AUTH: 30-10-107, MCA
IMP: 30-10-104, 30-10-107, MCA

REASON: The CSI proposes to amend this rule to eliminate a potentially archaic reference and correct a typographical error. The rule's reference to CD-ROM is stricken; this medium has become less commonly used in recent years, and the reference is unnecessary as the rule contains an expansive definition of manual formats (which encompasses CD-ROM). Additionally, the singular "has" is replaced with the plural "have," as the subsection refers to multiple market makers.

6.10.306 TRANSACTIONAL EXEMPTIONS FOR COOPERATIVE ASSOCIATIONS (1) A cooperative association organized under another state's laws that are substantially the same as the provisions of Title 35, chapter 15, MCA, is entitled to a transactional exemption from the registration requirements of the ~~Montana~~ Securities Act of Montana, provided that the association has furnished the commissioner with a general written description of the security to be offered or sold in Montana. For the purposes of 33-10-105, MCA, the commissioner has determined that the following states' laws authorizing the organization of the corresponding types of cooperative organizations are substantially the same as the provisions of Title 35, chapter 15, MCA:

(a) through (2) remain the same.

AUTH: 30-10-105, 30-10-107, MCA
IMP: 30-10-105, MCA

REASON: It is reasonably necessary to update this rule because the current rule includes an incorrect reference to the Securities Act of Montana.

6.10.401 FRAUDULENT AND UNETHICAL PRACTICES PROHIBITED BY BROKER-DEALERS AND SALESMEN (1) through (1)(n)(i) remain the same.

(ii) entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading ~~appearing~~ appearance with respect to the market for the security. A broker-dealer may, however, enter a bono fide agency cross transaction for its customers.

(iii) through (2) remain the same.

AUTH: 30-10-107, MCA
IMP: 30-10-201, 30-10-301, MCA

REASON: The CSI proposes to amend this rule to correct a typographical error. The rule is adopted from the North American Securities Administrators Association (NASAA) Dishonest or Unethical Business Practices of Broker-Dealers and Agents model rule. The text of the model rule clarifies that "misleading appearing" is intended to read "misleading appearance." This is consistent with the prior reference within the same subsection to "misleading appearance."

6.10.402 FRAUDULENT AND UNETHICAL PRACTICES PROHIBITED BY INVESTMENT ADVISERS, ~~AND~~ INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED ADVISERS (1) A person who is a federal covered adviser, investment adviser, or an investment adviser representative is a fiduciary and has a duty to act for the benefit of its clients. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (PL 104-290). While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, investment adviser representative, or a federal covered adviser and its clients and the circumstances of each case, an investment adviser, investment adviser representative, or a federal covered adviser shall not engage in unethical business practices, or prohibited, fraudulent, deceptive, or manipulative conduct, including but not limited to the following:

(a) Recommending to a client, to whom investment supervisory, management or consulting services are provided, the purchase, sale, or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered adviser;

(b) Exercising any discretionary power in placing an order for the purchase or sale of a security for a client without ~~first~~ obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(c) inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account if the investment adviser, investment adviser representative or federal covered adviser can directly or indirectly benefit from the number of securities transactions effected in a client's account;

(d) placing an order to purchase or sell a security for the account of a client without authority to do so;

(e) placing an order to purchase or sell a security for the account of a client upon instructions of a third party without first having obtained written third party trading authorization from the client;

(f) borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, investment adviser representative, or of a federal covered adviser, or a financial institution engaged in the business of loaning funds or securities;

(g) loaning money or securities to a client unless the investment adviser, investment adviser representative, or federal covered adviser is a financial institution engaged in the business of loaning funds, or the client is an affiliate of the investment adviser, investment adviser representative, or a federal covered adviser;

(h) misrepresenting to ~~a client, or prospective client,~~ an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or federal covered adviser, or an employee or affiliate of the investment adviser, investment adviser representative, or federal covered adviser; misrepresenting the nature of the advisory services being offered or fees to be charged for the investment advisory service; or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading;

(i) providing a report or recommendation to a client prepared by someone other than the investment adviser, investment adviser representative, or federal covered adviser without disclosing that fact. This prohibition does not apply to a situation where the investment adviser, investment adviser representative, or federal covered adviser uses a published research report or statistical analysis to render advice or where an investment adviser, investment adviser representative, or federal covered adviser orders such a report in the normal course of providing service.

(j) charging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser, investment adviser representative, or federal covered adviser, the sophistication and bargaining power of the client, and whether the investment adviser, investment adviser representative, or federal covered adviser has disclosed that a lower fee for comparable services may be available from other sources;

(k) failing to disclose to a client in writing before any advice is rendered a material conflict of interest relating to the investment adviser, investment adviser representative, or federal covered adviser or any of its employees or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:

(i) compensation arrangements connected with advisory services to a client which are in addition to compensation from the client for the services; and

(ii) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, investment adviser representative, or federal covered adviser or its employees or affiliates;

(iii) serving as an officer, or in a similar capacity, for any outside company or other entity;

(l) guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;

(m) publishing, circulating, or distributing sales material which does not comply with 17 C.F.R. 275.206(4)-1;

(n) disclosing to a third party the identity, affairs, other financial information, or investment of a client or former client unless:

(i) and (ii) remain the same.

(o) taking action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, if the investment adviser, investment adviser representative, or federal covered adviser has custody or possession of the securities or funds when the investment adviser's, investment adviser representative's, or federal covered adviser's action is subject to, and does not comply with, the requirements of 17 C.F.R. 275.206(4)-2, or the investment adviser, investment adviser representative, or federal covered adviser is exempt from these requirements by virtue of 17 C.F.R. 275.206(4)-2(b);

(p) entering into, extending, or renewing an investment advisory contract, other than a contract for impersonal services, unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of or the manner of calculation of the prepaid fee to be returned in the event of contract termination or nonperformance, and whether the contract grants discretionary power to the investment adviser, investment adviser representative, or federal covered adviser or its representative, and that no assignment of such contract shall be made by the investment adviser, investment adviser representative, or federal covered adviser without the consent of the other party;

(q) failing to disclose to a client or prospective client each material fact with respect to:

(i) the financial condition of the investment adviser, investment adviser representative, or federal covered adviser that is reasonably likely to impair the ability of the investment adviser, investment adviser representative, or federal covered adviser to meet contractual commitments to a client, if the investment adviser, investment adviser representative, or federal covered adviser has express or implied discretionary authority or custody over the client's funds or securities or requires prepayment of advisory fees of more than $500 from the client, six months or more in advance; or

(ii) a legal or disciplinary action that is material to an evaluation of the investment adviser's, investment adviser representative's, or federal covered adviser's integrity or ability to meet contractual commitments to a client;

(r) through (t) remain the same

(u) engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, or contrary to the provisions of section 206(4) of the

Investment Advisers Act of 1940, 15 U.S.C. 80b-6(4), which is adopted and incorporated ~~herein~~ by this reference, notwithstanding the fact that such investment adviser, investment adviser representative, or federal covered adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-3. Section 206(4) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-6(4) establishes prohibited practices in the investment advisory business, and may be obtained from the ~~Commissioner of Securities~~ CSI, 840 Helena Avenue, Helena, MT 59601;

(v) remains the same.

(w) accessing a client's account by using the client's own unique identifying information, except where:

(i) the investment adviser, investment adviser representative, or federal covered adviser does not know, or have access to, the client's passwords;

(ii) there is an agreement between a data aggregation software company and the custodian(s)/online account platform which permits some form of "back-door" access; and

(iii) the data is in a read-only format;

(x) While acting as principal for its own advisory account, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser, investment adviser representative, or federal covered adviser is acting and obtaining the consent of the client to the transaction.

(i) the prohibitions of this rule shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser, investment adviser representative, or federal covered adviser in relation to the transaction.

(ii) the prohibitions of this subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as investment adviser, investment adviser representative, or federal covered adviser solely:

(A) by means of publicly distributed written materials or publicly made oral statements;

(B) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(C) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(D) by any combination of the foregoing services.

(iii) publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communications uses the investment adviser's, investment adviser representative's, or federal covered adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser, investment adviser representative, or federal covered adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser, investment adviser representative, or federal covered adviser with the foregoing disclosure

requirement shall not relieve it of any other disclosure obligations under 15 U.S. C. § 206(3);

(iv) definitions for purposes of (x):

(A) "publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

(B) "publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(y) the prohibitions of this rule shall not apply to an investment adviser, investment adviser representative, or federal covered adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

(i) the advisory client executes a written consent prospectively authorizing the investment adviser, investment adviser representative, or federal covered adviser to effect agency cross transactions for such client;

(ii) before obtaining such written consent from the client, the investment adviser, investment adviser representative, or federal covered adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser, investment adviser representative, or federal covered adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(iii) at or before the completion of each agency cross transaction, the investment adviser, investment adviser representative, or federal covered adviser or any other person relying on this rule sends the client a written confirmation. The written confirmation shall include:

(A) a statement of the nature of the transaction;

(B) the date the transaction took place;

(C) an offer to furnish, upon request, the time when the transaction took place; and

(D) the source and amount of any other remuneration the investment adviser, investment adviser representative, or federal covered adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser, investment adviser representative, or federal covered adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser, investment adviser representative, or federal covered adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser, investment adviser representative, or federal covered adviser has been receiving or will receive any other remuneration and that the investment adviser, investment adviser representative, or federal covered adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

(iv) at least annually, and with or as part of any written statement or summary of the account from the investment adviser, investment adviser representative, or federal covered adviser, the investment adviser, investment adviser representative, or federal covered adviser or any other person relying on this rule sends each client a written disclosure statement identifying:

(A) the total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(B) the total amount of all commissions or other remuneration the investment adviser, investment adviser representative, or federal covered adviser received or will receive in connection with agency cross transactions for the client during the period.

(v) each written disclosure and confirmation required by this rule must include a conspicuous statement that the client may revoke the written consent required under (x)(i) of this rule at any time by providing written notice to the investment adviser, investment adviser representative, or federal covered adviser.

(vi) no agency cross transaction may be effected in which the same investment adviser, investment adviser representative, or federal covered adviser recommended the transaction to both any seller and any purchaser.

(vii) for purposes of this rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser, investment adviser representative, or federal covered adviser in relation to a transaction in which the investment adviser, investment adviser representative, or federal covered adviser, or any person controlling, controlled by, or under common control with such investment adviser, investment adviser representative, or federal covered adviser, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in this capacity the person is required to be registered as a broker-dealer in this state unless excluded from the definition.

(viii) nothing in this rule shall be construed to relieve an investment adviser, investment adviser representative, or federal covered adviser from acting in the best interests of the client, including fulfilling their duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser, investment adviser representative, or federal covered adviser of any other disclosure obligations imposed by the Act.

(z) making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

(aa) failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

(ab) taking any action, directly or indirectly, with respect to those securities or funds in which any client has a beneficial interest, where the investment adviser, investment adviser representative, or federal covered adviser has custody or possession of such securities or funds when the action of the investment adviser, investment adviser representative, or federal covered adviser, is subject to and does not comply with the requirements of ARM 6.10.508; and

~~(w)~~(ac) engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices.

AUTH: 30-10-107, MCA
IMP: 30-10-201, 30-10-301, MCA

REASON: The CSI proposes to adopt amendments to the NASAA Prohibited Conduct of Investment Advisers, Investment Adviser Representatives and Federal

Covered Investment Advisers Model Rule USA 2002 502(b) and NASAA Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers Model Rule 102(a)(4)-1. The change is necessary to remain current with updated federal and state securities laws. Additionally, the rule is necessary to pinpoint exactly who is requesting a transaction, thus ensuring CSI investigations protect consumers and registered persons.

6.10.501 REGISTRATION AND EXAMINATION - SECURITIES SALESPERSON, INVESTMENT ADVISER REPRESENTATIVES, BROKER-DEALERS, AND INVESTMENT ADVISERS (1) through (3)(b) remain the same.

(c) notwithstanding (3) of this rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the commissioner.; and

(d) pursuant to 30-10-209, MCA, those in-state salespersons and investment adviser representatives that file applications on the Form U-4 must submit a Resident Affidavit form with a form W-9 within 30 days of acceptance of the Form U-4 to receive a refund of the difference between out-of-state registration and in-state registration fees.

(4) through (6) remain the same.

AUTH: 30-10-107, 30-10-209, MCA
IMP: 30-10-201, MCA

REASON: With the enactment of HB 694 in 2019, the Legislature created an in-state fee and an out-of-state fee for salespersons and investment adviser representatives. Due to constraints caused by FINRA's CRD fee collection, this rule change is to detail the process by which the fee overpayment will be refunded to in-state individuals.

6.10.503 MINIMUM FINANCIAL REQUIREMENTS AND FINANCIAL REPORTING OF BROKER-DEALERS (1) and (2) remain the same.

(3) The commissioner adopts and incorporates by reference the rules cited in (1) and (2), which establish net capitalization requirements, customer free credit balance requirements, customer protection reserves, net capital decline reporting requirements, and capitalization reporting requirements. A copy of these rules may be obtained from the ~~Securities Department~~ Office of the Montana State Auditor, 840 Helena Avenue, Helena, MT 59601.

AUTH: 30-10-107, MCA
IMP: 30-10-107, 30-10-201, MCA

REASON: The CSI proposes to amend this rule for conformity with the CSI's current naming convention for the agency.

6.10.504 BROKER-DEALER BOOKS AND RECORDS (1) Unless otherwise provided by order of the commissioner, each registered broker-dealer shall make, maintain, and preserve books and records in compliance with the United States Securities and Exchange Commission rules 17a-3 (17 CFR 240.17a-3), 17a-4 (17 CFR 240.17a-4), and 15c2-11 (17 CFR 240.15c2-11) which are adopted and incorporated by this reference, and establish recordkeeping requirements related to the conduct of the business as a securities broker-dealer. Copies of these rules may be obtained from the ~~Commissioner of Securities~~ Office of the Montana State Auditor, 840 Helena Avenue, Helena, MT 59601.

(2) remains the same.

AUTH: 30-10-107, MCA
IMP: 30-10-201, MCA

REASON: The CSI proposes to amend this rule for conformity with the CSI's current naming convention for the agency.

6.10.506 MINIMUM FINANCIAL REQUIREMENTS FOR INVESTMENT ADVISERS (1) remains the same.

(2) An investment adviser registered or required to be registered under the Act who has custody or discretion of client funds or securities, but does not meet the minimum net worth requirements in (1) shall be bonded in the amount of the net worth deficiency rounded up to the nearest $5,000. Any bond required by this section shall be:

(a) in the form determined by the ~~director~~ commissioner;

(b) through (9) remain the same.

AUTH: 30-10-107, MCA
IMP: 30-10-107, 30-10-201, MCA

REASON: The CSI proposes to amend this rule to correctly reference the Commissioner of Securities and Insurance, Office of the Montana State Auditor (commissioner). The current version of the rule refers to "director," a term found in the model upon which this rule is based.

6.10.507 BONDING REQUIREMENTS FOR CERTAIN INVESTMENT ADVISERS (1) and (1)(a) remain the same.

(b) every investment adviser registered or required to be registered under the Act who has custody or discretion of client funds or securities who does not meet the minimum net worth standard in ARM ~~6.10.140(1)~~ 6.10.506(1) shall be bonded in the amount of the net worth deficiency rounded up to the nearest $5,000.

(2) remains the same.

AUTH: 30-10-107, MCA
IMP: 30-10-107, 30-10-201, MCA

REASON: The CSI proposes to amend this rule to correct a reference to a rule which has been previously transferred. The rule cites ARM 6.10.140, which has been transferred to ARM 6.10.506.

6.10.510 INVESTMENT ADVISER BOOKS AND RECORDS (1) and (1)(a) remain the same.

(b) all trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this rule, "financial statements" means balance sheets, income statements, cash flow statements and net worth computations as required by ARM ~~6.6.140~~ 6.10.506;

(c) through (3) remain the same.

(4) Every investment adviser registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

(a) The physical security and cybersecurity policies and procedures must:

(i) protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(ii) ensure that the investment adviser safeguards confidential client records and information; and

(iii) protect any records and information the release of which could result in harm or inconvenience to any client.

(b) The physical security and cybersecurity policies and procedures must cover at least five functions:

(i) the organizational understanding to manage information security risk to systems, assets, data, and capabilities;

(ii) implementation of the appropriate safeguards to ensure delivery of critical infrastructure services;

(iii) implementation of the appropriate activities to identify the occurrence of an information security event;

(iv) implementation of the appropriate activities to take action regarding a detected information security event; and

(v) implementation of the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

(c) The investment adviser must review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

(5) The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update

and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

(6) Every investment adviser shall establish, implement, and maintain written procedures relating to a Business Continuity and Succession Plan. The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The plan shall provide for at least the following:

(a) The protection, backup, and recovery of books and records.

(b) Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

(c) Office relocation in the event of temporary or permanent loss of a principal place of business.

(d) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

(e) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

~~(4)~~ (7) To the extent that the securities and exchange commission promulgates changes to the rules of the Investment Advisers Act of 1940 incorporated by reference into these rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the commissioner for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

~~(5)~~ (8) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with the state's record keeping requirements.

AUTH: 30-10-107, MCA
IMP: 30-10-201, MCA

REASON: The CSI proposes to amend this rule to correct a reference to a rule which has been transferred. The rule cites ARM 6.10.140, which has previously been transferred to ARM 6.10.506. The additions are in reference to the NASAA Model Rule on Business Continuity and Succession Planning Model Rule 203(a)-1A, and Investment Adviser Information Security and Privacy Rule. This change is necessary to remain current with applicable federal and model rule updates. The cybersecurity elements are reasonably necessary as more information is now stored electronically than on paper. The rule contemplates the needs of registered entities to maintain current with cybersecurity threats and the potential harm such threats might cause investors, especially in regard to personal identifying information. The business continuity model rule is reasonably necessary as an investment advisory business may be harmed in a death/incapacitation event which would directly harm clients who could no longer be able to access their funds.

6. The CSI proposes to transfer the following rule:

OLD	NEW	
6.10.608	6.10.307	FILINGS REQUIREMENT FOR TRANSACTIONAL EXEMPTION PURSUANT TO 30-10-105(15), MCA

REASON: The CSI proposes to transfer this rule to a subchapter more relevant to its contents. Its current subchapter 6 deals with senior citizen consumer protection issues; ARM 6.10.608 addresses transactional securities exemptions, which are addressed under subchapter 3.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Lynne Egan, Deputy Securities Commissioner, CSI, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-4388; fax (406) 444-3497; or e-mail legan@mt.gov, and must be received no later than 5:00 p.m., May 29, 2020.

8. Lynne Egan has been designated to preside over and conduct this hearing.

9. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: http://csimt.gov/laws-rules/ to specify for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 3 above, or may be made by completing a request form at any rules hearing held by the CSI.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and transfer of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Tom M. Melton
Tom M. Melton
Rule Reviewer

/s/ Michelle Dietrich
Michelle Dietrich
Chief Legal Counsel

Certified to the Secretary of State on April 21, 2020.