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Economic Affairs Interim Committee

66th Montana Legislature

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June 26, 2020

The following information was sent in an email 5-21-2020 to Economic Affairs Interim Committee members and provides background details regarding the rule and statute. Sent by staff Pat Murdo:

Hi – A question has been raised about definitions in proposed securities rules that appear intended to require that investment advisors be insurance agents but it is not clear. Securities advisors do not want to be insurance agents, but from what was sent to me by Bill Warden with NAIFA, it looks like the State Auditor's Office may want insurance agents that give securities advice to be covered by the securities laws. As I said, it is unclear and Mr. Warden has asked if a majority of the members of the Economic Affairs Interim Committee will ask request the presiding officer to request a temporary delay in adoption of the rule to allow the National Association of Insurance and Financial Advisors and others time to make clear what they think the definitions ought to be. The rule review would then be included in the EAIC June-July agenda. The public hearing on the rules was today. Written comment will be accepted until 5 p.m. May 29. So we would ask that you reply "all" to let Rep. Stewart Peregoy know how you want to proceed. Sen. Vance already has requested a delay. Call me at 406-444-3594 if you need Rep. Stewart Peregoy's cell phone number. But a reply all email also will work to trigger a letter if a majority requests a delay.

Here's the language of the proposed definition and below that (in red) is the language in statute (30-10-103, MCA) that describes the usual suspects. Part of that statute allows the definition to "EXCLUDE" by rule certain persons. Not clear that they can include:

Proposed rule 6.10.102 includes in definitions a new subsection: (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.

[...]

30-10-103(12) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

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

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

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (12)(a) to others for compensation.

(c) The term does not include:

(i) an investment adviser representative;

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

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

(iv) a registered broker-dealer whose performance of services described in subsection (12)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

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

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

(vii) an engineer or teacher whose performance of the services described in subsection (12)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (12) as the commissioner may by rule or order designate.