



ADMINISTRATIVE RULES OF MONTANA



6.10.102 DEFINITIONS

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

- (1) The definitions contained in 30-10-103, MCA, apply.
- (2) "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.
- (3) "American depository receipt" is a negotiable certificate issued by a U.S. depository pursuant to an effective registration statement filed on form F-6 with the Securities and Exchange Commission, representing the securities of a non-U.S. company, which securities are held in a similar type of receipt or instrument issued with respect to a security, which receipt of instrument has been approved for sale by order of the commissioner.
- (4) "Branch office" means an office, other than a main office but including a corporate subsidiary and any place of business of one or more registered salespersons of a registered broker-dealer, which is located in this state, owned or controlled by the broker-dealer, and engaged in the securities business in this state.
- (5) "Issuer of an American depository receipt" is the non-U.S. company that issued the securities represented by the American depository receipt.
- (6) "Promoter" means a person who, acting alone or in conjunction with one or more persons, directly or indirectly, takes the initiative in founding and organizing the business or enterprise of an issuer or an officer, director or party owning, directly or indirectly, 5% or more of the outstanding shares of the corporation before or immediately following the public offering, or any affiliate of the aforesaid persons; and
 - (a) does not include an unaffiliated institutional purchaser who purchased its shares more than one year prior to the public offering.
- (7) "Promotional or developmental stage" means a corporation which has no public market for its shares and has no significant earnings within the past five years (or shorter period of its existence).
- (8) "Promotional security" means a security issued within three years before the date of registration in return for:
 - (a) a price less than 85% of the consideration for which such securities are proposed to be sold to the public; or

- (i) services rendered, patents, copyrights, other intangibles, or real or personal property, the actual value of which has not been established to the satisfaction of the commissioner; or
 - (b) a security issued or to be issued to a promoter while a corporation is in a promotional or developmental stage.
- (9) "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.
- (10) "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.
- (11) "Significant earnings" exist if the corporation's earnings record over the last five years (or shorter period of its existence) demonstrates that for such period the corporation's net earnings per share is 30% of the public offering price per share (as adjusted for stock splits and stock dividends) or the corporation has earnings per share of 5% or more of the public offering price per share for each of any two consecutive years.
- (12) "U.S. or foreign GAAP" are the generally accepted accounting principles of the United States or of the foreign country in which the issuer is domiciled.

Authorizing statute(s): 30-10-107, MCA

Implementing statute(s): 30-10-104, 30-10-107, MCA

History: EMERG, NEW, Eff. 7/5/75; AMD, 1988 MAR p. 1803, Eff. 8/12/88; AMD, 1994 MAR p. 569, Eff. 3/18/94; AMD, 1996 MAR p. 1133, Eff. 4/26/96; AMD, 2008 MAR p. 2046, Eff. 9/26/08; AMD, 2020 MAR p. 1874, Eff. 10/24/20.