

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 254

H.P. 189

House of Representatives, February 16, 1989

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CURRAN of Westbrook.

Cosponsored by Senator BRANNIGAN of Cumberland, Representative RYDELL of Brunswick and Representative FOSS of Yarmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Amend the Revised Maine Securities Act and Related Statutes.



1 Be it enacted by the People of the State of Maine as follows:

3 Sec. 1. 9-B MRSA §212-A, as amended by PL 1985, c. 785, Pt.
5 B, §54, is repealed and the following enacted in its place:

7 §212-A. Securities Division

9 There is created a Securities Division, which constitutes a
11 division within the Bureau of Banking and which has
13 responsibility for the administration and enforcement of the
15 Revised Maine Securities Act, the Maine Commodity Code and the
17 law regulating the sale of business opportunities. The
19 activities of the division shall be directed by the Securities
21 Administrator, who shall be appointed by the superintendent,
23 subject to the Civil Service Law. The division shall have such
25 staff as the Legislature authorizes and all salaries and expenses
27 of the division shall be paid out of such amounts as the
29 Legislature appropriates.

31 Sec. 2. 32 MRSA §4695, sub-§1, ¶B, as amended by PL 1985, c.
33 597, §2, is further amended to read:

35 B. ~~The Superintendent of Banking or any person designated~~
37 ~~by the superintendent~~ Securities Administrator certifies to
39 the surety company issuing the bond or the licensed bank or
41 savings institute holding the escrow account that it has no
43 knowledge of any outstanding judgment, claims or notices of
45 claims against the seller in this State.

47 Sec. 3. 32 MRSA §4696, as amended by PL 1985, c. 597, §3, is
49 further amended to read:

51 §4696. Registration

Every seller shall register with the Superintendent ~~of~~
~~Banking or any person designated by the superintendent~~ Securities
Administrator prior to selling, offering to sell, advertising or
undertaking any other act relating to the promotion of business
opportunities in this State. Registration shall be complete upon
paying a \$25 fee, filing a copy of the disclosure statement
required by section 4692 and providing evidence of a bond or
escrow account satisfying the requirements of section 4695. The
seller shall update the disclosure statement as material
information changes.

Sec. 4. 32 MRSA §4700, sub-§§4 and 5, as enacted by PL 1985, c.
597, §4, are amended to read:

4. Administrative orders; rules; forms. The superintendent
Securities Administrator may make, amend and rescind rules, forms
and orders as are necessary to carry out the provisions of this
chapter, including rules and forms governing disclosure

1 documents, applications and reports and defining any terms,
2 whether or not used in this chapter insofar as the definitions
3 are not inconsistent with this chapter. For the purpose of rules
4 and forms, the superintendent Securities Administrator may
5 classify business opportunities, persons and matters within his
6 jurisdiction and prescribe different requirements for different
7 classes.

9 5. Cease and desist orders. Whenever it appears to the
10 superintendent Securities Administrator that any person has
11 engaged in or is about to engage in any act or practice
12 constituting a violation of this chapter or any rule or order
13 under this chapter, the superintendent Securities Administrator
14 may issue an order directing the person to cease and desist from
15 continuing the act or practice. Any person named in a cease and
16 desist order issued by the superintendent Securities
17 Administrator may, within 30 days after receipt of the order,
18 file a written request for a hearing with the superintendent
19 Securities Administrator. If the superintendent Securities
20 Administrator does not receive a written request for a hearing
21 within the time specified, the cease and desist order will become
22 permanent and the person named in the order will be deemed to
23 have waived all rights to a hearing.

25 **Sec. 5. 32 MRSA §4700-A**, as amended by PL 1985, c. 597, §5,
26 is further amended to read:

27 **§4700-A. Service of process**

29 The Superintendent of Banking or any person designated by
30 the superintendent Securities Administrator shall be an agent of
31 each seller who sells, offers for sale, advertises or promotes
32 business opportunities in this State for service of any process,
33 notice or demand required or permitted by law to be served and
34 this service shall be binding upon the seller. Service of any
35 such process, notice or demand shall be made as provided for
36 service upon the Secretary of State under the Maine Rules of
37 Civil Procedure, Rule 4(d)(8).

39 **Sec. 6. 32 MRSA §10204**, as enacted by PL 1985, c. 400, §2,
40 is amended to read:

43 **§10204. Misleading filings**

45 No person may make or cause to be made, in any document
46 filed with the superintendent administrator or in any proceeding
47 under this Act, any statement which that person knows or has
48 reasonable grounds to know is, at the time and in the light of
49 the circumstances under which it is made, false or misleading in
50 any material respect.

51

1 **Sec. 7. 32 MRSA §10205, first ¶**, as enacted by PL 1985, c. 400,
§2, is amended to read:

3
5 Neither the fact that an application for licensing under
subchapter III or a registration statement under subchapter IV
7 has been filed, nor the fact that a person is licensed under
subchapter III or a security is registered under subchapter IV
9 constitutes a finding by the ~~superintendent~~ administrator that
any document filed under this Act is true, complete and not
11 misleading. Neither any such fact nor the fact that an exemption
or exception is available for a security or a transaction means
13 that the ~~superintendent~~ administrator has passed in any way upon
the merits or qualifications of, or recommended or given approval
15 to, any person, security or transaction.

17 **Sec. 8. 32 MRSA §10301, sub-§3**, as enacted by PL 1985, c. 400,
§2, is amended to read:

19 **3. Employment of suspended or barred persons.** It is
unlawful for a broker-dealer or an issuer engaged in offering
21 securities in this State in connection with any of the
broker-dealer's or issuer's securities activities in this State
23 to employ or contract with any person who is then suspended or
barred from association with a broker-dealer or investment
25 adviser by the ~~superintendent~~ administrator. No broker-dealer or
issuer may be deemed to have violated this subsection if the
27 broker-dealer or issuer sustains the burden of proof that the
broker-dealer or issuer did not know and in the exercise of
29 reasonable care could not have known of the suspension or bar.
Upon request from a broker-dealer or issuer and for good cause
31 shown, the ~~superintendent~~ administrator, by order, may waive the
prohibition of this subsection with respect to a particular
33 person then suspended or barred.

35 **Sec. 9. 32 MRSA §10302, sub-§1, ¶D**, as enacted by PL 1985, c.
400, §2, is amended to read:

37 D. Other broker-dealers who whom the ~~superintendent~~
39 administrator may exclude, by rule or order, as not required
to be licensed consistent with the public interest and the
41 protection of investors.

43 **Sec. 10. 32 MRSA §10302, sub-§2, ¶E**, as enacted by PL 1985, c.
400, §2, is amended to read:

45 E. Other sales representatives who whom the ~~superintendent~~
47 administrator may exclude, by rule or order, as not required
to be registered consistent with the public interest and the
49 protection of investors.

51 **Sec. 11. 32 MRSA §10303, sub-§2**, as enacted by PL 1985, c.
400, §2, is amended to read:

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

2. **Employment of suspended and barred persons.** It is unlawful for an investment adviser to employ in connection with any of the investment adviser's investment advisory activities in this State any person who is then suspended or barred from association with a broker-dealer or investment adviser by the superintendent administrator. No investment adviser may be deemed to have violated this subsection if the investment adviser sustains the burden of proof that the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension or bar. Upon request from an investment adviser, and for good cause shown, the superintendent administrator, by order, may waive the prohibition of this subsection with respect to a particular person then suspended or barred.

Sec. 12. 32 MRSA §10304, sub-§3, as enacted by PL 1985, c. 400, §2, is amended to read:

3. **Other investment advisers.** Other investment advisers who whom the superintendent administrator may exclude, by rule or order, as not required to be licensed consistent with the public interest and the protection of investors.

Sec. 13. 32 MRSA §10305, sub-§§1 and 2, as enacted by PL 1985, c. 200, §2, are amended to read:

1. **Consent to service of process.** An applicant for licensing as a broker-dealer, sales representative or investment adviser shall file with the superintendent administrator or the designee of the superintendent administrator an application for licensing, together with a consent to service of process pursuant to section 10704. The application for licensing must contain such information as the superintendent administrator determines, by rule, is necessary or appropriate to facilitate the administration of this Act.

2. **Information available through a central registration depository system.** The requirements of subsection 1 may be satisfied by applicants who have filed and maintain a completed and current registration with the United States Securities and Exchange Commission or a self-regulatory organization registered with the United States Securities and Exchange Commission, if that registration information is readily available to the superintendent administrator through a central registration depository system approved by the superintendent administrator, by filing a notice with the superintendent administrator in the form and content determined by the superintendent administrator, by rule, together with a consent to service of process under section 10704, no later than 30 days prior to commencing business in this State.

1 **Sec. 14. 32 MRSA §10306, sub-§1, ¶B,** as enacted by PL 1985, c.
400, §2, is amended to read:

3 B. Sales representative, \$25 ~~§30~~; and

5 **Sec. 15. 32 MRSA §10306, sub-§2, ¶¶A and B,** as enacted by PL
7 1985, c. 400, §2, are amended to read:

9 A. Broker-dealer, \$75 ~~§100~~ and for each branch office in
this State, \$30;

11 B. Sales representative, \$15 ~~§30~~; and

13 **Sec. 16. 32 MRSA §10306, sub-§4,** as enacted by PL 1985, c.
15 400, §2, is amended to read:

17 4. Fees nonrefundable. If an application is denied or
19 withdrawn or the license is terminated by revocation,
cancellation or withdrawal, the superintendent administrator
shall retain the fee paid.

21 **Sec. 17. 32 MRSA §10307,** as amended by PL 1985, c. 617, §4,
23 is amended to read:

25 **§10307. Examinations**

27 1. Examination by rule. The superintendent administrator
may, by rule, impose an examination requirement upon:

29 A. An applicant applying for licensing under section 10301
31 or section 10303;

33 B. Any class of applicants; and

35 C. Any class of employees of applicants for licensing as to
37 whom the superintendent administrator shall determine that
an examination requirement is necessary for the protection
of investors.

39 2. Examination administration. Any examination required
41 may be administered by the superintendent administrator or a
designee of the superintendent administrator. Examinations may be
43 oral, written or both and may differ for each class of applicants.

45 3. Waiver of examination requirement. The superintendent
administrator may, by order, waive any examination requirement
47 imposed under subsection 1 as to any person, if the
superintendent administrator determines that an examination is
49 not necessary for the protection of investors.

51 **Sec. 18. 32 MRSA §10308, sub-§1,** as enacted by PL 1985, c.
400, §2, is amended to read:

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

1. Effective date of license. Unless a proceeding under section 10313 has been instituted, the license of any broker-dealer, sales representative or investment adviser becomes effective 30 days after an application for licensing and the last of any additional information requested by the superintendent administrator or the superintendent's administrator's designee has been filed and provided that all examination requirements imposed under section 10307 have been satisfied. The superintendent administrator may, by order, authorize an earlier effective date of licensing.

Sec. 19. 32 MRSA §10308, sub-§4, ¶B, as enacted by PL 1985, c. 400, §2, is amended to read:

B. When the superintendent administrator, by rule or order, authorizes multiple licenses as consistent with the public interest and protection of investors.

Sec. 20. 32 MRSA §10308, sub-§§5 and 6, as enacted by PL 1985, c. 400, §2, are amended to read:

5. Notification of administrator. When a sales representative terminates association with a broker-dealer or issuer, or terminates activities which make that person a sales representative, the sales representative and the former broker-dealer or issuer on whose behalf the sales representative was acting shall promptly notify the superintendent administrator or the designee of the superintendent administrator.

6. Limitations and conditions on licenses. If the superintendent administrator determines, by rule, that one or more classifications of licenses as a broker-dealer, sales representative or investment adviser which are subject to limitations and conditions on the nature of the activities which may be conducted by those persons are consistent with the public interest and the protection of investors, the superintendent administrator may authorize the licensing of persons subject to specific limitations and conditions.

Sec. 21. 32 MRSA §10309, as enacted by PL 1985, c. 400, §2, is amended to read:

§10309. Annual report and fee

For so long as a broker-dealer, sales representative or investment adviser is licensed under this Act, that person shall file an annual report, together with the fee specified in section 10306, subsection 2, with the superintendent administrator or the designee of the superintendent administrator, at a time and including such information as the superintendent administrator

1 determines, by rule, is necessary or appropriate to facilitate
administration of this Act.

3 **Sec. 22. 32 MRSA §10310**, as enacted by PL 1985, c. 400, §2,
5 is amended to read:

7 **§10310. Post-licensing requirements**

9 **1. Broker-dealer net capital requirements.** The
11 superintendent administrator may, by rule, require a licensed
broker-dealer, other than a broker-dealer registered under the
United States Securities Exchange Act of 1934, to maintain:

13 A. Minimum net capital; and

15 B. A prescribed ratio between net capital and aggregate
17 indebtedness, both of which may vary with type or class of
broker-dealer.

19 **2. Investment adviser net worth requirements.** The
21 superintendent administrator may, by rule, require a licensed
investment adviser, other than an investment adviser registered
23 under the United States Investment Advisers Act of 1940, to
maintain a minimum net worth, which may vary with type or class
25 of investment adviser.

27 **3. Notification of financial condition.** If a licensed
broker-dealer or investment adviser believes, or has reasonable
29 cause to believe, that any requirement imposed under subsection 1
is not being met, it shall promptly notify the superintendent
31 administrator of its current financial condition.

33 **4. Fidelity bonds.** The superintendent administrator may,
by rule, require the furnishing of fidelity bonds from
35 broker-dealers or classes of broker-dealers.

37 **5. Reporting requirements.** A licensed broker-dealer or
investment adviser shall file financial and other reports as the
39 superintendent administrator determines, by rule, are reasonably
necessary or appropriate.

41 Compliance with the financial reporting requirements of the
43 United States Securities Exchange Act of 1934 in the case of a
broker-dealer or the United States Investment Advisers Act of
45 1940 in the case of an investment adviser, may satisfy the
requirements of this subsection.

47 **6. Record keeping.** A licensed broker-dealer, sales
49 representative or investment adviser shall make and maintain
records as the superintendent administrator determines, by rule,
51 are necessary or appropriate.

1 A. Unless the superintendent administrator adopts, by rule,
3 a special record-keeping requirement, compliance with the
5 record-keeping requirements of the United States Securities
7 Exchange Act of 1934 in the case of a broker-dealer, or the
United States Investment Advisers Act of 1940 in the case of
an investment adviser, shall satisfy the requirement of this
subsection.

9 B. Required records may be maintained in computer or
11 microform format or any other form of data storage, provided
13 that the records are readily accessible to the
15 superintendent administrator.

17 C. Required records must be preserved for 6 years unless
the superintendent administrator, by rule, specifies either
a longer or shorter period for a particular type or class of
records.

19 7. Amendments to files. If the information contained in
21 any document filed with the superintendent administrator or the
23 superintendent's administrator's designee under this section or
25 section 10305, except for those documents which the
27 superintendent administrator, by rule or order, may exclude from
this requirement, is or becomes inaccurate or incomplete in any
material respect, the licensee shall promptly file a correcting
amendment, unless notification of the correction has been given
under section 10308, subsection 5.

29 **Sec. 23. 32 MRSA §10311, sub-§1**, as enacted by PL 1985, c.
31 400, §2, is amended to read:

33 1. **Broker-dealers; investment advisers.** A licensed
35 broker-dealer or any investment adviser may file an application
37 for licensing of a successor, whether or not the successor is
then in existence, together with any examination fee prescribed
by rule of the superintendent administrator.

39 **Sec. 24. 32 MRSA §10312**, as enacted by PL 1985, c. 400, §2,
is amended to read:

41 **§10312. Inspection power**

43 1. **Broker-dealers; investment advisers.** The superintendent
45 administrator, without prior notice, may examine the records and
47 require copies of the records which a licensed broker-dealer,
sales representative and investment adviser are required to make
and maintain under section 10310, subsection 6, within or without
49 this State, in a manner reasonable under the circumstances.
51 Broker-dealers, sales representatives and investment advisers
must make their records available to the superintendent
administrator in a readable form.

1 2. Copies of records. The superintendent administrator may
copy records or require a licensee to copy records and provide
3 the copies to the superintendent administrator in a manner
reasonable under the circumstances.

5
6 3. Examination fees. The superintendent administrator may
7 impose reasonable fees for conducting an examination under this
section.

9
10 **Sec. 25. 32 MRSA §10313, sub-§1,** as amended by PL 1985, c.
11 617, §5, is further amended to read:

12 **§10313. Grounds for denial, suspension, revocation,
13 cancellation and withdrawal**

14
15 1. Denial, suspension, revocation. The superintendent
16 administrator may, after notice and opportunity for hearing, by
17 order, deny, suspend or revoke any license, limit the activities
18 which an applicant or licensee may perform in this State or bar
19 any applicant or licensee from association with a licensed
20 broker-dealer or investment adviser, if the superintendent
21 administrator finds that the order is in the public interest and
22 that the applicant or licensee or, in the case of a broker-dealer
23 or investment adviser, any partner, executive officer or
24 director, any person occupying a similar status or performing
25 similar functions or any person directly or indirectly
26 controlling the broker-dealer or investment adviser:

27
28 A. Has filed an application for licensing with the
29 superintendent administrator or the designee of the
30 superintendent administrator which, as of its effective
31 date, or as of any date after filing in the case of an order
32 denying effectiveness, was incomplete in any material
33 respect or contained any statement which was, in light of
34 the circumstances under which it was made, false or
35 misleading with respect to any material fact;

36
37 B. Has knowingly or willfully violated or failed to comply
38 with a provision of this Act, a predecessor Act or a rule or
39 order under this Act or a predecessor Act, the United States
40 Securities Act of 1933, the United States Securities
41 Exchange Act of 1934, the United States Investment Advisers
42 Act of 1940, the United States Investment Company Act of
43 1940 or the United States Commodity Exchange Act, or the
44 securities law of any other state, but only if the acts
45 constituting the violation of that state's law would
46 constitute a violation of this Act had the acts taken place
47 in this State;

48
49 C. Has, within the last 10 years, pleaded guilty or nolo
50 contendere to, or been convicted of, any crime indicating a
51 lack of fitness to engage in the securities business;

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

D. Is then permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice indicating a lack of fitness to engage in the securities business;

E. Is the subject of an order of the superintendent administrator denying, suspending or revoking the person's license as a broker-dealer, sales representative or investment adviser;

F. Is the subject of any of the following orders which are currently effective and which were issued within the last 5 years:

(1) An order by the securities agency or administrator of another state, Canadian province or territory or the United States Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending or revoking the applicant's license as a broker-dealer, sales representative or investment adviser, or the substantial equivalent of those terms as defined in this Act;

(2) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the United States Securities and Exchange Act of 1934 or the United States Commodity Exchange Act;

(3) A United States Postal Service fraud order;

(4) A cease and desist order entered after notice and opportunity for hearing by the superintendent administrator or the securities agency or administrator of any other state, Canadian province or territory, the United States Securities and Exchange Commission, or the United States Commodity Futures Trading Commission;

(5) An order entered by the United States Commodity Futures Trading Commission denying, suspending or revoking registration under the United States Commodity Exchange Act; or

(6) An order entered by a court of competent jurisdiction or entered after notice and opportunity for hearing by a federal or state licensing agency denying, suspending, revoking or restricting the person's license to sell real estate, insurance or any investment other than securities, provided that the order resulted from allegations of misconduct. This subparagraph shall also apply when the denial,

1 suspension, revocation or restriction of the license is
3 pursuant to a consent agreement between the person and
the licensing agency, whether or not the agency also
5 issues an order;

7 G. Has engaged in any unlawful, unethical or dishonest
conduct or practice in the securities business;

9 H. Is insolvent, either in the sense that liabilities
11 exceed assets or in the sense that obligations cannot be met
as they mature, but the superintendent administrator may
13 only enter an order against a broker-dealer or investment
adviser under this paragraph and only after a finding of
15 insolvency as to the broker-dealer or investment adviser;

17 I. Is not qualified on the basis of such factors as
training, experience and knowledge of the securities
19 business, which determination shall be governed and limited
by subsection 2;

21 J. Has failed reasonably to supervise sales representatives
if a broker-dealer, or employees if an investment adviser; or
23

25 K. Has failed to pay the proper filing fee, but the
superintendent administrator shall vacate any order under
27 this paragraph when the deficiency has been corrected.

29 The superintendent administrator may not institute a suspension
or revocation proceeding on the basis of a fact or transaction
31 known to the superintendent administrator when the license became
effective, unless the proceeding is instituted within the next
180 days following issuance of the license.

33 **Sec. 26. 32 MRSA §10313, sub-§§2 to 6, as amended by PL 1985,**
35 **c. 400, §2, are amended to read:**

37 **2. Limitations on power of administrator.** The following
provisions govern the application of subsection 1, paragraph I.

39 A. The superintendent administrator may not enter an order
41 against a broker-dealer on the basis of the lack of
qualification of any person other than the broker-dealer if
43 the broker-dealer is an individual or a sales representative
of the broker-dealer.

45 B. The superintendent administrator may not enter an order
47 against an investment adviser on the basis of the lack of
qualification of any person other than the investment
49 adviser if the investment adviser is an individual or any
other person who represents the investment adviser in doing
51 any of the acts which make that person an investment adviser.

1 C. The superintendent administrator may not enter an order
solely on the basis of lack of experience if the applicant
3 or licensee is qualified by training or knowledge or both.
The possession of a currently effective license under this
5 Act or the compliance with the examination requirements of
this Act shall establish qualification.

7
9 D. The superintendent administrator shall consider that a
sales representative who will work under the supervision of
a licensed broker-dealer need not have the same
11 qualifications as a broker-dealer.

13 E. The superintendent administrator shall consider that an
investment adviser is not necessarily qualified solely on
15 the basis of experience as a broker-dealer or sales
representative.

17
19 3. Summary actions. Notwithstanding Title 5, sections
10003 and 10004, if the public interest or the protection of
investors so requires, the superintendent administrator may, by
21 order, summarily suspend a license or postpone the effective date
of a license. Upon the entry of the order, the superintendent
23 administrator shall promptly notify the applicant or licensee, as
well as the broker-dealer or issuer with whom the person is or
25 will be associated if the applicant or licensee is a sales
representative, that an order has been entered and of the reasons
27 therefor and that within 15 days after the receipt of a written
request the matter will be set down for hearing. Section 10708
29 shall apply with respect to all subsequent proceedings.

31 4. Cancellation. If the superintendent administrator finds
that any applicant or licensee is no longer in existence or has
33 ceased to do business as a broker-dealer, sales representative or
investment adviser, or is subject to an adjudication of mental
35 incompetence or to the control of a committee, conservator or
guardian, or cannot be located after reasonable search, the
37 superintendent administrator may, by order, cancel the license or
application.

39
41 5. Withdrawal. Withdrawal from licensing as a
broker-dealer, sales representative or investment adviser becomes
effective 30 days after receipt by the superintendent
43 administrator of an application to withdraw or within such
shorter period of time as the superintendent administrator may
45 determine, unless a revocation or suspension proceeding is
pending when the application is filed a proceeding to revoke or
47 suspend or to impose conditions upon the withdrawal is instituted
within 30 days after the application to withdraw is filed or
49 additional information is requested regarding the withdrawal
application.

51

1 6. Proceeding. If a proceeding is pending or instituted
2 under subsection 1 or 3, withdrawal becomes effective at such
3 time and upon such conditions as the superintendent administrator
4 by order determines. If additional information is requested
5 withdrawal is effective 30 days after the additional information
6 is filed or within such shorter period of time as the
7 superintendent administrator may determine. If no proceeding is
8 pending or instituted and withdrawal becomes effective, the
9 superintendent administrator may institute a revocation or
10 suspension proceeding under this section within one year after
11 withdrawal became effective and enter a revocation or suspension
12 order as of the last date on which the license was effective.

13 **Sec. 27. 32 MRSA §10314**, as enacted by PL 1985, c. 400, §2,
14 is amended to read:

15 **§10314. Custody of clients' securities and funds**

16 1. Persons registered under the United States Investment
17 Advisers Act of 1940. Unless prohibited by rule or order of the
18 superintendent administrator, an investment adviser registered
19 under the United States Investment Advisers Act of 1940 may take
20 or have custody of securities or funds of a client.
21

22 2. Persons exempt under the United States Investment
23 Advisers Act of 1940. If permitted by rule or order of the
24 superintendent administrator, an investment adviser exempt from
25 registration under the United States Investment Advisers Act of
26 1940, but licensed as an investment adviser under this Act, may
27 take or have custody of securities or funds of a client.
28

29 **Sec. 28. 32 MRSA §10402, sub-§3**, as enacted by PL 1985, c.
30 400, §2, is amended to read:

31 3. Effectiveness of registration. If no stop order is in
32 effect and no proceeding is pending under section 10406, a
33 registration statement under this section automatically becomes
34 effective at 3 p.m. Eastern Standard Time of the 2nd full
35 business day after the filing of the registration statement or
36 the last amendment or at such earlier time as the superintendent
37 administrator determines.
38

39 **Sec. 29. 32 MRSA §10403, sub-§2, ¶B**, as enacted by PL 1985, c.
40 400, §2, is amended to read:

41 B. If the superintendent administrator, by rule or order,
42 requires:

43 (1) A copy of the articles of incorporation and
44 bylaws, or their substantial equivalents, currently in
45 effect;
46

1 (2) A copy of any agreements with or among
underwriters;

3
5 (3) A copy of any indenture or other instrument
governing the issuance of the security to be
7 registered; and

9 (4) A specimen or copy of the security;

11 **Sec. 30. 32 MRSA §10403, sub-§2, ¶C**, as amended by PL 1985, c.
617, §6, is further amended to read:

13 C. If the superintendent administrator requests, and
subject to section 10701, subsection 4, any other
15 information or copies of other documents, filed under the
United States Securities Act of 1933; and

17 **Sec. 31. 32 MRSA §10403, sub-§§3 and 4**, as enacted by PL 1985,
19 c. 400, §2, are amended to read:

21 3. **Effectiveness of registration.** A registration statement
under this section automatically becomes effective at the moment
23 the federal registration statement becomes effective, if all the
following conditions are satisfied.

25 A. No stop order is in effect and no proceeding is pending
27 under section 10406.

29 B. The registration statement has been on file with the
superintendent administrator for at least 10 days, except
31 that, if the registration statement is not filed with the
superintendent administrator within 10 days of the initial
33 filing under the United States Securities Act of 1933, the
registration statement must have been on file with the
35 superintendent administrator for 30 days or any shorter
period the superintendent administrator, by rule or order,
37 permits.

39 C. A statement of the maximum and minimum proposed offering
prices and the maximum underwriting discounts and
41 commissions has been on file for 2 full business days or any
shorter period as the superintendent administrator permits,
43 by rule or order, and the offering is made within those
limitations.

45
47 The registrant shall promptly supply to the superintendent
administrator written notification of the date and time when
the federal registration statement became effective and the
49 content of the price amendment, if any, and shall promptly
file a post-effective amendment containing the information
51 and documents in the price amendment.

1 Upon failure to receive the required notification and
2 post-effective price amendment, the superintendent
3 administrator may enter a stop order, without notice or
4 hearing, retroactively denying effectiveness to the
5 registration statement or suspending its effectiveness until
6 compliance with this subsection. The superintendent
7 administrator must promptly notify the registrant by
8 telephone or telegram, and promptly confirm by letter or
9 telegram when the superintendent administrator notifies by
10 telephone, of the issuance of the order. If the registrant
11 complies with the requirements of this subsection as to
12 notice and post-effective amendment within 15 days of the
13 entry of the stop order, the stop order is void as of the
14 time of its entry.

15 The superintendent administrator may, by rule or order, waive
16 either or both of the conditions specified in paragraphs B and C.

17 If the federal registration statement becomes effective before
18 all the conditions in this subsection are satisfied and they are
19 not waived, the registration statement automatically becomes
20 effective as soon as all the conditions are satisfied. If the
21 registrant advises the superintendent administrator of the date
22 when the federal registration statement is expected to become
23 effective, the superintendent administrator shall promptly advise
24 the registrant by telephone or telegram, at the registrant's
25 expense, whether all the conditions are satisfied and whether the
26 superintendent administrator contemplates the institution of a
27 proceeding under section 10406; but this advice by the
28 superintendent administrator does not preclude the institution of
29 such a proceeding at any time.

30 **4. Modification of requirements.** The superintendent
31 administrator may, by rule or order, waive or modify the
32 application of any of the requirements of this section if any
33 provision or amendment, repeal or other alteration of the
34 securities registration provisions of the United States
35 Securities Act of 1933, or the rules promulgated under that Act,
36 render the waiver or modification necessary or appropriate for
37 further coordination of state and federal registration, and the
38 superintendent administrator finds the waiver or modification
39 necessary for the administration of the Act and consistent with
40 the protection of investors.

41 **Sec. 32. 32 MRSA §10404, sub-§2, ¶Q,** as enacted by PL 1985, c.
42 400, §2, is amended to read:

43 Q. Such additional information as the superintendent
44 administrator requires by rule or order.

45 **Sec. 33. 32 MRSA §10404, sub-§§3 and 4,** as enacted by PL 1985,
46 c. 400, §2, are amended to read:

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

3. Effectiveness of registration. A registration statement under this section becomes effective 30 calendar days, or any shorter period as the superintendent administrator, by rule or order, permits, from the date the registration statement or the last amendment other than a price amendment is filed, if:

A. No stop order is in effect and no proceeding is pending under section 10406;

B. The superintendent administrator has not ordered under subsection 4 that effectiveness be delayed; and

C. The registrant has not requested that effectiveness be delayed.

4. Delay of effectiveness. The superintendent administrator may delay effectiveness for a single period of not more than 90 days if the superintendent administrator determines that the registration statement is not complete in all material respects and promptly notifies the registrant of that determination. The superintendent administrator may delay effectiveness for a single period of not more than 30 days if the superintendent administrator finds that the delay is necessary for the administration of the Act and the protection of investors, whether or not the superintendent administrator previously has delayed effectiveness.

Sec. 34. 32 MRSA §10405, sub-§§2, 5 to 11 and 13, as enacted by PL 1985, c. 400, §2, are amended to read:

2. Fees. A person filing a registration statement shall pay a filing fee of \$300. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 10406, the superintendent administrator shall retain the fee.

5. Omission of information. The superintendent administrator may, by rule or order, permit the omission of any item of information or document from any registration statement.

6. Escrow. In the case of a registration under section 10403 or 10404 by an issuer which has no public market for its shares and no significant earnings from continuing operations during the past 5 years, or the shorter period of its existence, the superintendent administrator may, by rule or order, require as a condition of registration that the following securities be deposited in escrow for not more than 2 years:

A. Any security issued within the 3 years immediately preceding the offering or to be issued to a promoter for a consideration substantially less than the offering price; or

1
2 B. Any security issued to a promoter for a consideration
3 other than cash, unless the registrant can demonstrate that
4 the value of the noncash consideration received in exchange
5 for the security is substantially equivalent to the offering
6 price for the security.

7
8 The superintendent administrator may, by rule or order, determine
9 the conditions of any required escrow under this subsection, but
10 the superintendent administrator may not reject a depository
11 solely because of location in another state.

12
13 7. Impounding of proceeds. The superintendent
14 administrator may, by rule or order, require as a condition of
15 registration under section 10403 or 10404 that the proceeds from
16 the sale of the registered security in this State be impounded
17 until the issuer receives a specified amount from the sale of the
18 security either in this State or elsewhere. The superintendent
19 administrator may, by rule or order, determine the conditions of
20 any required impounding under this section, but the
21 superintendent administrator may not reject a depository solely
22 because of location in another state.

23
24 8. Prospectus delivery. When a security is registered
25 under section 10402 or 10403, the prospectus filed under the
26 United States Securities Act of 1933 shall be delivered to each
27 purchaser at the time mandated by the prospectus delivery
28 requirements of the United States Securities Act of 1933. With
29 respect to a security registered under section 10402 or 10403,
30 the superintendent administrator, by rule or order, may require
31 the delivery of other material documents or information to each
32 purchaser concurrent with or prior to the delivery of the
33 prospectus.

34
35 9. Offering document delivery. When a security is
36 registered under section 10404, an offering document containing
37 such information as the superintendent administrator, by rule or
38 order, shall designate shall be delivered to each purchaser
39 before or concurrently with the earliest of:

40 A. The first written offer made to the purchaser by or for
41 the account of the issuer or any other person on whose
42 behalf the offering is being made, or by any underwriter or
43 broker-dealer who is offering part of an unsold allotment or
44 subscription taken by it as a participant in the
45 distribution;

46
47 B. Confirmation of any sale made by or for the account of
48 any person named in paragraph A;

49
50 C. Payment under any sale; or
51

1 D. Delivery under any sale.

3 10. Period of effectiveness. A registration statement shall
5 remain effective for one year from its effective date unless the
7 period of effectiveness is extended by rule or order of the
9 superintendent administrator. All outstanding securities of the
11 same class as a registered security are considered to be
13 registered for the purpose of any nonissuer transaction so long
15 as the registration statement is effective, unless the
17 superintendent administrator provides otherwise by rule or order.
A registration statement may not be withdrawn after its effective
date if any of the securities registered have been sold in this
State, unless the superintendent administrator provides otherwise
by rule or order. No registration statement is effective during
the time a stop order is in effect under section 10406,
subsection 1.

19 11. Reports. So long as a registration statement is
21 effective, the superintendent administrator may, by rule or
23 order, require the person who filed the registration statement to
file reports, not more often than quarterly, to keep reasonably
current the information contained in the registration statement
and to disclose the progress of the offering.

25 13. Increasing number of securities registered by
27 qualification. A registration statement filed under section 10404
29 may be amended after its effective date to increase the
31 securities specified to be offered and sold, provided that the
33 public offering price and underwriters' discounts and commissions
35 are not modified or altered from the respective amounts of which
the superintendent administrator previously had been informed.
The amendment becomes effective when the superintendent
administrator so orders and relates back to the date or dates of
sale of the additional securities being registered. Each person
filing such an amendment shall pay a filing fee of \$300, with
respect to the additional securities to be offered and sold.

37
39 **Sec. 35. 32 MRSA §10406, sub-§§1, 2 and 4,** as enacted by PL
1985, c. 400, §2, are amended to read:

41 1. Stop orders. The superintendent administrator may issue
43 a stop order denying effectiveness to, or suspending or revoking
45 the effectiveness of, any registration statement if the
superintendent administrator finds that the order is in the
public interest and that:

47 A. The registration statement as of its effective date or
49 as of any earlier date in the case of an order denying
effectiveness, or any amendment under section 10405,
51 subsection 12 or 13, as of its effective date, or any report
under section 10405, subsection 11, is incomplete in any
material respect or contains any statement which was, in the

1 light of the circumstances under which it was made, false or
3 misleading with respect to any material fact;

5 B. Any provision of this Act or any rule, order or
7 condition lawfully imposed under this Act has been knowingly
9 violated, in connection with the offering, by:

11 (1) The person filing the registration statement;

13 (2) The issuer, any partner, officer or director of
15 the issuer, any person occupying a similar status or
17 performing similar functions or any person directly or
19 indirectly controlling or controlled by the issuer, but
21 only if the person filing the registration statement is
23 directly or indirectly controlled by or acting for the
25 issuer; or

27 (3) Any underwriter;

29 C. The security registered or sought to be registered is
31 the subject of an administrative stop order or similar order
33 or a permanent or temporary injunction of any court of
35 competent jurisdiction entered under any other federal or
37 state Act applicable to the offering, but:

39 (1) The ~~superintendent~~ administrator may not institute
41 a proceeding against an effective registration
43 statement under this subsection more than one year from
45 the date of the order or injunction relied on; and

47 (2) The ~~superintendent~~ administrator may not enter an
49 order under this paragraph on the basis of an order or
51 injunction entered under any other state Act unless
that order or injunction was based on facts which would
currently constitute a ground for a stop order under
this section;

D. The issuer's enterprise or method of business includes
or would include activities which are illegal where
performed;

E. The offering has worked or tended to work a fraud, as
that term is used in section 10201, upon purchasers or would
so operate;

F. The offering is being made on terms which are unfair,
unjust or inequitable;

G. The offering has been or would be made with unreasonable
amounts of underwriters' and sellers' discounts, commissions
or other compensation or promoters' profits or participation
or unreasonable amounts or kinds of options;

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

H. When a security is sought to be registered under section 10402, it is not eligible for that registration;

I. When a security is sought to be registered under section 10403, there has been a failure to comply with the undertaking required by section 10403, subsection 2, paragraph D; or

J. The applicant or registrant has failed to pay the proper filing fee, but the ~~superintendent~~ administrator may enter only a denial order under this clause and shall vacate any such order when the deficiency has been corrected.

The ~~superintendent~~ administrator may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to ~~him~~ the administrator when the registration statement became effective unless the proceeding is instituted within 30 days of, the day the registration statement became effective.

2. Summary orders. The ~~superintendent~~ administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the ~~superintendent~~ administrator shall promptly notify each person specified in subsection 3 that the order has been entered and of the reasons for the order and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the ~~superintendent~~ administrator, the order will remain in effect until it is modified or vacated by the ~~superintendent~~ administrator. If a hearing is requested or ordered, the ~~superintendent~~ administrator, after notice of and opportunity for hearing to each person specified in subsection 3, may modify or vacate the order or extend it until final determination.

4. Vacating and modifying stop order. The ~~superintendent~~ administrator may vacate or modify a stop order if the ~~superintendent~~ administrator finds that the conditions which prompted entry have changed or that it is otherwise in the public interest to do so.

Sec. 36. 32 MRSA §10501, sub-§1, ¶D, as enacted by PL 1985, c. 400, §2, is amended to read:

D. Any other persons the ~~superintendent~~ administrator may exclude, by rule or order, consistent with the public interest and protection of investors.

Sec. 37. 32 MRSA §10501, sub-§1-A is enacted to read:

1 1-A. Administrator. "Administrator" means the Securities
2 Administrator.

3 **Sec. 38. 32 MRSA §10501, sub-§3,** as enacted by PL 1985, c.
4 400, §2, is amended to read:

5 **3. Filing.** "Filing" means the receipt of any document by
6 the superintendent administrator or designee of the
7 superintendent administrator for filing.

8 **Sec. 39. 32 MRSA §10501, sub-§8, ¶G,** as enacted by PL 1985, c.
9 400, §2, is amended to read:

10 G. Any other persons not within the intent of this
11 subsection as the superintendent administrator may, by rule
12 or order, designate.

13 **Sec. 40. 32 MRSA §10501, sub-§20,** as enacted by PL 1985, c.
14 400, §2, is repealed.

15 **Sec. 41. 32 MRSA §10502, sub-§1, ¶H,** as enacted by PL 1985, c.
16 400, §2, is amended to read:

17 H. Any security:

18 (1) Listed for more than 30 days, prior to sale in
19 this State, on the New York Stock Exchange, the
20 American Stock Exchange, the Midwest Stock Exchange or
21 upon a finding by the superintendent administrator that
22 the Securities and Exchange Commission has approved the
23 National Association of Securities Dealers corporate
24 governance provisions, the National Association of
25 Securities Dealers Automated Quotation - National
26 Marketing System; or

27 (2) Listed or approved for listing upon notice of
28 issuance on the New York Stock Exchange, the American
29 Stock Exchange, the Midwest Stock Exchange, a national
30 market system designated by rule of the superintendent
31 administrator or, upon a finding by the superintendent
32 administrator that the Securities and Exchange
33 Commission has approved the National Association of
34 Securities Dealers corporate governance provisions, the
35 National Association of Securities Dealers Automated
36 Quotation - National Marketing System; any other
37 security of the same issuer which is of senior or
38 substantially equal rank; any security called for by
39 subscription rights or warrants so listed or approved
40 on such an exchange; or any warrant or right to
41 purchase or subscribe to any of the foregoing, provided
42 that there has been filed by the issuer, any dealer or
43 other offeror of the security with the superintendent

1 administrator a notice containing the name and address
3 of the person intending to offer the security and
 identification of the security, together with a notice
5 filing fee in the amount of \$300;

7 **Sec. 42. 32 MRSA §10502, sub-§2, ¶¶B, C, D, L, M, N, Q and R,** as
 enacted by PL 1985, c. 400, §2, are amended to read:

9 B. Any nonissuer transaction in an outstanding security if
 the issuer of that security:

11 (1) Has a class of securities registered pursuant to
13 the United States Securities Exchange Act of 1934,
 Section 12(b) or 12(g) and has been subject to the
15 requirements of the United States Securities Exchange
 Act of 1934, Section 12 or 15(d), for a period of not
17 less than 90 days prior to the transaction; or

19 (2) Has filed and maintained with the ~~superintendent~~
21 administrator for a period of not less than 90 days
 prior to the transaction information comparable to the
23 information which that issuer would be required to file
 under the United States Securities Exchange Act,
25 Section 12(b) or 12(g), were that issuer to have a
 class of its securities registered under the United
27 States Securities Exchange Act, Section 12;

29 C. Any nonissuer transaction in an outstanding security if
 Moody's, Standard and Poor's, Fitch's or any other
31 nationally recognized securities manual which the
 ~~superintendent~~ administrator may, by rule or order,
33 designate contains, and has contained for a period of not
 less than 90 days prior to the transaction, a balance sheet
35 of the issuer as of a date within 18 months and a profit and
 loss statement for either the fiscal year preceding that
37 date or the most recent year of operations;

39 D. Any nonissuer transaction effected by or through a
 licensed broker-dealer pursuant to an unsolicited order or
41 offer to buy; but the ~~superintendent~~ administrator, by rule,
 may require that the broker-dealer must make a good faith
43 effort to have the customer acknowledge upon a specified
 form that the sale was unsolicited and that a signed copy of
45 each such form be preserved by that broker-dealer for a
 specified period;

47 L. Any transaction pursuant to an offer to existing
 security holders of the issuer, including persons who at the
49 time of the transaction are holders of convertible
 securities, nontransferable warrants or transferable
51 warrants exercisable within not more than 90 days of their
 issuance, if no commission or other remuneration, other than

1 a standby commission, is paid or given directly or
2 indirectly for soliciting any security holder in this State
3 and the issuer first files a notice together with a filing
4 fee of \$300 specifying the terms of the offer and the
5 superintendent administrator does not by order disallow the
6 exemption within the next 5 full business days;

7
8 M. A transaction involving an offer, but not a sale, of:

9
10 (1) A security where the United States Securities Act
11 of 1933 or a rule of the United States Securities and
12 Exchange Commission allows preeffective offers to be
13 made if:

14 (a) A registration or offering statement or
15 similar document, as required under the United
16 States Securities Act of 1933 or rules of the
17 United States Securities and Exchange Commission,
18 has been filed, but is not effective;

19 (b) A registration statement, if required, has
20 been filed under this Act, but is not effective;
21 and

22 (c) No stop, refusal or suspension order has been
23 entered by the superintendent administrator or the
24 United States Securities and Exchange Commission
25 and no public proceeding or examination that may
26 culminate in that kind of order is pending;

27
28 (2) A transaction involving an offer, but not a sale,
29 of a security not within subparagraph (1), if:

30 (a) A registration statement has been filed under
31 this Act for registration under section 10404, but
32 is not effective;

33 (b) No stop, refusal or suspension order or order
34 withdrawing the exemption relied upon has been
35 entered by the United States Securities and
36 Exchange Commission and no public proceeding or
37 examination that may culminate in that kind of
38 order is pending;

39 (c) No stop, refusal or delay order has been
40 entered by the superintendent administrator and no
41 public proceeding or examination that may
42 culminate in that kind of order is pending; and

43 (d) The security is entitled to an exemption from
44 the registration requirement of the United States
45 Securities Act of 1933;

1
3 N. Any transaction involving the distribution of the
5 securities of an issuer to the security holders of another
7 person in connection with a merger, consolidation, exchange
of securities, sale of assets or other reorganization to
which the issuer, or its parent or subsidiary and the other
person, or its parent or subsidiary, are parties, if:

9 (1) The securities to be distributed are registered
11 under the United States Securities Act of 1933 prior to
the consummation of the transaction; or

13 (2) If the transaction is exempt from registration
15 under the United State Securities Act of 1933, written
17 notice of the transaction, together with a copy of all
19 materials, if any, by which approval of the transaction
21 will be solicited is given to the superintendent
23 administrator at least 10 days prior to the
consummation of the transaction and the superintendent
administrator does not, by order, disallow the
exemption within the next 10 days on the ground that
the disallowance is necessary or appropriate for the
protection of investors;

25 Q. Any offer or sale of securities of a corporation
27 organized under the laws of this State, if the number of
29 holders of securities of the entity, exclusive of persons
31 specified in section 10501, subsection 4 will in consequence
33 of the sale exceed 10, but will not in consequence of the
35 sale exceed 25 in number and if the securities sold in
37 reliance on this subsection have not been offered to the
39 public by general advertisement or general solicitation. Any
41 person who relies on this exemption shall file with the
43 superintendent administrator a notification for exemption
45 which shall be in such form as may be prescribed by the
47 superintendent administrator and which shall require only
49 the following information: The name, address and telephone
51 number of the issuer; the state and date of incorporation of
the issuer; the name, address and telephone number of
persons who may respond to inquiries about the issuer; the
location at which the books and records of the issuer shall
be kept and whether they will be available for inspection by
shareholders; a description of all classes of securities of
the issuer, including newly authorized classes of
securities, providing the number of authorized units of each
class, par value per unit and the number of units of each
class as are issued and outstanding; a description of the
class of securities as shall be offered for sale, including
the number of units authorized, par value per unit, the
number of units currently outstanding, the number of units
being offered for sale, the number of units to be
outstanding and the price at which each unit is offered for

1 sale; a description of the rights of holders of the
2 securities offered pursuant to this exemption, including
3 voting rights and if cumulative or noncumulative liquidation
4 rights, preemptive rights and any other rights or
5 limitations applicable to the securities; the date the
6 annual meeting of the shareholders will be held, the
7 location and time of the meeting, a description of how the
8 shareholders will be notified and if an annual financial
9 statement and report of activity will be available to
10 shareholders; a brief description of how the proceeds of the
11 offering will be used and if proceeds shall be returned to
12 investors if minimum amounts are not raised by a specific
13 date; a brief description of the issuer's plan of business
14 and whether the business is currently operational; and a
15 list of the significant risks assumed by the investor,
16 including management experience, competitive and economic
17 factors, net worth position of the issuer and improbable or
18 limited opportunity for release of the securities. A copy of
19 the notification of exemption shall be made available to
20 each offeree of securities sold in reliance on this
21 exemption and shall contain such legends as the
22 superintendent administrator shall prescribe, notifying the
23 offeree that the securities have not been registered with
24 the superintendent administrator, that they may be deemed
25 restricted securities and that the issuer is under an
26 obligation to make a reasonable finding that the securities
27 are a suitable investment for the offeree. The
28 superintendent administrator may promulgate such rules as
29 are considered necessary to further define or implement this
30 subsection consistent with the intent of this subsection; and
31

32 R. Any transaction by an issuer not involving any public
33 offering within the meaning of the United States Securities
34 Act of 1933, as amended, Section 4(2) and the rules
35 promulgated under that Act, including, but not limited to,
36 any transaction exempt from registration with the United
37 States Securities and Exchange Commission under the United
38 States Securities and Exchange Commission, Rule 506, or any
39 successor rule adopted under the United States Securities
40 Act of 1933, as amended, and any transaction constituting a
41 nonpublic offering under rules adopted by the superintendent
42 administrator if at least 10 days prior to the sale of a
43 security in reliance on the exemption from registration
44 provided in this subsection, the issuer shall file with the
45 superintendent administrator a notification of exemption,
46 upon such form as the superintendent administrator may
47 prescribe and pay a filing fee of \$300.

48 **Sec. 43. 32 MRSA §10502, sub-§§3 and 4,** as amended by PL 1985,
49 c. 617, §8, are further amended to read:
50

51

1 3. **Additional exemptions.** The superintendent administrator
2 is authorized by rule to exempt securities or classes of
3 securities or certain transactions, including promulgating a
4 limited offering exemption, which shall further the objectives to
5 compatibility with the exemptions from securities registration
6 authorized by the United States Securities Act of 1933, Section
7 19(c)(2)(C) and uniformity among the states. In any rule
8 establishing an exemption for which a notice must be filed, the
9 superintendent administrator may provide for a filing fee of
10 \$300.

11
12 To keep any rules adopted by the superintendent administrator in
13 harmony with the rules promulgated by the United States
14 Securities and Exchange Commission from time to time pursuant to
15 the United States Securities Act of 1933 and with the rules of
16 administrators in other states, the purposes, policies and
17 provisions of this Act, in adopting, amending and repealing any
18 rules promulgated under this subsection, take into consideration
19 the rules so prescribed by the United States Securities and
20 Exchange Commission and the rules of administrators in other
21 jurisdictions which enact the Uniform Securities Act or the
22 Revised Uniform Securities Act.

23
24 4. **Denial and revocation of exemptions.** Notwithstanding
25 the Maine Administrative Procedure Act, Title 5, chapter 375, the
26 superintendent administrator may by order deny or revoke any
27 exemption specified in subsection 1, paragraph J, L or M, or in
28 subsection 2 or 3, with respect to a specific security or
29 transaction if the superintendent administrator reasonably
30 believes that the action is necessary or appropriate for the
31 protection of investors. Following entry of any such order, the
32 procedures set forth in section 10708 shall be followed. No order
33 under this subsection may operate retroactively.

34 **Sec. 44. 32 MRSA §10502, sub-§6,** as enacted by PL 1985, c.
35 617, §9, is amended to read:

36
37 6. **Waiting period.** For purposes of exemption notice filed
38 under subsection 2, paragraph L, N or R, or subsection 3, the
39 superintendent administrator may, when he the administrator
40 determines that good cause exists, provide in writing for a
41 shorter waiting period than that which is specified in the
42 paragraph.

43
44 **Sec. 45. 32 MRSA §10503,** as amended by PL 1985, c. 617, §10,
45 is further amended to read:

46
47 **§10503. Filing of sales and advertising literature**

48
49 The superintendent administrator, by rule or order, may
50 require the filing of any prospectus, pamphlet, circular, form
51 letter, advertisement or other sales literature or advertising

1 communication addressed or intended for distribution to
2 prospective investors, including clients or prospective clients
3 of an investment adviser, unless the security or transaction
4 qualifies for an exemption under section 10502 for which the
5 filing of a notice with the superintendent administrator is not
6 required.

7
8 **Sec. 46. 32 MRSA §10601**, as enacted by PL 1985, c. 400, §2,
9 is amended to read:

11 **§10601. Investigations**

13 **1. Investigations.** The superintendent administrator may
14 make any public or private investigation, within or without this
15 State, as the superintendent administrator finds necessary to:

17 A. Determine whether any person has violated, or is about
18 to violate, this Act or any rule or order of the
19 superintendent administrator; or

21 B. Aid in enforcement of this Act.

23 **2. Publication.** The superintendent administrator may
24 publish information concerning any violation of this Act or any
25 rule or final order of the superintendent administrator or
26 concerning types of securities or acts or practices in the sale
27 of securities which tend to work a fraud or deceit.

29 **3. Oaths; subpoenas; production of matters.** For purposes
30 of any investigation or proceeding under this Act, the
31 superintendent administrator or any officer or employee
32 designated by rule or order, may administer oaths and
33 affirmations, take evidence, issue subpoenas to require the
34 attendance of witnesses, compel testimony and require the
35 production of any matter, including, but not limited to, books,
36 papers, correspondence, memoranda, agreements or other documents
37 or records, which is relevant to the inquiry.

39 The superintendent administrator may require or permit any person
40 to file a statement in writing, under oath or otherwise as the
41 superintendent administrator may determine, as to the facts and
42 circumstances concerning the matter to be investigated.

43
44 Nothing in this subsection may prevent an individual from
45 asserting the privilege against self-incrimination.

47 **4. Failure to comply with subpoena.** If a person does not
48 give testimony or produce the documents required by the
49 superintendent administrator or a designated employee pursuant to
50 an administrative subpoena, the superintendent administrator or
51 designated employee may apply for a court order compelling

1 compliance with the subpoena or the giving of the required
testimony.

3
4 The request for order of compliance may be addressed to either
5 the Superior Court located in Kennebec County or the Superior
6 Court where service may be obtained on the person refusing to
7 testify or produce, if the person is within this State; or the
8 appropriate court of the state having jurisdiction over the
9 person refusing to testify or produce, if the person is outside
this State.

11 **Sec. 47. 32 MRSA §10602, sub-§1,** as enacted by PL 1985, c.
13 400, §2, is amended to read:

15 **1. Violation of Act.** If the superintendent administrator
16 reasonably believes, whether or not based upon an investigation
17 conducted under section 10601, that any person has engaged, is
18 engaging or is about to engage in any act or practice
19 constituting a violation of any provision of this Act or any rule
20 or order under this Act, the superintendent administrator may, in
21 addition to any specific powers granted under subchapter III or
IV:

23
24 A. Issue a cease and desist order without necessity for
25 prior hearing if the superintendent administrator determines
26 that the public interest or the protection of investors so
27 requires, subject to the right of that person to obtain a
subsequent hearing pursuant to section 10708;

29
30 B. Censure that person if that person is a licensed
31 broker-dealer, sales representative or investment adviser,
32 but in each case only after compliance with section 10708,
33 subsection 6;

34
35 C. Bar that person from association with any licensed
36 broker-dealer or investment adviser in this State, but in
37 each case only after compliance with section 10708,
38 subsection 6; or

39
40 D. ~~Initiate any of the actions specified in subsection 2,~~
41 Request that the Attorney General bring an action for any
42 relief authorized by section 10603 or bring any other civil
43 or criminal action which the Attorney General is authorized
44 to bring in the courts of this State, another state or the
45 United States.

46
47 ~~The superintendent may elect to impose one or more of the~~
48 ~~sanctions specified in this subsection for a violation of this~~
49 ~~Act or any rule or order under this Act, except that, if the~~
50 ~~superintendent revokes the license of a broker-dealer, sales~~
51 ~~representative or investment adviser or bars a person from~~
~~association with a licensed broker-dealer, sales representative~~

1 ~~or investment adviser, the imposition of that sanction shall~~
2 ~~preclude imposition of any other sanction specified in this~~
3 ~~subsection.~~

5 **Sec. 48. 32 MRSA §10602, sub-§2,** as enacted by PL 1985, c.
6 400, §2, is repealed.

7
8 **Sec. 49. 32 MRSA §10603, sub-§§1 to 3,** as enacted by PL 1985,
9 c. 400, §2, are amended to read:

11 1. **Remedies for violation of Act.** Upon showing of
12 violation of this Act or a rule or order of the ~~superintendent~~
13 administrator, the court, in addition to traditional legal and
14 equitable remedies, including, but not limited to, temporary
15 restraining orders and permanent or temporary prohibitory or
16 mandatory injunctions, may grant one or more of the following
17 special remedies:

19 A. Imposition of a civil penalty in an amount which may not
20 exceed \$10,000 for any single violation;

21 B. Disgorgement;

22 C. Declaratory judgment;

23 D. Restitution to investors wishing restitution; and

24 E. Appointment of a receiver or conservator for the
25 defendant or the defendant's assets.

26
27 2. **Prohibiting violation of Act.** Remedies which the court
28 may grant when the defendant is shown only about to violate this
29 Act or a rule or order of the ~~superintendent~~ administrator shall
30 be limited to:

31 A. A temporary restraining order; or

32 B. A temporary or permanent injunction.

33
34 3. **No bond required.** The court shall not require the
35 ~~superintendent~~ administrator to post a bond in any official
36 action under this Act.

37
38 **Sec. 50. 32 MRSA §10604, sub-§1, ¶B,** as enacted by PL 1985, c.
39 400, §2, is amended to read:

40 B. Any rule or order of the ~~superintendent~~ administrator
41 under this Act; or

42
43 **Sec. 51. 32 MRSA §10604, sub-§§2 and 3,** as enacted by PL 1985,
44 c. 400, §2, are amended to read:

1 2. Referral to Attorney General. The superintendent
2 administrator may refer such evidence as is available concerning
3 violations of this Act or any rule or order of the superintendent
4 administrator to the Attorney General, who may, with or without
5 such a reference from the superintendent administrator, institute
6 the appropriate criminal proceedings under this Act.

7
8 3. Assistance to Attorney General. The Attorney General
9 may request assistance from the superintendent administrator or
10 employees of the superintendent administrator.

11 **Sec. 52. 32 MRSA §10605, sub-§1**, as enacted by PL 1985, c.
12 400, §2, is amended to read:

13
14 1. Offer or sale of security. Any person who offers or
15 sells a security in violation of section 10201, 10205, 10301,
16 10401 or 10405, subsection 8, or any rule of the superintendent
17 administrator relating to those sections or any condition imposed
18 under section 10405, subsection 7, is liable to the person
19 purchasing the security from that person. The person purchasing
20 the security may sue to recover the consideration paid for the
21 security, together with interest at the legal rate from the date
22 of payment, costs and reasonable attorneys' fees less the amount
23 of any income received on the security, upon the tender of the
24 security, or for damages plus costs and reasonable attorneys'
25 fees if the person no longer owns the security. Damages are the
26 amount that would be recoverable upon a tender less the value of
27 the security when the purchaser disposed of it and interest at
28 the legal rate from the date of disposition. Tender shall require
29 only notice of willingness to exchange the security for the
30 amount specified.

31
32 A person who offers or sells a security in violation of section
33 10201, subsection 2, is not liable under this subsection if the
34 purchaser knew of the untrue statement of a material fact or
35 omission of a statement of a material fact; or the person
36 sustains the burden of proof to establish that the person did not
37 know and in the exercise of reasonable care could not have known
38 of the untrue statement or omission.

39
40 **Sec. 53. 32 MRSA §10607, sub-§3**, as enacted by PL 1985, c.
41 400, §2, is amended to read:

42
43
44 3. Form of offer. The superintendent administrator, by
45 rule, may prescribe the form in which the information specified
46 in subsections 1 and 2 shall be contained in any offer made under
47 subsection 1 or 2.

48
49 **Sec. 54. 32 MRSA §10608, sub-§§1 and 2**, as enacted by PL 1985,
50 c. 200, §2, are amended to read:

1 1. Contract in violation of Act. No person subject to this
3 Act who has made or engaged in the performance of any contract in
5 violation of this Act or any rule or order of the superintendent
7 administrator, or who has acquired any purported right under any
contract with knowledge of the facts by reasons of which its
making or performance was in violation, may base any suit on the
contract.

9 2. Waiver of Act. Any condition, stipulation or provision
11 in an agreement or contract entered into or effective in this
13 State, but excluding any choice of law provision or provision to
15 arbitrate under a rule of a self-regulatory organization approved
17 by the United States Securities and Exchange Commission in an
agreement or contract between persons all of whom are engaged in
the securities business, binding any person acquiring any
security to waive compliance with any provision of this Act or
any rule or order of the superintendent administrator is void.

19 **Sec. 55. 32 MRSA §10701, sub-§§1 to 6, as enacted by PL 1985,**
21 **c. 400, §2, are amended to read:**

23 1. Administrator. This Act shall be administered by the
~~Superintendent of Banking~~ Securities Administrator.

25 2. Use of information. Neither the superintendent
27 administrator nor any employee of the superintendent
29 administrator may use any information which is filed with or
31 obtained by the superintendent administrator which is not public
33 information for personal gain or benefit, nor may the
35 superintendent administrator nor any employee of the
superintendent administrator conduct any securities dealings
based upon any such information, even though public, if there has
not been a sufficient period of time for the securities markets
to assimilate that information.

37 3. Public information. Except as provided in subsection 4,
39 all information filed with or obtained by the superintendent
administrator is public information and is available for public
examination in accordance with Title 1, chapter 13, subchapter I.

41 4. Nonpublic information. Information filed with or
43 obtained by the superintendent administrator is nonpublic to the
45 extent it would be considered as nonpublic matters and
47 information by the Securities and Exchange Commission as provided
by 17 Code of Federal Regulations 200.80 et seq. The
confidentiality provisions of the Maine Banking Code, Title 9-B,
section 226, apply to nonpublic matters and information.

49 5. Disclosure for enforcement purposes. The superintendent
51 administrator may disclose any information obtained in connection
with an investigation pursuant to section 10601 that would
otherwise be nonpublic information to the securities agencies and

1 administrators specified in section 10702, subsection 1, but only
2 if disclosure is required for the purpose of a civil,
3 administrative or criminal enforcement investigation and the
4 requesting agency certifies that under applicable law reasonable
5 protections exist to preserve the integrity, confidentiality and
6 security of the information, comparable to the protections
7 existing under the laws of this State.

9 6. **Privilege.** No provision of this Act either creates or
10 derogates any privilege which exists at common law, by statute or
11 otherwise when documentary or other evidence is sought under
12 subpoena directed to the superintendent administrator or any
13 employee of the superintendent administrator.

15 **Sec. 56. 32 MRSA §10701, sub-§8,** as enacted by PL 1985, c.
16 617, §11, is amended to read:

17
18 8. **Waiver of fee.** The superintendent administrator may, by
19 order, waive the filing fee required to register a security or to
20 secure an exemption from registration, upon a written finding
21 that the fee would be unreasonably high in light of the maximum
22 potential proceeds from the sale of the security in the State or
23 that the imposition of the fee would otherwise be unreasonable.

25 **Sec. 57. 32 MRSA §10702, sub-§1,** as enacted by PL 1985, c.
26 400, §2, is amended to read:

27
28 1. **Cooperation.** The superintendent administrator and the
29 employees of the superintendent administrator may cooperate,
30 including bearing the expense of the cooperation, with the
31 securities agencies or securities administrator of another state
32 or Canadian province or territory or another country, the United
33 States Securities and Exchange Commission, the United States
34 Commodity Futures Trading Commission, the United States
35 Securities Investor Protection Corporation, any self-regulatory
36 organization established under the United States Securities
37 Exchange Act of 1934 or the United States Commodity Exchange Act,
38 any national or international organization of securities
39 officials or agencies and any governmental law enforcement agency.

41 **Sec. 58. 32 MRSA §10703,** as enacted by PL 1985, c. 400, §2,
42 is amended to read:

43
44 **§10703. General authority to adopt rules, forms and
45 orders**

47 1. **Authority.** In addition to specific authority granted
48 elsewhere in this Act, the superintendent administrator may make,
49 amend and rescind rules, forms and orders as are necessary to
50 carry out this Act. These rules or forms may include, but need
51 not be limited to, the following:

1 A. Rules or forms governing registration statements,
3 applications and reports; and

5 B. Rules defining any terms, whether or not used in this
7 Act, insofar as the definitions are not inconsistent with
9 this Act. For the purpose of rules or forms, the
11 superintendent administrator may classify securities,
persons and matters within the superintendent's
administrator's jurisdiction and prescribe different
requirements for different classes.

13 2. Adoption of rules, forms and orders. Unless
15 specifically provided in this Act, no rule, form or order may be
adopted, amended or rescinded unless the superintendent
administrator finds that the action is:

17 A. Necessary or appropriate in the public interest or for
19 the protection of investors; and

21 B. Consistent with the purposes fairly intended by the
policy and this Act.

23 3. Financial statements. The superintendent administrator
25 may, by rule or order, prescribe:

27 A. The form and content of financial statements required
under this Act;

29 B. The circumstances under which consolidated financial
31 statements shall be filed; and

33 C. Whether any required financial statements shall be
35 certified by independent or certified public accountants.
Unless provided otherwise by rule or order, all financial
statements shall be prepared in accordance with generally
accepted accounting practices.

37 4. Publication. All rules and forms of the superintendent
39 administrator shall be published.

41 5. Conformity with rule, form or order. No provision of
43 this Act imposing any liability applies to any act done or
45 omitted in good faith in conformity with a rule, order or form
47 adopted by the superintendent administrator, notwithstanding that
the rule, order or form may later be amended or rescinded or be
determined by judicial or other authority to be invalid for any
reason.

49 Sec. 59. 32 MRSA §10704, as enacted by PL 1985, c. 400, §2,
51 is amended to read:

§10704. Consent to service of process

1
3 1. Filing requirement. Every applicant for licensing under
5 subchapter III and every issuer which registers one or more
7 classes of its securities under subchapter IV or which proposes
9 to offer a security in this State through a sales representative
11 shall file with the superintendent administrator, in a form
13 prescribed by rule, an irrevocable consent appointing the
15 superintendent administrator to be that person's attorney to
receive service of any lawful process in any noncriminal
proceeding against the person, a successor or personal
representative, which arises under this Act or any rule or order
of the superintendent administrator after the consent has been
filed, with the same force and validity as if served personally
on the person filing the consent.

17 2. No additional filing required. A person who has filed
19 the consent required by subsection 1 in connection with a
previous registration need not file an additional consent.

21 3. Prohibited acts deemed consent. When a person,
23 including a nonresident of this State, engages in conduct
25 prohibited or made actionable by the Act or any rule or order of
27 the superintendent administrator and has not filed a consent to
29 service of process under subsection 1, the engaging in the
31 conduct shall constitute the appointment of the superintendent
administrator as the person's attorney to receive service of any
lawful process in a noncriminal proceeding against the person, a
successor or personal representative which grows out of that
conduct and which is brought under the Act or any rule or order
of the superintendent administrator with the same force and
validity as if served personally.

33 4. Service. Service under subsections 1 and 3 may be made
35 by leaving a copy of the process in the office of the
superintendent administrator, but it is not effective unless:

37 A. The plaintiff, who may be the superintendent
39 administrator, immediately sends notice of the service and a
41 copy of the process by registered or certified mail, return
receipt requested, to the defendant or respondent at the
last address known to the superintendent administrator; and

43 B. The plaintiff files an affidavit of compliance with this
45 subsection in the proceeding on or before the return day of
47 the process, if any, or within such further time as the
court, or the superintendent administrator in a proceeding
before the superintendent administrator, allows.

49 5. Proceeding before administrator. Service as provided in
51 subsection 4 may be used in any proceeding before the
superintendent administrator or by the superintendent

1 administrator in any proceeding in which the superintendent
2 administrator is the moving party.

3
4 6. **Continuances.** When the process is served under
5 subsection 4, the court or the superintendent administrator shall
6 order continuances as may be necessary to afford the defendant or
7 respondent reasonable opportunity to defend.

8 **Sec. 60. 32 MRSA §10705**, as enacted by PL 1985, c. 400, §2,
9 is amended to read:

10 **§10705. Advisory rulings; declaratory rulings**

11
12 1. **Advisory rulings.** The superintendent administrator may
13 honor requests from interested persons for advisory rulings as to
14 the application of this Act to any transaction.

15
16 2. **Declaratory rulings.** The superintendent administrator,
17 in his the administrator's discretion upon application by an
18 interested party, may conduct a hearing and issue a declaratory
19 ruling under the Maine Administrative Procedure Act, Title 5,
20 section 9001, subsection 3, as to the applicability of this Act,
21 any provision of this Act or any rule or order of the
22 superintendent administrator to any person or transaction or as
23 to the meaning of any term used in this Act or any rule or order
24 of the superintendent administrator.

25
26 **Sec. 61. 32 MRSA §10706, sub-§§1, 2 and 4**, as enacted by PL
27 1985, c. 400, §2, are amended to read:

28
29 1. **Register.** The superintendent administrator shall keep a
30 register of the following items:

31
32 A. All applications for licensing, registration and
33 exemption;

34
35 B. All registration and exemption filings which have become
36 effective under this Act;

37
38 C. All denial, suspension or revocation orders which have
39 been entered under this Act;

40
41 D. All disciplinary and enforcement orders issued and
42 reports of investigation under this Act; and

43
44 E. All advisory rulings and declaratory rulings rendered.

45
46 2. **Files.** The superintendent administrator shall retain in
47 his the files the following:
48
49

1 A. All registration statements currently effective or which
3 have been effective, denied or revoked within the last 6
years;

5 B. All investigatory files under subchapters III and VI
7 currently open or which have been closed within the last 6
years, along with any disciplinary or file closure order
9 pertaining to the file;

11 C. The transcript or record of all administrative hearings
held during the past 6 years; and

13 D. Any administrative orders entered under the Act.

15 4. **Photocopies.** The superintendent administrator shall
17 furnish to any person photocopies or other copies of any entry in
the registers required to be maintained by this section. Upon
19 request, the superintendent administrator shall certify under the
seal of office any copy as being a true and correct copy of the
21 records maintained by the office. The superintendent
administrator may make reasonable charges for the furnishing or
23 certifying of copies as established by rule. In any proceeding or
prosecution under this Act, any copy so certified is prima facie
evidence of the contents of the entry or document certified.

25 **Sec. 62. 32 MRSA §10708, sub-§1,** as enacted by PL 1985, c.
27 400, §2, is amended to read:

29 1. **Notice of intent, summary order.** The superintendent
administrator shall commence an administrative proceeding under
31 this Act by entering either a notice of intent to do an act
authorized by this Act or a summary order. The notice of intent
33 may be entered without notice, without opportunity for hearing
and need not be supported by findings of fact or conclusions of
35 law, but must be in writing. A summary order is subject to the
requirements of section 10602, must be supported by allegations
37 and must be in writing.

39 **Sec. 63. 32 MRSA §10708, sub-§2,** as amended by PL 1985, c.
41 617, §12, is further amended to read:

43 2. **Notification of parties.** Upon entry of a notice of
intent or summary order, the superintendent administrator shall
45 promptly notify in writing all interested parties that the notice
or summary order has been entered and the reasons for that notice
47 or order. If the proceeding is pursuant to a notice of intent,
the superintendent administrator shall notify all interested
49 parties of the date, time and place set for the hearing in the
notice, or if no hearing has been scheduled, the superintendent
51 administrator shall notify all interested parties that they have
30 calendar days from the entry of the notice of intent to file a
written request with the superintendent administrator for a

1 hearing. If the proceeding is pursuant to a summary order, the
3 superintendent administrator shall notify all interested parties
5 that they have 30 calendar days from the entry of the order to
7 file a written request for a hearing on the matter with the
superintendent administrator and that the hearing will be
scheduled to commence within 15 calendar days after the receipt
of the written request.

9 Notwithstanding anything in this subsection, the superintendent
11 administrator may give notice of the entry of the notice of
intent or summary order to such parties as he may determine to be
13 necessary or appropriate.

15 **Sec. 64. 32 MRSA §10708, sub-§§3 to 5,** as enacted by PL 1985,
c. 400, §2, are amended to read:

17 3. **Hearing on summary order.** If the proceeding is pursuant
to a summary order, the superintendent administrator, whether or
19 not a written request for hearing is received from any interested
party, may set the matter down for hearing on the
21 superintendent's administrator's own motion.

23 4. **Final order.** A summary order issued against any person
becomes a final order:

25 A. Thirty days after the superintendent administrator mails
27 notice to the interested parties of the right to request a
hearing if they fail to request a hearing; or

29 B. On the date of the hearing if the person requesting the
31 hearing fails to appear.

33 5. **Orders pending hearings.** If a hearing is requested or
ordered, the superintendent administrator, after notice of and
35 opportunity for hearing to all interested persons, may modify or
vacate the order or extend it until final determination.

37 **Sec. 65. 32 MRSA §10708, sub-§§7 and 8** are enacted to read:

39 7. Appointment of presiding officer. For purposes of any
41 hearing conducted pursuant to this section, the administrator may
43 appoint a qualified person to preside at the hearing and to make
45 proposed findings of fact and conclusions of law. The
responsibility for the entry of the final findings of fact and
conclusions of law and for the issuance of any final order shall
remain with the administrator.

47 8. Superintendent in place of administrator. In any case
49 in which the administrator is unable to conduct a hearing and
issue a final order under this section, the Superintendent of
51 Banking shall serve in place of the administrator and for that
purpose shall have all of the powers of the administrator.

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

Sec. 66. 32 MRSA §10709, as enacted by PL 1985, c. 400, §2, is amended to read:

§10709. Judicial review of orders

Any person aggrieved by a final order of the superintendent administrator may obtain judicial review of the order in the Kennebec Superior Court by filing a petition in accordance with Title 5, section 11001 and the Maine Rules of Civil Procedure, Rule 80C.

Sec. 67. 32 MRSA §10711 is enacted to read:

§10711. Acts of Superintendent of Banking

All rules and orders issued by, and all other actions taken by, the Superintendent of Banking at a time when authority for administering the Revised Maine Securities Act or any predecessor act was vested in the Superintendent of Banking shall remain in effect for as long as they would have remained in effect if that authority had not been transferred to the Securities Administrator.

Sec. 68. 32 MRSA §11201, sub-§1-A is enacted to read:

1-A. Administrator. "Administrator" means the Securities Administrator.

Sec. 69. 32 MRSA §11201, sub§§2, 4 and 6, as enacted by PL 1985, c. 643, are amended to read:

2. Commodity. "Commodity" means, except as otherwise specified by the superintendent administrator by rule or order, any agricultural, grain or livestock products or by-products, any metals or minerals, including a precious metal set forth in subsection 12, any gem or gemstone, whether characterized as precious, semiprecious or otherwise, any fuel, whether liquid, gaseous or otherwise, any foreign currency and all other goods, articles, products or items of any kind provided that the term commodity shall not include:

- A. A numismatic coin whose fair market value is at least 15% higher than the value of the metal it contains;
- B. Real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property; or
- C. Any work of art offered or sold by art dealers at public auction or offered or sold through a private sale by the owner.

1
3 4. Commodity Exchange Act. "Commodity Exchange Act" means
5 the Act of Congress known as the "Commodity Exchange Act," as
7 amended to the effective date of this chapter, codified at the
9 United States Code, Title 7, Section 1, et seq., and all
11 subsequent amendments, additions or other revisions to that Act,
13 unless the ~~superintendent~~ administrator, within 10 days following
15 the effective date of the amendment, addition or revision,
17 disallows its application to this chapter or to any provision of
19 this chapter by rule, regulation or order.

21 6. Commodity Futures Trading Commission Rule. "Commodity
23 Futures Trading Commission Rule" means any rule or order of the
25 Commodity Futures Trading Commission in effect on the effective
27 date of this chapter, and all subsequent amendments, additions or
29 other revisions to any rule or order, unless the ~~superintendent~~
31 administrator, within 10 days following the effective date of any
33 such amendment, addition or revision, disallows the application
35 of any such amendment, addition or revision to this chapter or to
37 any provision by rule or order.

39 **Sec. 70. 32 MRSA §11201, sub-§12, ¶F**, as enacted by PL 1985, c.
41 643, is amended to read:

43 F. Such other items as the ~~superintendent~~ administrator may
45 specify by rule or order.

47 **Sec. 71. 32 MRSA §11201, sub-§14**, as enacted by PL 1985, c.
49 643, is repealed.

51 **Sec. 72. 32 MRSA §11204, sub-§1, ¶B**, as enacted by PL 1985, c.
53 643, is amended to read:

55 B. A commodity contract for the purchase of one or more
57 precious metals which requires, and under which the
59 purchaser receives, within 7 calendar days from the payment
61 in good funds of any portion of the purchase price, physical
63 delivery of the quantity of the precious metals purchased by
65 such payment, provided that, for purposes of this paragraph,
67 physical delivery shall be deemed to have occurred if,
69 within that 7-day period, the quantity of precious metals
71 purchased by the payment is delivered, whether in
73 specifically segregated or fungible bulk form, into the
75 possession of a depository, other than the seller, which is
77 either:

79 (1) A financial institution;

81 (2) A depository, the warehouse receipts of which are
83 recognized for delivery purposes for any commodity on a
85 contract market designated by the Commodity Futures
87 Trading Commission;

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

(3) A storage facility licensed or regulated by the United States or any agency of the United States; or

(4) A depository designated by the superintendent administrator, and such depository, or other person which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a certificate, document of title, confirmation or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

Sec. 73. 32 MRSA §11204, sub-§2, as enacted by PL 1985, c. 643, is amended to read:

2. Rules or orders specifying exemption. The superintendent administrator may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of this chapter conditionally or unconditionally and otherwise implementing the provisions of this chapter for the protection of purchasers and sellers of commodities.

Sec. 74. 32 MRSA §11208, as enacted by PL 1985, c. 643, is amended to read:

§11208. Securities laws unaffected

Nothing in this chapter impairs, derogates or otherwise affects the authority or powers of the superintendent administrator under the Revised Maine Securities Act or the application of any provision to that Act to any person or transaction subject to that Act.

Sec. 75. 32 MRSA §11301, as enacted by PL 1985, c. 643, is amended to read:

§11301. Investigations

1. Investigations. The superintendent administrator may make investigations, within or outside this State, as he the administrator finds necessary or appropriate to:

1 A. Determine whether any person has violated, or is about
2 to violate, any provision of this chapter or any rule or
3 order of the superintendent administrator; or

5 B. Aid in enforcement of this chapter.

7 2. **Publication.** The superintendent administrator may
8 publish information concerning any violation of this chapter or
9 any rule or order of the superintendent administrator.

11 3. **Power of administrator.** For purposes of any
12 investigation or proceeding under this chapter, the
13 superintendent administrator or any officer or employee
14 designated by rule or order, may administer oaths and
15 affirmations, subpoena witnesses, compel their attendance, take
16 evidence and require the production of any books, papers,
17 correspondence, memoranda, agreements or other documents or
18 records which the superintendent administrator deems to be
19 relevant or material to the inquiry.

21 4. **Court order.** If a person does not give testimony or
22 produce the documents required by the superintendent
23 administrator or a designated employee pursuant to an
24 administrative subpoena, the superintendent administrator or
25 designated employee may apply for a court order compelling
26 compliance with the subpoena or the giving of the required
27 testimony.

29 The request for order of compliance may be addressed to either:

31 A. The Superior Court located in the County of Kennebec or
32 the Superior Court where service may be obtained on the
33 person refusing to testify or produce, if the person is
34 within this State; or

35 B. The appropriate court of the state having jurisdiction
36 over the person refusing to testify or produce, if the
37 person is outside this State.

39 **Sec. 76. 32 MRSA §11302**, as enacted by PL 1985, c. 643, is
40 amended to read:

43 **§11302. Enforcement of chapter**

45 1. **Cease and desist order.** If the superintendent
46 administrator believes, whether or not based upon an
47 investigation conducted under section 11301, that any person has
48 engaged or is about to engage in any act or practice constituting
49 a violation of any rule or order under this chapter, the
50 superintendent administrator may:

51 A. Issue a cease and desist order; or

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

B. Initiate any of the actions specified in subsection 2.

2. Court action. The ~~superintendent~~ administrator may institute any of the following actions in the appropriate courts of this State, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

- A. An action for declaratory judgment;
- B. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the superintendent administrator;
- C. An action for disgorgement; or
- D. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

Sec. 77. 32 MRSA §11303, sub-§§1, 2 and 3, as enacted by PL 1985, c. 643, are amended to read:

1. **Violation of chapter.** Upon showing of violation of this chapter or a rule or order of the ~~superintendent~~ administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders and permanent or temporary prohibitory or mandatory injunctions, may grant one or more of the following special remedies:

- A. Imposition of a civil penalty in an amount which may not exceed \$10,000 for any single violation;
- B. Disgorgement;
- C. Declaratory judgment;
- D. Restitution to investors wishing restitution; or
- E. Appointment of a receiver or conservator for the defendant or the defendant's assets.

2. **Violation about to occur.** Upon a showing by the ~~superintendent~~ administrator that a person is about to violate any provision of this chapter or any rule or order of the ~~superintendent~~ administrator, the court may grant one or more of the following remedies:

- A. A temporary restraining order;
- B. A temporary or permanent injunction; or

1 C. An order appointing a receiver or conservator for the
3 defendant or the defendant's assets.

5 3. No bond required. The court shall not require the
7 superintendent administrator to post a bond in any official
9 action under this chapter.

11 **Sec. 78. 32 MRSA §11304**, as enacted by PL 1985, c. 643, is
13 amended to read:

15 **§11304. Criminal penalties**

17 1. **Knowing violation.** Any person who knowingly violates
19 any provision of this chapter or any rule or order of the
21 superintendent administrator under this chapter shall be guilty
23 of a Class C crime, provided that, notwithstanding Title 17-A,
25 section 1301, the maximum fine shall be \$10,000 or any higher
27 amount which does not exceed twice the pecuniary gain derived
29 from the crime by the defendant.

31 2. **Prosecution.** The superintendent administrator may refer
33 such evidence as is available concerning violations of this
35 chapter or any rule or order of the superintendent administrator
37 to the Attorney General or the proper district attorney, who may,
39 with or without such a reference from the superintendent
41 administrator, institute the appropriate criminal proceedings
43 under this chapter.

45 **Sec. 79. 32 MRSA §11305**, as enacted by PL 1985, c. 643, is
47 amended to read:

49 **§11305. Administration of chapter**

51 1. **Administrator.** This chapter shall be administered by
the superintendent-~~of-Banking~~ Securities Administrator.

2. **Use of information.** Neither the superintendent
administrator nor any employee of the superintendent
administrator may use any information which is filed with or
obtained by the superintendent administrator which is not public
information for personal gain or benefit, nor may the
superintendent administrator nor any employee of the
superintendent administrator conduct any securities or commodity
dealings whatsoever based upon any such information, even though
public, if there has not been a sufficient period of time for the
securities or commodity markets to assimilate that information.

3. **Public information.** Notwithstanding any other provision
of law, except as provided in paragraph A, all information
collected, assembled or maintained by the superintendent
administrator is public information and is available for the
examination of the public.

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

A. The following are exceptions to this subsection:

- (1) Information obtained in private investigations pursuant to section 11301;
- (2) Information made confidential by rule or order of the superintendent administrator; or
- (3) Information obtained from federal agencies which may not be disclosed under federal law.

4. **Disclosure of information.** The superintendent administrator may disclose any information made confidential under subsection 3, paragraph A, subparagraph (1), to persons identified in section 11306, subsection 1.

5. **Privilege.** No provision of this chapter creates or derogates any privilege which exists at common law, by statute or otherwise, when any documentary or other evidence is sought under subpoena directed to the superintendent administrator or any employee of the superintendent administrator.

Sec. 80. 32 MRSA §11306, sub-§1, as enacted by PL 1985, c. 643, is amended to read:

1. **Cooperation.** To encourage uniform application and interpretation of this chapter and commodities regulation and enforcement in general, the superintendent administrator and the employees of the superintendent administrator may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies and any governmental law enforcement agency.

Sec. 81. 32 MRSA §11307, as enacted by PL 1985, c. 643, is amended to read:

§11307. General authority to adopt rules, forms and orders

1. **Rules; forms; orders.** In addition to specific authority granted elsewhere in this chapter, the superintendent administrator may make, amend and rescind rules, forms and offers as are necessary to carry out this chapter. These rules or forms shall include, but need not be limited to, the following:

1 A. Rules defining any terms, whether or not used in this
3 chapter, insofar as the definitions are not inconsistent
5 with this chapter. For the purpose of rules or forms, the
7 superintendent administrator may classify commodities and
superintendent's administrator's jurisdiction.

9 2. Adoption of rules; forms; orders. Unless specifically
11 provided in this chapter, no rule, form or order may be adopted,
amended or rescinded unless the superintendent administrator
finds that the action is:

13 A. Necessary or appropriate in the public interest or for
15 the protection of investors; and

17 B. Consistent with the purposes fairly intended by the
policy and provisions of this chapter.

19 3. Publication. All rules and forms of the superintendent
21 administrator shall be published.

23 4. Liability. No provision of this chapter imposing any
25 liability applies to any act done or omitted in good faith in
27 conformity with a rule, order or form adopted by the
superintendent administrator, notwithstanding that the rule,
order or form may later be amended or rescinded, or be determined
by judicial or other authority to be invalid for any reason.

29 Sec. 82. 32 MRS §11308, as enacted by PL 1985, c. 643, is
31 amended to read:

33 **§11308. Consent to service of process**

35 1. Appointment of administrator. When a person, including
37 a nonresident of this State, engages in conduct prohibited or
made actionable by the chapter or any rule or order of the
39 superintendent administrator, the engaging in the conduct shall
constitute the appointment of the superintendent administrator as
41 the person's attorney to receive service of any lawful process in
a noncriminal proceeding against the person, a successor or
43 personal representative, which grows out of that conduct and
which is brought under the chapter or any rule or order of the
45 superintendent administrator with the same force and validity as
if served personally.

47 2. Service. Service under subsection 1 may be made by
leaving a copy of the process in the office of the superintendent
49 administrator, but it is not effective unless:

51 A. The plaintiff, who may be the superintendent
administrator in a suit, action or proceeding instituted by
him the administrator, forthwith sends notice of the service

1 and a copy of the process by registered or certified mail to
2 the defendant or respondent at his the last address known to
3 the plaintiff; and

4 B. The plaintiff's affidavit of compliance with this
5 subsection is filed in the case on or before the return day
6 of the process, if any, or within such further time as the
7 court allows.

8
9 **Sec. 83. 32 MRSA §11310, sub§§1 to 5,** as enacted by PL 1985, c.
10 643, are amended to read:

11
12 **1. Notice of intent, summary order.** The superintendent
13 administrator shall commence an administrative proceeding under
14 this chapter, by entering either a notice of intent to do a
15 contemplated act or a summary order. The notice of intent or
16 summary order may be entered without notice, without opportunity
17 for hearing and need not be supported by findings of fact or
18 conclusions of law, but must be in writing.

19
20 **2. Notification of parties.** Upon entry of a notice of
21 intent or summary order, the superintendent administrator shall
22 promptly notify, in writing, all interested parties that the
23 notice or summary order has been entered and the reasons for that
24 notice or order. If the proceeding is pursuant to a notice of
25 intent, the superintendent administrator shall notify all
26 interested parties of the date, time and place set for the
27 hearing in the notice or, if no hearing has been scheduled, the
28 superintendent administrator shall notify all interested parties
29 that they have 30 calendar days from the entry of the notice of
30 intent to file a written request with the superintendent
31 administrator for a hearing. If the proceeding is pursuant to a
32 summary order, the superintendent administrator shall notify all
33 interested parties that they have 30 calendar days from the entry
34 of the order to file a written request for a hearing on the
35 matter with the superintendent administrator and that the hearing
36 will be scheduled to commence within 15 calendar days after the
37 receipt of the written request.

38
39 Notwithstanding anything in this subsection, the superintendent
40 administrator may give notice of the entry of the notice of
41 intent or summary order to such parties as he the administrator
42 may determine to be necessary or appropriate.

43
44 **3. Hearing.** If the proceeding is pursuant to a summary
45 order, the superintendent administrator, whether or not a written
46 request for a hearing is received from any interested party, may
47 set the matter down for hearing on the superintendent's
48 administrator's own motion.

49
50 **4. Summary order final.** A summary order issued against any
51 person becomes a final order:

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

A. Thirty days after the ~~superintendent~~ administrator mails notice to the interested parties of the right to request a hearing if they fail to request a hearing and none is scheduled by the ~~superintendent~~ administrator; or

B. On the date of the hearing, if the person requesting the hearing fails to appear.

5. Action pending final determination. If a hearing is requested or ordered, the ~~superintendent~~ administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

Sec. 84. 32 MRSA §11311, as enacted by PL 1985, c. 643, is amended to read:

§11311. Judicial review of orders

Any person aggrieved by a final order of the ~~superintendent~~ administrator may obtain review of the order in the Kennebec County Superior Court by filing a petition in accordance with Title 5, section 11001, and the Maine Rules of Civil Procedure, Rule 80C.

Sec. 85. 32 MRSA §11312 is enacted to read:

§11312. Orders issued by Superintendent of Banking

All orders issued by the Superintendent of Banking at a time when authority for administering this chapter was vested in the Superintendent of Banking shall remain in effect for as long as they would have remained in effect if that authority had not been transferred to the Securities Administrator.

FISCAL NOTE

It is anticipated that enactment of sections 14 and 15 of this bill will produce annual revenue for the General Fund of approximately \$300,000.

STATEMENT OF FACT

The purpose of this bill is to transfer responsibility for administering and enforcing Maine's laws governing the sale of securities, commodity contracts and business opportunities from the Superintendent of Banking to the Securities Administrator. By recognizing what is essentially the current practice, the

1 change will eliminate the possibility that actions taken by the
2 Securities Administrator will be subject to legal challenge for
3 lack of statutory authority. It is also part of a larger plan to
4 expand and upgrade the status of the Securities Division, with
5 the ultimate objective of enhancing its effectiveness in
6 protecting Maine investors.

7
8 Sections 14 and 15 of the bill raise certain of the
9 division's licensing fees, thereby generating additional annual
10 revenue for the General Fund of approximately \$300,000. These
11 increases are being sought in conjunction with the division's
12 Part II budget request for approximately \$200,000 in additional
13 annual appropriations. Even with the increases, Maine's
14 securities licensing fees would remain low when compared with the
15 other New England states.

16
17 Sections 47 and 48 clarify the actions which may be taken by
18 the division and by the Attorney General's Office with regard to
19 violations of the securities laws. Although it is believed that
20 current law allows the State to recover restitution for injured
21 Maine investors, the primary purpose of this clarification is to
22 eliminate any doubt on that score.

23
24 Section 65 allows the use of outside hearing officers in
25 division hearings and provides that if the Securities
26 Administrator is unable to serve as the decision maker, that role
27 would be assumed by the Superintendent of Banking.