

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 472

S.P. 152

In Senate, January 14, 1999

An Act to Amend the Revised Maine Securities Act.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator ABROMSON of Cumberland.

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

2 **Sec. 1. 32 MRSA §10301, sub-§2**, as amended by PL 1997, c. 168,
4 §1, is further amended to read:

6 **2. Employment of unlicensed persons.** It is unlawful for
any issuer or broker-dealer ~~licensed under this Act~~ to employ or
8 contract with a person as a sales representative in this State
unless the sales representative is licensed or exempt from
10 licensing under this Act.

12 **Sec. 2. 32 MRSA §10301, sub-§3**, as amended by PL 1989, c. 542,
14 §8, is further amended to read:

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

32 **Sec. 3. 32 MRSA §10302, sub-§2, ¶A-2** is enacted to read:

34 A-2. A sales representative acting for a broker-dealer
licensed under section 10301, subsection 1, in effecting in
36 this State transactions exclusively with financial and
institutional investors acting for themselves or in a
38 fiduciary capacity.

40 **Sec. 4. 32 MRSA §10306, sub-§3**, as enacted by PL 1985, c. 400,
42 §2, is amended to read:

44 **3. Branch offices.** ~~For purposes of this section, a "branch~~
"Branch office" means each any office of a broker-dealer or
investment adviser located in this State, other than the
46 principal office of the broker-dealer in this State from which 2
or more sales representatives transact business or investment
48 adviser.

2 **Sec. 5. 32 MRSA §10313, sub-§1**, as amended by PL 1997, c. 660,
Pt. C, §1, is further amended by amending the first paragraph to
read:

4
6 **1. Denial, suspension, revocation.** The administrator may,
after notice and opportunity for hearing, by order, deny, suspend
or revoke any license, limit the activities ~~which~~ that an
8 applicant or licensee may perform in this State or censure or bar
any applicant or licensee from association with ~~a-~~ an issuer,
10 licensed broker-dealer or investment adviser, if the
administrator finds that the order is in the public interest and
12 that the applicant or licensee or, in the case of a broker-dealer
or investment adviser, any partner, executive officer or
14 director, any person occupying a similar status or performing
similar functions or any person directly or indirectly
16 controlling the broker-dealer or investment adviser:

18 **Sec. 6. 32 MRSA §10313, sub-§1, ¶F**, as amended by PL 1989, c.
542, §25, is further amended by amending subparagraph (1) to read:

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

32 **Sec. 7. 32 MRSA §10313, sub-§4**, as amended by PL 1989, c. 542,
§26, is further amended to read:

34 **4. Cancellation.** If the administrator finds that any
36 applicant or licensee is no longer in existence or has ceased to
do business as a broker-dealer, sales representative or
38 investment adviser, ~~or~~ is a successor firm, is subject to an
adjudication of mental incompetence or to the control of a
40 committee, conservator or guardian, or ~~cannot~~ can not be located
after reasonable search, the administrator may, by order, cancel
42 the license or application.

44 **Sec. 8. 32 MRSA §10404, sub-§5**, as enacted by PL 1987, c. 592,
is amended to read:

46 **5. Simplified statement.** For purposes of simplifying the
48 registration statement for smaller offerings and promoting
uniformity with other states, the ~~superintendent~~ administrator

2 may adopt, by rule ~~promulgated~~ adopted in accordance with the
4 Maine Administrative Procedure Act, Title 5, chapter 375, a form
6 to be used as the registration statement for securities being
8 registered under this section and sold in offerings in which the
aggregate offering price does not exceed the maximum amount
specified in the rule. The form need not require all the
information included in this section and may require information
not included in this section.

10 **Sec. 9. 32 MRSA §10501, sub-§3**, as amended by PL 1989, c. 542,
12 §38, is further amended to read:

14 **3. Filing.** "Filing" means the receipt of any document by
the administrator or designee of the administrator ~~for filing~~.

16 **Sec. 10. 32 MRSA §10501, sub-§18**, as amended by PL 1997, c.
18 168, §23, is further amended to read:

20 **18. Security.** "Security" means any note; stock; treasury
22 stock; bond; debenture; evidence of indebtedness; certificate of
24 interest or participation in any profit-sharing agreement; any
26 limited partnership interest; collateral-trust certificate;
28 preorganization certificate or subscription; transferable share;
investment contract; voting-trust certificate; certificate of
deposit for a security; documents of title to ~~and~~ or certificates
of interest or participation in an oil, gas or other mineral
30 title or lease or in payments out of production under such any
32 title lease, right or royalty; any put, call, straddle or option
entered into a national securities exchange relating to foreign
34 currency; any put, call, straddle or option on any security,
certificate of deposit or group or index of securities, including
any interest therein or based on the value thereof; or, in
36 general, any interest or instrument commonly known as a
"security," or any certificate of interest or participation in,
temporary or interim certificate for, receipt for, guarantee of,
or warrant or right to subscribe to or purchase, any of the
38 foregoing. "Security" does not include any insurance or endowment
policy or annuity contract under which an insurance company
promises to pay money either in a lump sum or periodically for
40 life or some other specified period or any interest in a
contributory or noncontributory pension or welfare plan subject
42 to the United States Employee Retirement Income Security Act of
44 1974.

46 **Sec. 11. 32 MRSA §10501, sub-§21** is enacted to read:

48 **21. Successor firm.** "Successor firm" includes any
48 broker-dealer or investment adviser whose direct or indirect
50 ownership or control has changed by more than 45%.

2 **Sec. 12. 32 MRSA §10502, sub-§1, ¶C**, as amended by PL 1993, c.
257, §10, is further amended to read:

4 C. Any security issued by and representing an interest in
6 or a direct obligation of, or guaranteed by, any depository
8 institution or depository institution holding company, the
10 deposit accounts of which are insured by the Federal Deposit
12 Insurance Corporation or any successor to this agency
14 authorized by federal law or a deposit insurance fund
16 expressly authorized by state law and supervised by a state
 governmental official or agency, ~~This exemption does not
 apply to securities representing an interest in a depository
 institution that is required by law to have as its majority
 shareholder a mutual holding company, to securities
 convertible into these securities or to warrants, options or
 rights to purchase these securities;~~

18 **Sec. 13. 32 MRSA §10502, sub-§2**, as amended by PL 1997, c.
20 168, §§24 and 25, is further amended by amending the first
 paragraph to read:

22 **2. Exempt transactions.** The following transactions are
24 exempted from ~~sections~~ section 10401 and ~~10504~~:

26 **Sec. 14. 32 MRSA §10601, sub-§3**, as amended by PL 1989, c.
542, §46, is further amended to read:

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

38 The administrator may require or permit any person to file a
40 statement in writing, under oath or otherwise as the
42 administrator may determine, as to the facts and circumstances
 concerning the matter to be investigated. It is unlawful to fail
 to provide promptly any written statement if requested.

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

48 **Sec. 15. 32 MRSA §10602, sub-§1, ¶C**, as amended by PL 1991, c.
509, §35, is further amended to read:

2 C. Bar that person from association with any issuer,
licensed broker-dealer or investment adviser in this State,
4 but in each case only after compliance with section 10708,
subsection 6;

6 **Sec. 16. 32 MRSA §10602, sub-§3**, as enacted by PL 1991, c. 82,
§9, is amended to read:

8
10 **3. Liability of control persons.** In an administrative
action brought by the administrator, or a civil action brought by
12 the Attorney General for a violation of any provision of this Act
or any rule or order adopted or issued by the administrator
14 pursuant to this Act, every person who directly or indirectly
controls another person liable for the violation, every partner,
officer or director of that other person, every person occupying
16 a similar status or performing similar functions, every employee
of that other person who materially aids in the act or
18 transaction constituting the violation and every broker-dealer or
sales representative who materially aids in the act or
20 transaction constituting the violation is liable to the same
extent as that other person, unless the person otherwise
22 secondarily liable under this Act proves that the person did not
know, and in the exercise of reasonable care could not have
24 known, of the existence of the facts by reason of which the
liability is alleged to exist. Any of the remedies authorized by
26 section 10603, subsections 1 and 2 may be granted with respect to
a person secondarily liable under this subsection. This
28 subsection is not intended to abrogate any right to contribution
that may exist at common law with respect to an award of
30 restitution.

32 **Sec. 17. 32 MRSA §10702, sub-§1**, as amended by PL 1989, c.
542, §57, is further amended to read:

34
36 **1. Cooperation.** The administrator and the employees of the
administrator may cooperate, including bearing the expense of the
38 cooperation, with the securities agencies or securities
administrator of another state or Canadian province or territory
or another country, the United States Securities and Exchange
40 Commission, the United States Commodity Futures Trading
Commission, the Federal Trade Commission, the United States
42 Securities Investor Protection Corporation, any self-regulatory
organization established under the United States Securities
44 Exchange Act of 1934 or the United States Commodity Exchange Act,
any national or international organization of securities
46 officials or agencies and any governmental law enforcement agency.

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SUMMARY

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The bill makes a series of changes to various provisions of the Revised Maine Securities Act. The changes fall into 3 categories: first, to clarify; 2nd, to correct previously overlooked errors; and 3rd, to make the Act more uniform with the laws of other states.