

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)



120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1637

S.P. 518

In Senate, March 13, 2001

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.
Cosponsored by Representative SULLIVAN of Biddeford and
Senator LaFOUNTAIN of York, Representatives: DUDLEY of Portland, MARRACHE of
Waterville, MAYO of Bath, O'NEIL of Saco.

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

PART A

Sec. A-1. 32 MRSA §10303, as amended by PL 1997, c. 168, §§6 and 7, is further amended to read:

§10303. Investment adviser and investment adviser representative licensing requirement

1. **Investment advisers and investment adviser representatives.** A person may not act in this State as an investment adviser or an investment adviser representative unless licensed or exempt from licensing under this Act.

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 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 administrator, by order, may waive the prohibition of this subsection with respect to a particular person then suspended or barred.

3. **Employment of unqualified persons by investment advisers subject to licensing requirements in this State.** It is unlawful for an investment adviser licensed or required to be licensed under this Act to employ or contract with an individual as a representative of the investment adviser in this State unless the individual is licensed and has satisfied all applicable examination requirements under this Act. ~~For purposes of this subsection, "representative" means an individual who represents an investment adviser in doing any of the acts that make that person an investment adviser.~~

4. **Employment of unqualified persons by investment advisers exempt under section 10304, subsection 2-A.** It is unlawful for an investment adviser exempt from licensing under section 10304, subsection 2-A, to employ or contract with an individual who has a place of business in this State as a representative of the investment adviser unless the individual is licensed and has satisfied all applicable examination requirements under this Act, or unless the investment adviser is otherwise exempt from licensing under this Act. ~~For purposes of this subsection, "representative" means an individual who represents an investment~~

2 ~~adviser--in--doing--any--of--the--acts--that--make--that--person--an~~
~~investment--adviser.~~

4 **Sec. A-2. 32 MRSA §10305, sub-§1**, as amended by PL 1989, c.
542, §13, is further amended to read:

6
7 **1. Consent to service of process.** An applicant for
8 licensing as a broker-dealer, sales representative ~~or~~ investment
9 adviser or investment adviser representative shall file with the
10 administrator or the designee of the administrator an application
11 for licensing, together with a consent to service of process
12 pursuant to section 10704. The application for licensing must
13 contain such information as the administrator determines, ~~by~~
14 ~~rule,~~ is necessary or appropriate to facilitate the
15 administration of this Act.

16
17 **Sec. A-3. 32 MRSA §10306, sub-§1, ¶B**, as amended by PL 1991,
18 c. 591, Pt. M, §1 and affected by §5, is further amended to read:

19 B. Sales representative, \$40; and

20
21 **Sec. A-4. 32 MRSA §10306, sub-§1, ¶C**, as amended by PL 1993,
22 c. 410, Pt. K, §3, is further amended to read:

23 C. Investment adviser, \$200+; and

24
25 **Sec. A-5. 32 MRSA §10306, sub-§1, ¶D** is enacted to read:

26 D. Investment adviser representative, \$40.

27
28 **Sec. A-6. 32 MRSA §10306, sub-§2, ¶B**, as amended by PL 1991,
29 c. 591, Pt. M, §2 and affected by §5, is further amended to read:

30 B. Sales representative, \$40; and

31
32 **Sec. A-7. 32 MRSA §10306, sub-§2, ¶C**, as amended by PL 1993,
33 c. 410, Pt. K, §4, is further amended to read:

34 C. Investment adviser, \$100+; and

35
36 **Sec. A-8. 32 MRSA §10306, sub-§2, ¶D** is enacted to read:

37 D. Investment adviser representative, \$40.

38
39 **Sec. A-9. 32 MRSA §10307, sub-§1, ¶C**, as amended by PL 1997,
40 c. 168, §12, is further amended to read:

2 C. Any class of employees of applicants for licensing as to
whom the administrator determines that an examination
4 requirement is necessary for the protection of investors; and

6 **Sec. A-10. 32 MRSA §10307, sub-§1, ¶D,** as amended by PL 1997,
c. 168, §13, is repealed.

8 **Sec. A-11. 32 MRSA §10501, sub-§8-A** is enacted to read:

10 **8-A. Investment adviser representative.** "Investment
12 adviser representative" means an individual employed by or
associated with an investment adviser and who acts on behalf of
14 an investment adviser in performing any of the following
activities:

16 A. Making recommendations or otherwise rendering advice
regarding securities to clients;

18 B. Managing client accounts or portfolios that include or
20 may include securities;

22 C. Determining, either individually or as a member of the
investment advisor's investment committee, which
24 recommendations or advice regarding securities should be
given to clients;

26 D. Soliciting, offering and negotiating for the sale of or
28 selling investment advisory services; or

30 E. Supervising employees in performing any of the
activities described in this subsection.

32 **Sec. A-12. Effective date.** This Part takes effect January 1,
34 2002.

36 **PART B**

38 **Sec. B-1. 32 MRSA §10502, sub-§2, ¶C,** as amended by PL 1989,
40 c. 542, §42, is repealed and the following enacted in its place:

42 C. Any nonissuer transaction in a security that has been
outstanding in the hands of the public for at least 90 days
44 if at the time of the transaction:

46 (1) The issuer of the security is:

48 (a) Actually engaged in business;

(b) Not in the organizational stage;

- 2 (c) Not a development stage company, a blank
4 check, blind pool or shell company, the primary
6 plan of business of which is to engage in a merger
 or combination with, or an acquisition of, an
 unidentified person or persons; and
- 8 (d) Not in bankruptcy or receivership;
- 10 (2) A licensed agent of a licensed broker-dealer
 effects the transaction;
- 12 (3) The security is sold at a price reasonably related
14 to the current market price of the security;
- 16 (4) The security does not constitute the whole or part
18 of an unsold allotment to, or a subscription or
 participation by, a broker-dealer as an underwriter of
20 the security;
- 22 (5) A nationally recognized securities manual
 designated by order of the administrator or a document
24 filed with the United States Securities and Exchange
 Commission that is publicly available through the
26 United States Securities and Exchange Commission's
 Electronic Data Gathering and Retrieval system contains:
- 28 (a) A description of the issuer's business and
30 operations;
- 32 (b) The names of the issuer's officers and
 directors or, in the case of a non-United States
34 issuer, the corporate equivalents of such persons
 in the issuer's country of domicile;
- 36 (c) An audited balance sheet of the issuer as of
38 a date within the last 18 months or, in the case
 of a reorganization or merger where the parties
40 had audited balance sheets, a pro forma balance
 sheet; and
- 42 (d) An audited income statement for each of the
44 issuer's immediately preceding 2 fiscal years or
 for the issuer's period of existence if less than
46 2 years or, in the case of a reorganization or
 merger where the parties had audited income
48 statements, a pro forma income statement; and
- 50 (6) The issuer of the security has a class of equity
 securities listed on a national securities exchange

2 registered under the United States Securities Exchange
3 Act of 1934, or designated for trading on the National
4 Association of Securities Dealers Automated Quotation
5 System, unless:

6 (a) The issuer of the security has been engaged
7 in continuous business, including predecessors,
8 for at least 3 years; or

9 (b) The issuer of the security has total assets
10 of at least \$2,000,000 based on an audited balance
11 sheet as of a date within the last 18 months or,
12 in the case of a reorganization or merger where
13 the parties had audited balance sheets, a pro
14 forma balance sheet;

15 **Sec. B-2. 32 MRSA §10502, sub-§2, ¶D,** as amended by PL 1989,
16 c. 542, §42, is further amended to read:

17 D. Any nonissuer transaction effected by or through a
18 licensed broker-dealer pursuant to an unsolicited order or
19 offer to buy; but ~~the administrator, by rule, may require~~
20 ~~that~~ the broker-dealer must make a good faith effort to have
21 the customer acknowledge upon a specified form that the sale
22 was unsolicited and ~~that must preserve~~ a signed copy of each
23 such acknowledgment form ~~be preserved by that broker-dealer~~
24 for ~~a specified period~~ 6 years;

25 **Sec. B-3. 32 MRSA §10502, sub-§2, ¶P,** as enacted by PL 1985, c.
26 400, §2, is amended to read:

27 P. Any offer or sale of securities of a corporation,
28 limited partnership or limited liability company organized
29 under the laws of this State or any issuer determined by the
30 administrator by order to have its principal executive
31 office in this State, if the number of holders of securities
32 of the ~~corporation~~ entity does not at the time of the sale,
33 and will not in consequence of the sale, exceed 10 in number
34 exclusive of persons specified in section 10501, subsection
35 4, and if the securities sold in reliance on this subsection
36 have not been offered to the public by general advertisement
37 or general solicitation;

38 **Sec. B-4. 32 MRSA §10502, sub-§2, ¶Q,** as amended by PL 1999,
39 c. 279, §5, is further amended to read:

40 Q. Any offer or sale of securities of a corporation,
41 limited partnership or limited liability company, organized
42 under the laws of this State or any issuer determined by the

2 administrator by order to have its principal executive
3 office in this State, if the number of holders of securities
4 of the entity, exclusive of persons specified in section
5 10501, subsection 4, will in consequence of the sale exceed
6 10, but will not in consequence of the sale exceed 25 in
7 number and if the securities sold in reliance on this
8 subsection have not been offered to the public by general
9 advertisement or general solicitation. Any person who relies
10 on this exemption shall file with the administrator a
11 notification for exemption that must be in such form as may
12 be prescribed by the administrator and requires only the
13 following information: The name, address and telephone
14 number of the issuer; the state and date of incorporation of
15 the issuer; the name, address and telephone number of
16 persons who may respond to inquiries about the issuer; the
17 location at which the books and records of the issuer are
18 kept and whether they are available for inspection by
19 shareholders; a description of all classes of securities of
20 the issuer, including newly authorized classes of
21 securities, providing the number of authorized units of each
22 class, par value per unit and the number of units of each
23 class as are issued and outstanding; a description of the
24 class of securities offered for sale, including the number
25 of units authorized, par value per unit, the number of units
26 currently outstanding, the number of units being offered for
27 sale, the number of units to be outstanding and the price at
28 which each unit is offered for sale; a description of the
29 rights of holders of the securities offered pursuant to this
30 exemption, including voting rights and if cumulative or
31 noncumulative liquidation rights, preemptive rights and any
32 other rights or limitations applicable to the securities;
33 the date the annual meeting of the shareholders is held, the
34 location and time of the meeting, a description of how the
35 shareholders are notified and if an annual financial
36 statement and report of activity is available to
37 shareholders; a brief description of how the proceeds of the
38 offering will be used and whether proceeds will be returned
39 to investors if minimum amounts are not raised by a specific
40 date; a brief description of the issuer's plan of business
41 and whether the business is currently operational; and a
42 list of the significant risks assumed by the investor,
43 including management experience, competitive and economic
44 factors, net worth position of the issuer and improbable or
45 limited opportunity for release of the securities. A copy of
46 the notification of exemption must be ~~made--available~~
47 provided to each offeree of securities sold in reliance on
48 this exemption and must contain such legends as the
49 administrator prescribes, notifying the offeree that the
50 securities have not been registered with the administrator,
that they may be considered restricted securities and that

2 the issuer is under an obligation to make a reasonable
3 finding that the securities are a suitable investment for
4 the offeree. The administrator may adopt such rules as are
5 considered necessary to further define or implement this
6 subsection consistent with the intent of this subsection;

8 **SUMMARY**

10 This bill amends the Revised Maine Securities Act in several
11 respects.

12 Part A of the bill defines "investment adviser
13 representative" and requires investment adviser representatives
14 to be licensed in the same manner as investment advisers. The
15 licensing of investment adviser representatives allows the State
16 to participate in a national investment adviser representative
17 database to track and regulate these individuals for the
18 protection of the public.

20 Part B of the bill clarifies certain ambiguous language in
21 the Revised Maine Securities Act. Part B updates a current
22 securities exemption for companies where information about the
23 company is publicly available through a nationally recognized
24 securities manual. The exemption language proposed is model
25 language recommended by the North American Securities
26 Administrators Association. Part B updates the securities
27 exemptions for certain domestic issuers so that they apply to
28 limited partnerships and limited liability companies organized
29 under the laws of this State or any issuer determined by the
30 securities administrator to have its principal place of business
31 in the State.
32