

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985
Chapters 384-End

AND AT THE

FIRST SPECIAL SESSION

November 13, 1985

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine
1985

PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED AT THE
FIRST REGULAR SESSION
CONTINUED
and
FIRST SPECIAL SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

and outside consultants. All reasonable costs related to the review of a plan of conversion, including those costs attributable to the use of staff personnel, shall be borne by the insurer or insurers making the filing.

Sec. 9. Transitional provision. Notwithstanding the terms of the Maine Revised Statutes, Title 1, section 302; Title 24-A, sections 10, 3471 and 3477, as amended by this Act, shall apply to any filing by a mutual insurer seeking the approval of the Superintendent of Insurance of its plan and procedure of demutualization, including any such filing which has been previously filed with and is currently pending hearing or decision by the Superintendent of Insurance upon the effective date of this Act.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 21, 1985.

CHAPTER 400

H.P. 1022 - L.D. 1500

AN ACT to Revise the Maine Securities Act.

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

Sec. 1. 32 MRSA c. 13, sub-cc. I to V, as amended, are repealed.

Sec. 2. 32 MRSA c. 105 is enacted to read:

CHAPTER 105

REVISED MAINE SECURITIES ACT

SUBCHAPTER I

SHORT TITLE

§10101. Short title

This Act may be cited as the "Revised Maine Securities Act."

SUBCHAPTER IIFRAUDULENT AND OTHER PROHIBITED PRACTICES§10201. Offers, sales and purchases

In connection with the offer, sale or purchase of any security, a person shall not, directly or indirectly:

1. Fraud. Employ any device, scheme or artifice to defraud;

2. Untrue statements, material omissions. Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

3. Deceptive practices. Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

§10202. Market manipulation

Without limiting the general applicability of section 10201, a person may not:

1. Fictitious quotations. Quote a fictitious price with respect to a security;

2. No change in beneficial ownership. Effect a transaction in a security which involves no change in the beneficial ownership of the security for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

3. Orders for purchases. Enter an order for the purchase of a security with the knowledge that an order of substantially the same size and at substantially the same time and price for the sale of the security has been, or will be, entered by or for the same, or affiliated, person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

4. Orders for sale. Enter an order for the sale of a security with the knowledge that an order of substantially the same size and at substantially the same time and price for the purchase of the security has been, or will be, entered by or for the same, or

affiliated, person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security; or

5. Deceptive practices. Employ any other deceptive or fraudulent device, scheme or artifice to manipulate the market in a security.

§10203. Prohibited actions by investment advisers

Neither an investment adviser nor an employee of an investment adviser may, directly or indirectly, employ any device, scheme or artifice to defraud any client or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any client.

§10204. Misleading filings

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

§10205. Unlawful representations concerning licensing, registration or exemption

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

It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with this section.

SUBCHAPTER III

LICENSING OF BROKER-DEALERS, SALES REPRESENTATIVES
AND INVESTMENT ADVISERS

§10301. Broker-dealer and sales representative licensing requirement

1. Transaction of business. It is unlawful for any person to transact business in this State as a broker-dealer or sales representative unless licensed or exempt from licensing under this Act.

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

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

§10302. Exempt broker-dealers and sales representatives

1. Exempt broker-dealers. The following broker-dealers are exempt from the licensing requirements of section 10301:

A. A broker-dealer who is registered as a broker-dealer under the United States Securities Exchange Act of 1934, if the transactions effected by the broker-dealer in this State are exclusively with the following:

(1) The issuer of the securities involved in the transactions;

(2) Other broker-dealers licensed or exempt under this Act, except when the broker-dealer is acting as a clearing broker-dealer for such other broker-dealers; and

(3) Financial and institutional investors acting for themselves or in a fiduciary capacity;

B. A broker-dealer who is registered as a broker-dealer under the United States Securities Exchange Act of 1934 and licensed under the securities act of the state in which the broker-dealer maintains its principal place of business and has no place of business in this State, if the broker-dealer offers and sells in this State to persons who are existing customers of the broker-dealer and who represent that they have no principal place of residence in this State;

C. A person who is registered as a broker-dealer under the United States Securities Exchange Act of 1934 and has no place of business in this State if during the period of any 12 consecutive months the person does not direct more than 15 offers to sell or purchase to this State in any manner to persons other than financial and institutional investors, whether or not the offeror or any of the offerees is then present in this State; and

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

2. Exempt sales representatives. The following sales representatives are exempt from the licensing requirements of section 10301:

A. A sales representative acting for a broker-dealer exempt under section 10302, subsection 1;

B. A sales representative acting for an issuer in effecting transactions in a security exempt by one or more paragraphs of section 10502, subsection 1, except paragraphs E, F, G, H, I and J;

C. A sales representative acting for an issuer effecting offers or sales of securities in transactions exempt by one or more paragraphs of section 10502, subsection 2;

D. A sales representative acting for an issuer effecting transactions with existing employees, partners or directors of the issuer, a parent or wholly owned subsidiary of the issuer, provided that no commissions or other remuneration are

paid or given directly or indirectly to that person for soliciting any employee, partner or director in this State; and

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

§10303. Investment adviser licensing requirement

1. Investment advisers. A person may not act in this State as an investment adviser 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 superintendent. 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, by order, may waive the prohibition of this subsection with respect to a particular person then suspended or barred.

§10304. Exempt investment advisers

The following investment advisers are exempt from the licensing requirements of section 10303:

1. Transactions with certain clients. An investment adviser who is registered as an investment adviser under the United States Investment Advisers Act of 1940, if its only clients in this State are other investment advisers, broker-dealers or financial and institutional investors, whether acting for themselves or in a fiduciary capacity;

2. No place of business in this State. A person who is registered as an investment adviser under the United States Investment Advisers Act of 1940 and has no place of business in this State if during the period of any 12 consecutive months the person does not direct business communication into this State in any manner to more than 5 clients other than those specified in subsection 1, whether or not that person or any of the clients to whom the communications are directed is then present in this State; and

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

§10305. Application

1. Consent to service of process. An applicant for licensing as a broker-dealer, sales representative or investment adviser shall file with the superintendent or the designee of the superintendent 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 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 through a central registration depository system approved by the superintendent, by filing a notice with the superintendent in the form and content determined by the superintendent, 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.

3. Automatic licensing. Licensing of a broker-dealer automatically constitutes the licensing of any sales representative who is a partner, officer, director or a person occupying a similar status or performing similar functions.

§10306. Fees

1. Initial fees. An applicant for licensing shall pay an initial fee as follows:

A. Broker-dealer, \$100 and for each branch office in this State, \$50;

B. Sales representative, \$25; and

C. Investment adviser, \$50.

2. Renewal fees. Except in any year in which an initial fee is paid, an applicant shall pay an annual renewal fee as follows:

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

B. Sales representative, \$15; and

C. Investment adviser, \$35.

3. Branch offices. For purposes of this section, a "branch office" means each office of a broker-dealer in this State, other than the principal office of the broker-dealer in this State from which 3 or more sales representatives transact business.

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

§10307. Examinations

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

A. An applicant applying for licensing under section 10301;

B. Any class of applicants; and

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

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

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

§10308. Licensing

1. Effective date of license. Unless a proceeding under section 10313 has been instituted, the li-

cense 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 or the superintendent's designee has been filed and provided that all examination requirements imposed under section 10307 have been satisfied. The superintendent may, by order, authorize an earlier effective date of licensing.

2. License effective until terminated. The license of a broker-dealer, sales representative or investment adviser is effective until terminated by revocation, cancellation or withdrawal.

3. Scope of sales representative license. The license of a sales representative is only effective with respect to transactions effected as an employee or otherwise on behalf of the broker-dealer or issuer for whom the sales representative is licensed.

4. Multiple licensing of sales representatives. No person may at any one time act as a sales representative for more than one broker-dealer or one issuer, except:

A. When the broker-dealers or issuers for whom the sales representative will act are affiliated by direct or indirect common control, a sales representative may represent each of those organizations; or

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

5. Notification of superintendent. 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 or the designee of the superintendent.

6. Limitations and conditions on licenses. If the superintendent 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 may

authorize the licensing of persons subject to specific limitations and conditions.

§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 or the designee of the superintendent, at a time and including such information as the superintendent determines, by rule, is necessary or appropriate to facilitate administration of this Act.

§10310. Post-licensing requirements

1. Broker-dealer net capital requirements. The superintendent 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:

A. Minimum net capital; and

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

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

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

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

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

Compliance with the financial reporting requirements of the United States Securities 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, may satisfy the requirements of this subsection.

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

A. Unless the superintendent adopts, by rule, a special record-keeping requirement, compliance with the record-keeping requirements of the United States Securities 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.

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

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

7. Amendments to files. If the information contained in any document filed with the superintendent or the superintendent's designee under this section or section 10305, except for those documents which the superintendent, 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.

§10311. Successor firms

1. Broker-dealers; investment advisers. A licensed broker-dealer or any investment adviser may file an application 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.

2. Sales representatives. Licensing of the sales representatives of the broker-dealer filing the ap-

plication under subsection 1 shall continue upon licensing of the successor and no separate filing or fee shall be required for the continued licensing of the sales representatives.

§10312. Inspection power

1. Broker-dealers; investment advisers. The superintendent, without prior notice, may examine the records and 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 this State, in a manner reasonable under the circumstances. Broker-dealers, sales representatives and investment advisers must make their records available to the superintendent in a readable form.

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

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

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

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

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

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

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

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 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 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; or

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

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

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

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

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

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

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

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

A. The superintendent may not enter an order against a broker-dealer on the basis of the lack

of qualification of any person other than the broker-dealer if the broker-dealer is an individual or a sales representative of the broker-dealer.

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

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

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

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

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

4. Cancellation. If the superintendent finds that any applicant or licensee is no longer in existence or has ceased to do business as a broker-dealer, sales representative or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardi-

an, or cannot be located after reasonable search, the superintendent may, by order, cancel the license or application.

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

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

§10314. Custody of clients' securities and funds

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

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

SUBCHAPTER IV

REGISTRATION OF SECURITIES

§10401. Registration requirement

A person may not offer or sell any security in this State unless the security is registered under this Act or the security or transaction is exempt under this Act.

§10402. Registration by notification

1. Eligible securities. The following securities may be registered by notification, whether or not they are eligible for registration by coordination under section 10403:

A. Any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(1) There has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest or dividends on any security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision; and

(2) The issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices:

(a) Which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and which equal at least 5% of the amount of such outstanding securities, as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price; or

(b) Which, if the issuer and any predecessors have not had any security of the type specified in division (a) outstanding for 3 full fiscal years, which equal at least 5% of the amount, as measured in division (a) of all se-

curities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this State, are issued; and

B. Any security, other than a document of title to or certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if:

(1) Any security of the same class has ever been registered under this Act or a predecessor Act; or

(2) The security being registered was originally issued under an exemption under this Act or a predecessor Act.

2. Registration statement. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 10405, subsection 3, and the consent to service of process required by section 10704:

A. A statement demonstrating eligibility for registration by notification;

B. With respect to the issuer and any significant subsidiary, its name, address and form of organization; the state, or foreign jurisdiction, and the date of its organization; and the general character and location of its business;

C. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution, name and address; the amount of securities of the issuer held by that person as of the date of the filing of the registration statement; and a statement of the reasons for making the offering;

D. A description of the security being registered;

E. The information and documents specified in section 10404, subsection 2, paragraphs H, J and L; and

F. In the case of any registration under subsection 1, paragraph B, which does not also satisfy

the conditions of subsection 1, paragraph A, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessors' existence if less than 2 years.

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

§10403. Registration by coordination

1. Eligible securities. Any security for which a registration statement has been filed under the United States Securities Act of 1933 in connection with the same offering may be registered by coordination.

2. Information and documents. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 10405, subsection 3, and the consent to service of process required by section 10704:

A. Two copies of the latest form of prospectus filed under the United States Securities Act of 1933;

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

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

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

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

(4) A specimen or copy of the security;

C. If the superintendent requests, and subject to section 10701, subsection 3, paragraph B, any other information or copies of other documents, filed under the United States Securities Act of 1933; and

D. An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the United States Securities and Exchange Commission, whichever first occurs.

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

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

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

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

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

Upon failure to receive the required notification and post-effective price amendment, the superintendent may enter a stop order, without notice or hearing, retroactively denying effectiveness to

the registration statement or suspending its effectiveness until compliance with this subsection. The superintendent must promptly notify the registrant by telephone or telegram, and promptly confirm by letter or telegram when the superintendent notifies by telephone, of the issuance of the order. If the registrant complies with the requirements of this subsection as to notice and post-effective amendment within 15 days of the entry of the stop order, the stop order is void as of the time of its entry.

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

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

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

§10404. Registration by qualification

1. Eligible securities. Any security may be registered by qualification.

2. Information and documents. A registration statement under this section shall contain the following information and be accompanied by the follow-

ing documents in addition to the information specified in section 10405, subsection 3, and the consent to service of process required by section 10704;

A. With respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

B. With respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: Name, address and principal occupation for the past 5 years; the amount of securities of the issuer held by the person as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected;

C. With respect to persons covered by paragraph B: The remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries and affiliates, to all those persons in the aggregate;

D. With respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: The information specified in paragraph B other than occupation;

E. With respect to every promoter, if the issuer was organized within the past 3 years: The information specified in paragraph B, any amount paid to that person within that period or intended to be paid and the consideration for any such payment;

F. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: Name and address; the

amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected; and a statement of the reasons for making the offering;

G. The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill or anything else, for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

H. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

I. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order

or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commission and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

J. A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph B, D, E, F or H and by any person who holds or will hold 10% or more in the aggregate of any such options;

K. The dates of, parties to and general effect concisely stated of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past 2 years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities;

L. A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering;

M. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

N. A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is

in a foreign language, which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;

O. The written consent of any accountant, engineer, appraiser or other person whose profession gives authority to a statement made by that person, if any such person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;

P. A balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

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

3. Effectiveness of registration. A registration statement under this section becomes effective 30 calendar days, or any shorter period as the superintendent, 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 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 may delay effectiveness for a single period of not more than 90 days if the superintendent determines that the registration statement is not complete in all material respects and promptly notifies the reg-

istrant of that determination. The superintendent may delay effectiveness for a single period of not more than 30 days if the superintendent finds that the delay is necessary for the administration of the Act and the protection of investors, whether or not the superintendent previously has delayed effectiveness.

§10405. Provisions applicable to registration generally

1. Who may file. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a registered broker-dealer.

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 shall retain the fee.

3. Contents of registration statement. Every registration statement shall specify:

A. The amount of securities to be offered in this State;

B. The states in which a registration statement or similar document in connection with the offering has been or is to be filed; and

C. Any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court or the United States Securities and Exchange Commission.

4. Incorporation of documents. Any document filed under this Act or a predecessor Act, within 5 years preceding the filing of a registration statement, may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

5. Omission of information. The superintendent 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 superin-

tendent 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

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

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

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

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

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

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

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

C. Payment under any sale; or

D. Delivery under any sale.

10. Period of effectiveness. A registration statement shall remain effective for one year from its effective date unless the period of effectiveness is extended by rule or order of the superintendent. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the registration statement is effective, unless the superintendent 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 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.

11. Reports. So long as a registration statement is effective, the superintendent may, by rule or 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.

12. Increasing number of securities registered by notification and coordination. A registration statement filed under section 10402 or 10403 may be amended after its effective date to increase the securities specified to be offered and sold. The amendment becomes effective upon filing of the amendment and payment of an additional filing fee of \$300, with respect to the additional securities to be offered and sold. The effectiveness of the amendment relates back to the date or dates of sale of the additional securities being registered.

13. Increasing number of securities registered by qualification. A registration statement filed un-

der section 10404 may be amended after its effective date to increase the securities specified to be offered and sold, provided that the public offering price and underwriters' discounts and commissions are not modified or altered from the respective amounts of which the superintendent previously had been informed. The amendment becomes effective when the superintendent 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.

§10406. Denial, suspension and revocation of registration

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

A. The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 10405, 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 light of the circumstances under which it was made, false or misleading with respect to any material fact;

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

(1) The person filing the registration statement;

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

(3) Any underwriter;

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

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

(2) The superintendent may not enter an order under this paragraph on the basis of an order or 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;

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 may enter only a denial order under this clause and shall vacate any such order when the deficiency has been corrected.

The superintendent may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to him 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 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 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, the order will remain in effect until it is modified or vacated by the superintendent. If a hearing is requested or ordered, the superintendent, 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.

3. Stop orders. No stop order may be entered under any part of this section, except under subsection 2, without appropriate prior notice to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered, opportunity for hearing and written findings of fact and conclusions of law.

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

SUBCHAPTER V

GENERAL PROVISIONS

§10501. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

1. Broker-dealer. "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that

person's own account. "Broker-dealer" does not include:

- A. A sales representative;
- B. An issuer, except when effecting transactions other than with respect to its own securities;
- C. A depository institution when it is engaged in its regular course of business; or
- D. Any other persons the superintendent may exclude, by rule or order, consistent with the public interest and protection of investors.

2. Depository institution. "Depository institution" means a person, other than an insurance company or other organization primarily engaged in the insurance business, which is:

- A. Organized, chartered or holding an authorization certificate under the laws of any state or of the United States which authorizes the person to receive deposits, including a savings, share, certificate or deposit account; and
- B. Supervised and examined for the protection of depositors by an official or agency of any state or the United States. "Depository institution" also includes any trust company or other institution which is authorized by state law to exercise fiduciary powers similar to those permitted to national banks under the authority of the United States Comptroller of the Currency, but does not include any industrial bank, Morris Plan Bank or industrial loan bank.

3. Filing. "Filing" means the receipt of any document by the superintendent or designee of the superintendent for filing.

4. Financial and institutional investor. "Financial and institutional investor" means, but is not limited to:

- A. A depository institution or a depository institution holding company;
- B. An insurance company;
- C. A separate account of an insurance company;
- D. An investment company as defined by the United States Investment Company Act of 1940;

E. A business development company as defined by the United States Investment Company Act of 1940;

F. An entity, other than a natural person, a substantial part of whose business activities consists of investing, purchasing, selling or trading in securities of more than one issuer and not of its own issue and that has gross assets in excess of \$1,000,000 at the end of its latest fiscal year;

G. An employee pension and profit sharing or benefit plan, other than an employee pension and profit sharing or benefit plan of the issuer, a self-employed individual retirement plan or individual retirement account, if:

(1) The investment decision is made by a plan fiduciary, as defined in the United States Employee Retirement Income Security Act of 1974, Section 3, subsection 21, which is either a depository institution, an insurance company or an investment adviser registered under this Act; or

(2) The plan has total assets in excess of \$5,000,000;

H. A small business investment company licensed by the United States Small Business Administration under the United States Small Business Investment Act of 1958, Section 301(c) or (d); or

I. An entity organized and operated not for private profit, as described in the United States Internal Revenue Code, Section 501(c)(3) with total assets in excess of \$5,000,000.

A person may be a financial and institutional investor whether acting for itself or others in a fiduciary capacity.

5. Fraud, deceit, defraud. "Fraud," "deceit" and "defraud" are not limited to common law deceit.

6. Guaranteed. "Guaranteed" means guaranteed as to payment of all or substantially all of principal and interest or dividends.

7. Insured. "Insured" means insured as to payment of all or substantially all of principal and interest or dividends.

8. Investment adviser. "Investment adviser" means any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

"Investment adviser" does not include:

A. An employee of an investment adviser;

B. A depository institution or a depository institution holding company;

C. A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of that person's profession and who receives no additional compensation solely for those services;

D. A broker-dealer whose performance of the investment advisory services is solely incidental to the conduct of that person's business as a broker-dealer and who receives no special compensation for the investment advisory services;

E. Any of the following:

(1) A publisher, employee or columnist of any bona fide newspaper, news magazine or business or financial publication; or

(2) An owner, operator, producer or employee of a radio or television network, station or production facility if, in either case, the financial and business news published or disseminated is made available to the general public on a regular basis and the content does not consist of rendering advice on the basis of the specific investment situation of each client;

F. A person whose advice, analyses or reports relate only to securities exempt under section 10502, subsection 1, paragraph A; and

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

9. Issuer. Except as provided in this subsection, "issuer" means a person that issues or proposes to issue a security.

A. The "issuer" of a collateral trust certificate, voting trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or persons performing similar functions, means the person or persons performing the acts and assuming the duties of depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued.

B. The "issuer" of an equipment trust certificate, including a conditional sales contract, or similar security serving the same purpose, means the person to whom the equipment or property is or is to be leased or conditionally sold.

C. The "issuer" of a fractional undivided interest in oil, gas or other mineral rights means the owner of an interest in such a right, whether whole or fractional, who creates fractional interests for the purpose of sale.

10. Nonissuer. "Nonissuer" means not directly or indirectly for the benefit of the issuer.

11. Offer to sell, offer to purchase. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. "Offer to purchase" includes every attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value, but does not include a transaction which is subject to the United States Securities Exchange Act of 1934, Section 14(d).

12. Person. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency or any other legal or commercial entity.

13. Price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering prices, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price.

14. Promoter. "Promoter" includes any person who, acting alone or in concert with one or more oth-

er persons, takes entrepreneurial initiative in founding or organizing the business or enterprise of an issuer; and any officer or director owning any securities of an issuer or any shareholder who owns, beneficially or of record, 10% or more of any class of securities of the issuer if the officer, director or shareholder acquires any of those securities in a transaction which does not possess the indicia of arms-length bargaining or which is otherwise unfair to the issuer.

15. Sale, sell. "Sale" or "sell" includes every contract of sale of, contract to sell or disposition of a security or interest in a security for value.

A. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

B. A purported gift of assessable stock is considered to involve an offer and sale.

C. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

D. The terms defined in this subsection do not include:

(1) Any bona fide pledge or loan of a security;

(2) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; or

(3) Any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests or partly in such exchange and partly for cash.

16. Sales representative. "Sales representative" means a natural person other than a broker-dealer, whether as an employee or in the form of a professional corporation, authorized to act and acting for a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is a sales representative only if that person otherwise comes within this definition.

17. United States Securities Act of 1933, United States Securities Act of 1934, United States Public Utility Holding Company Act of 1935, United States Investment Company Act of 1940, United States Employee Retirement Income Security Act of 1974 and United States Small Business Investment Act of 1958. "United States Securities Act of 1933," "United States Securities Act of 1934," "United States Public Utility Holding Company Act of 1935," "United States Investment Company Act of 1940," "United States Employee Retirement Income Security Act of 1974" and "United States Small Business Investment Act of 1958" mean the federal laws of those names, as amended before or after the effective date of this Act.

18. Security. "Security" means any note; stock, treasury stock; bond, debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; any limited partnership interest; collateral - trust certificate; preorganization certificate or subscription; transferable share, investment contract; voting-trust certificate; certificate of deposit for a security; documents of title to and certificates of interest in an oil, gas or other mineral lease or in payments out of production under such lease, right or royalty; documents of title to and certificates of interest in the title to or any profits or earnings from land or other property situated outside of the State; any put, call, straddle or option entered into a national securities exchange relating to foreign 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 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 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 life or some other specified period or any interest in a contributory or noncontributory pension or welfare plan subject to the United States Employee Retirement Income Security Act of 1974.

19. State. "State" means a state, commonwealth, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

20. Superintendent. "Superintendent" means the Superintendent of Banking.

§10502. Exemptions

1. Exempt securities. The following securities are exempted from sections 10401 and 10503:

A. Any security, including a revenue obligation, issued, insured or guaranteed by the United States, any agency or corporate or other instrumentality of the United States, any international agency or corporate or other instrumentality created jointly by the United States and one or more foreign governments, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more states or their political subdivisions; or any certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a non-governmental industrial or commercial enterprise, unless the payments are guaranteed by a person whose securities are exempt from registration by paragraphs F and H;

B. Any security issued, insured or guaranteed by Canada, any Canadian province or territory, any political subdivision of Canada or any such province or territory, any agency or corporate or other instrumentality of one or more of the foregoing, or any foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer, insurer or guarantor;

C. Any security issued by and representing an interest in or a direct obligation of, or guaranteed by, any depository institution or depository institution holding company, the deposit accounts of which are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan

Insurance Corporation or any successor to either agency authorized by federal law or a deposit insurance fund expressly authorized by state law and supervised by a state governmental official or agency;

D. Any security issued by and representing an interest in or a direct obligation of, or guaranteed by, any federal credit union or any credit union organized and supervised under the laws of this State, the share accounts of which are insured by the National Credit Union Share Insurance Fund, or by a deposit insurance fund expressly authorized by state law and supervised by a state governmental official or agency;

E. Any security issued by and representing an interest in or a direct obligation of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this State; but this exemption does not apply to an annuity contract, investment contract or similar security under which the promised payments are not fixed in dollars, but are substantially dependent upon the investment results of a segregated fund or account invested in securities;

F. Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is:

(1) Subject to the jurisdiction of the United States Interstate Commerce Commission;

(2) A registered holding company under the United States Public Utility Holding Company Act of 1935 or a subsidiary of a registered holding company within the meaning of the Act;

(3) Regulated in respect to its rates and charges by a governmental authority of the United States or any state; or

(4) Regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province or territory;

G. Equipment trust certificates in respect of equipment leased or conditionally sold to a person, if securities issued by that person would be exempt under this subsection;

H. Any security:

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

(2) Listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, a national market system designated by rule of the superintendent or, upon a finding by the superintendent that the Securities and Exchange Commission has approved the National Association of Securities Dealers corporate governance provisions, the National Association of Securities Dealers Automated Quotation - National Marketing System; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved on such an exchange; or any warrant or right to purchase or subscribe to any of the foregoing, provided that there has been filed by the issuer, any dealer or other offeror of the security with the superintendent a notice containing the name and address of the person intending to offer the security and identification of the security, together with a notice filing fee in the amount of \$300;

I. Any option issued by a clearing agency registered as such under the United States Securities Exchange Act of 1934, if the security, currency, commodity or other interest underlying the option is registered under this Act, is exempt under this subsection or is not otherwise required to be registered under this Act; provided that this exemption does not include or extend to any off-exchange futures contract or substantially similar arrangement;

J. Any security issued by:

(1) Any person organized and operated not for private profit, but exclusively for a religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purpose, or as a Chamber of Commerce or trade or professional association; or

(2) To the extent that a person is not described in subparagraph (1), a person exempt from tax or subsequently determined to have been exempt at the time of the sale under the United States Internal Revenue Code of 1954, as amended, Section 501(c), (2), (3), (4), (5), (6), (7), (8), (9), (10), (19), 501(e), 501(f) or 528 or any similar successor provision thereto; provided that no part of the net earnings of the issuer inures to the benefit of any person, private stockholder, member or individual;

K. Any commercial paper which arises out of a current transaction the proceeds of which have been or are to be used for current transactions, and which evidences any obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited or any guarantee of that paper or of any such renewal;

L. Any security issued in connection with an employees' stock purchase, pension, savings, option, profit-sharing or similar employees' benefit plan; and

M. A membership or equity interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the laws of any state when not traded to the public.

2. Exempt transactions. The following transactions are exempted from section 10401 and 10503:

A. Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

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

(1) Has a class of securities registered pursuant to the United States Securities Ex-

change Act of 1934, Section 12(b) or 12(g) and has been subject to the requirements of the United States Securities Exchange Act of 1934, Section 12 or 15(d), for a period of not less than 90 days prior to the transaction; or

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

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

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

E. Any transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter or among underwriters;

F. Any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

G. Any transaction by a personal representative, as defined in Title 18-A, section 1-201, subsection 30, executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator acting in their official capacities;

H. Any transaction executed by a bona fide secured party without purpose of evading this Act;

I. Any offer or sale of a security to a financial and institutional investor or to a broker-dealer;

J. Any offer or sale of a preorganization certificate or subscription if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective customer, no public advertising or general solicitation is used in connection with the offer or sale, the number of subscribers does not exceed 10 and no payment is made by any subscriber;

K. Any offer or sale of a preorganization certificate or subscription agreement issued in connection with the organization of a depository institution if that institution is under the supervision of a governmental official or agency which has and exercises the authority to regulate and supervise the depository institution. For purposes of this subsection, supervision of an organization by a governmental official or agency shall include the ability of that official or agency to:

(1) Require disclosures to prospective investors similar to those required under section 10404;

(2) Impound proceeds from the sale of preorganization certificates or subscription agreements until organization of the depository institution is completed; and

(3) Require refund to investors if the depository institution does not obtain a grant of authority from the appropriate governmental official or agency;

L. Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransfer-

able warrants or transferable warrants exercisable within not more than 90 days of their issuance, if no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this State and the issuer first files a notice together with a filing fee of \$300 specifying the terms of the offer and the superintendent does not by order disallow the exemption within the next 5 full business days;

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

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

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

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

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

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

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

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

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

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

N. Any transaction involving the distribution of the securities of an issuer to the security holders of another 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:

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

(2) If the transaction is exempt from registration under the United State Securities Act of 1933, written notice of the transaction, together with a copy of all materials, if any, by which approval of the transaction will be solicited is given to the superintendent at least 10 days prior to the consummation of the transaction and the superintendent 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;

O. Any transaction involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate which is used for residential or commercial purposes and participation interest in the notes:

(1) Where the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) The minimum aggregate sales price paid by each purchaser shall be not less than \$250,000;

(b) Each purchaser shall pay cash either at the time of the sale or within 60 days of the sale; and

(c) Each purchaser shall buy for that person's own account only;

(2) Where the notes and participation interests are originated by a mortgagee approved by the United States Secretary of Housing and Urban Development pursuant to the National Housing Act, Sections 203 and 211 and are offered or sold, subject to the 3 conditions specified in subparagraph (1), to a depository institution or insurance company, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Government National Mortgage Association; and

(3) Any transaction between any of the persons described in subparagraph (1), involving nonassignable contracts to buy or sell the securities described in subparagraph (1), which contracts are to be completed within 2 years, provided that:

(a) The seller of the securities pursuant to any such contract is one of the parties described in subparagraph (1), who may originate those securities;

(b) The purchaser of those securities pursuant to any such contract is any other institution described in subparagraph (1); and

(c) The 3 conditions described in subparagraph (1) are fulfilled;

P. Any offer or sale of securities of a corporation organized under the laws of this State, if the number of holders of securities of the corporation does not at the time of the sale, and will not in consequence of the sale, exceed 10 in number exclusive of persons specified in section 10501, subsection 4, and if the securities sold in reliance on this subsection have not been offered to the public by general advertisement or general solicitation;

Q. Any offer or sale of securities of a corporation organized under the laws of this State, if the number of holders of securities of the entity, exclusive of persons specified in section 10501, subsection 4 will in consequence of the sale exceed 10, but will not in consequence of the sale exceed 25 in number and if the securities sold in reliance on this subsection have not been offered to the public by general advertisement or general solicitation. Any person who relies on this exemption shall file with the superintendent a notification for exemption which shall be in such form as may be prescribed by the superintendent and which shall require only the following information: The name, address and telephone 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 sale; a description of the rights of holders of the securities offered pursuant to this exemption, including voting rights and if cumulative or noncumulative liquidation rights, preemptive rights and any other rights or limitations applicable to the securities; the date the annual meeting of the shareholders will be held, the location and time of the meeting, a description of how the shareholders will be notified and if an annual financial statement and report of activity will be available to shareholders; a brief description of how the proceeds of the offering will be used and if proceeds shall be returned to investors if minimum amounts are not raised by a specific date; a brief description of the issuer's plan of business and whether the business is currently operational; and a list of the significant risks assumed by the investor, including management experience, competitive and economic factors, net worth position of the issu-

er and improbable or limited opportunity for release of the securities. A copy of the notification of exemption shall be made available to each offeree of securities sold in reliance on this exemption and shall contain such legends as the superintendent shall prescribe, notifying the offeree that the securities have not been registered with the superintendent, that they may be deemed restricted securities and that the issuer is under an obligation to make a reasonable finding that the securities are a suitable investment for the offeree. The superintendent may promulgate such rules as are considered necessary to further define or implement this subsection consistent with the intent of this subsection; and

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

3. Additional exemptions. The superintendent is authorized by rule to exempt securities or classes of securities or certain transactions, including promulgating a limited offering exemption, which shall further the objectives to compatibility with the exemptions from securities registration authorized by the United States Securities Act of 1933, Section 19(c)(2)(C) and uniformity among the states.

To keep any rules adopted by the superintendent in harmony with the rules promulgated by the United States Securities and Exchange Commission from time to time pursuant to the United States Securities Act of 1933 and with the rules of administrators in other states, the purposes, policies and provisions of this Act, in adopting, amending and repealing any rules promulgated under this subsection, take into consid-

eration the rules so prescribed by the United States Securities and Exchange Commission and the rules of administrators in other jurisdictions which enact the Uniform Securities Act or the Revised Uniform Securities Act.

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

5. Burden of proof. In any civil, criminal or administrative proceeding under this Act, the burden of proving an exemption or any exception from a definition is upon the person claiming it.

§10503. Filing of sales and advertising literature

The superintendent, by rule or order, may require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempt under section 10502.

SUBCHAPTER VI

ENFORCEMENT AND CIVIL LIABILITY

§10601. Investigations

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

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

B. Aid in enforcement of this Act.

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

3. Oaths; subpoenas; production of matters. For purposes of any investigation or proceeding under this Act, the superintendent or any officer or employee designated by rule or order, may administer oaths and affirmations, take evidence, 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.

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

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

4. Failure to comply with subpoena. If a person does not give testimony or produce the documents required by the superintendent or a designated employee pursuant to an administrative subpoena, the superintendent or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

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

§10602. Enforcement of Act

1. Violation of Act. If the superintendent reasonably believes, whether or not based upon an investigation conducted under section 10601, that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule or order under this

Act, the superintendent may, in addition to any specific powers granted under subchapter III or IV:

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

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

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

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

The superintendent may elect to impose one or more of the sanctions specified in this subsection for a violation of this Act or any rule or order under this Act, except that, if the superintendent revokes the license of a broker-dealer, sales representative or investment adviser or bars a person from association with a licensed broker-dealer, sales representative or investment adviser, the imposition of that sanction shall preclude imposition of any other sanction specified in this subsection.

2. Referral to Attorney General. The superintendent may request that the Attorney General institute any of the following actions in the appropriate courts of this State, in the appropriate courts of another state or in the district or bankruptcy courts of the United States in addition to any legal or equitable remedies otherwise available:

A. A declaratory judgment;

B. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this Act or any rule or order of the superintendent;

C. An action for disgorgement; or

D. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

§10603. Power of court to grant relief

1. Remedies for violation of Act. Upon showing of violation of this Act or a rule or order of the superintendent, the court, in addition to traditional legal and equitable remedies, including, but not limited to, 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; and

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

2. Prohibiting violation of Act. Remedies which the court may grant when the defendant is shown only about to violate this Act or a rule or order of the superintendent shall be limited to:

A. A temporary restraining order; or

B. A temporary or permanent injunction.

3. No bond required. The court shall not require the superintendent to post a bond in any official action under this Act.

4. Securities agency of another state. Upon a showing by the administrator or securities agency of another state that a person has violated any provision of the securities act of that state or any rule or order of the administrator or securities agency of that state, the Superior Court may grant appropriate legal and equitable remedies.

Upon showing of a violation of the securities act of another state or a rule or order of the administrator or securities agency of that state, the court, in addition to traditional legal and equitable remedies, including, but not limited to, temporary restraining orders and permanent or temporary prohibitory or mandatory injunctions, may grant the following special remedies:

A. Disgorgement; and

B. Appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this State.

§10604. Criminal penalties

1. Knowing violation. Any person who knowingly violates:

A. Any provision of this Act, except section 10204;

B. Any rule or order of the superintendent under this Act; or

C. Section 10204, knowing the statement made to be false or misleading in any material respect, shall, upon conviction, notwithstanding Title 17-A, be fined not more than \$5,000 or imprisoned more than 5 years, or both, for each violation.

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

3. Assistance to Attorney General. The Attorney General may request assistance from the superintendent or employees of the superintendent.

4. Limitation on action. No indictment or information may be returned under this section more than 6 years after the alleged violation.

5. Punishment. Nothing in this Act limits the power of the State to punish any person for any conduct which constitutes a crime.

§10605. Civil liability

1. Offer or sale of security. Any person who offers or sells a security in violation of section 10201, 10205, 10301, 10401 or 10405, subsection 8, or any rule of the superintendent relating to those sections or any condition imposed under section 10405, subsection 7, is liable to the person purchasing the security from that person. The person purchasing the security may sue to recover the consideration paid

for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees less the amount of any income received on the security, upon the tender of the security, or for damages plus costs and reasonable attorneys' fees if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified.

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

2. Purchase of a security. Any person who purchases a security in violation of section 10201, subsection 2, is liable to the person selling the security to that person. The person selling the security may sue to recover the security, plus any income received by the purchaser on the security upon tender of the consideration received, costs and reasonable attorneys' fees, or for damages plus costs and reasonable attorneys' fees if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser acquired it, plus interest at the legal rate on that amount from the date of disposition, over the consideration paid for the security plus any income received on the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security.

A person who purchases a security in violation of section 10201, subsection 2, is not liable under this subsection if the seller knew of the untrue statement of a material fact or omission of a statement of a material fact; or the person sustains the burden of proof to establish that the person did not know and in the exercise of reasonable care could not have known of the untrue statement or omission.

3. Control persons. Every person who directly or indirectly controls another person liable under subsection 1 or 2, every partner, officer or director of that other person, every person occupying a similar

status or performing similar functions, every employee of that other person who materially aids in the act or transaction constituting the violation and every broker-dealer or sales representative who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as that other person, unless the person otherwise secondarily liable under this Act proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

§10606. Civil statute of limitations

No person may sue under section 10605, unless suit is brought within 2 years after the violation, except that, if liability arises under subchapter II, suit must be brought within 2 years after the discovery of the violation or after discovery should have been made by the exercise of reasonable diligence.

§10607. Rescission and settlement offers

1. Purchaser. No purchaser may commence an action under section 10605 if, before suit is commenced, the purchaser has received a written offer:

A. Stating the respect in which liability under section 10605 may have arisen and fairly advising the purchaser of the purchaser's rights;

B. Offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income received thereon, or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 10605, subsection 1; and

C. Stating that the offer may be accepted by the purchaser at any time within a specified period of not less than 30 days after the date of its receipt by the purchaser.

2. Seller. No seller may commence an action under section 10605 if, before suit is commenced, the seller has received a written offer:

A. Stating the respect in which liability under section 10605 may have arisen and fairly advising the seller of the seller's rights;

B. Offering to return the security, plus the amount of any income received on the security, upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 10605, subsection 2; and

C. Providing that the offer may be accepted by the seller at any time within a specified period of not less than 30 days after the date of its receipt by the seller.

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

4. Delivery of offer. Every offer under subsection 1 or 2 shall be delivered to the offeree or sent by certified mail to the offeree at the offeree's last known address.

5. Statute of limitation tolled. If an offer is not performed in accordance with its terms, suit by the offeree under section 10605 shall be permitted without regard to this section and the statute of limitations shall toll from the time of receipt of the offer until 60 days after the rescission or settlement offer was to have been performed.

§10608. Miscellaneous provisions

1. Contract in violation of Act. No person subject to this Act who has made or engaged in the performance of any contract in violation of this Act or any rule or order of the superintendent, 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.

2. Waiver of Act. Any condition, stipulation or provision in an agreement or contract entered into or effective in this State, but excluding any choice of law provision or provision to arbitrate under a rule of a self-regulatory organization approved 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 is void.

3. Time of tender. Except as provided in section 10607, any tender required under this Act may be made at any time before entry of judgment.

4. Rights and remedies not exclusive. The rights and remedies provided by this Act are in addition to any other rights or remedies that may exist at law or in equity, but this Act does not create any cause of action not specified in this subchapter.

5. Survival of cause of action. Every cause of action under this Act survives the death of any person who might have been a plaintiff or defendant.

SUBCHAPTER VII

ADMINISTRATION

§10701. Administration of Act

1. Superintendent. This Act shall be administered by the Superintendent of Banking.

2. Use of information. Neither the superintendent nor any employee of the superintendent may use any information which is filed with or obtained by the superintendent which is not public information for personal gain or benefit, nor may the superintendent nor any employee of the superintendent 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.

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

4. Nonpublic information. Information filed with or obtained by the superintendent is nonpublic to the extent it would be considered as nonpublic matters and 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.

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

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

7. Applicability of Maine Administrative Procedure Act, Title 5, chapter 375. Unless otherwise indicated, the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, govern the administration of this Act.

§10702. Cooperation with other agencies

1. Cooperation. The superintendent and the employees of the superintendent may cooperate, including bearing the expense of the 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 Commission, the United States Commodity Futures Trading Commission, the United States Securities Investor Protection Corporation, any self-regulatory organization established under the United States Securities Exchange Act of 1934 or the United States Commodity Exchange Act, any national or international organization of securities officials or agencies and any governmental law enforcement agency.

2. Authorized activities. The cooperation authorized by subsection 1 may include, but need not be limited to, the following:

A. Establishing a central depository for licensing or registration under this Act and other documents or records required or allowed to be maintained under this Act;

B. Making joint license or registration reviews, examinations or investigations;

C. Holding joint administrative hearings;

D. Filing and prosecuting joint litigation;

E. Sharing and exchanging personnel;

F. Sharing and exchanging information and documents subject to the restrictions of section 10701, subsection 3;

G. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and interpretative opinions and releases; and

H. Issuing and enforcing subpoenas at the request of a federal or another state securities agency or the United States Commodity Futures Trading Commission, if the activities constituting an alleged violation for which the information is sought would also be a violation of this Act if the activities had taken place in this State and provided that any person against whom a subpoena may be issued shall have an opportunity for hearing before the subpoena is issued.

§10703. General authority to adopt rules, forms and orders

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

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

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

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

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

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

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

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

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

C. Whether any required financial statements shall be 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.

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

5. Conformity with rule, form or order. No provision of this Act imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order or form adopted by the superintendent, 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.

§10704. Consent to service of process

1. Filing requirement. Every applicant for licensing under subchapter III and every issuer which registers one or more classes of its securities under subchapter IV or which proposes to offer a security in this State through a sales representative shall file with the superintendent, in a form prescribed by rule, an irrevocable consent appointing the superintendent 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 after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

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

3. Prohibited acts deemed consent. When a person, including a nonresident of this State, engages in conduct prohibited or made actionable by the Act or any rule or order of the superintendent and has not filed a consent to service of process under subsection 1, the engaging in the conduct shall constitute the appointment of the superintendent 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 with the same force and validity as if served personally.

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

A. The plaintiff, who may be the superintendent, immediately sends notice of the service and a 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; and

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

5. Proceeding before superintendent. Service as provided in subsection 4 may be used in any proceeding before the superintendent or by the superintendent in any proceeding in which the superintendent is the moving party.

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

§10705. Advisory rulings; declaratory rulings

1. Advisory rulings. The superintendent may honor requests from interested persons for advisory rulings as to the application of this Act to any transaction.

2. Declaratory rulings. The superintendent, in his discretion upon application by an interested party, may conduct a hearing and issue a declaratory ruling under the Maine Administrative Procedure Act, Title 5, section 9001, subsection 3, as to the applicability of this Act, any provision of this Act or any rule or order of the superintendent to any person or transaction or as to the meaning of any term used in this Act or any rule or order of the superintendent.

§10706. Administrative files

1. Register. The superintendent shall keep a register of the following items:

A. All applications for licensing, registration and exemption;

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

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

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

E. All advisory rulings and declaratory rulings rendered.

2. Files. The superintendent shall retain in his files the following:

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

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

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

D. Any administrative orders entered under the Act.

3. Format of records. All records required to be maintained by subsections 1 and 2 may be maintained in computer or microfilm format or any other form of data storage.

4. Photocopies. The superintendent shall furnish to any person photocopies or other copies of any entry in the registers required to be maintained by this section. Upon request, the superintendent shall certify under the seal of office any copy as being a true and correct copy of the records maintained by the office. The superintendent may make reasonable charges for the furnishing or 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.

§10707. Scope of the Act

1. Sale or offer to sell. Sections 10201, 10202, 10205, 10301, 10401 and subchapter VI apply to persons who sell or offer to sell when:

A. An offer to sell is made in this State; or

B. An offer to purchase is made and accepted in this State.

2. Purchase or offer to purchase. Sections 10201, 10202, 10205, 10301 and subchapter VI apply to persons who purchase or offer to purchase when:

A. An offer to purchase is made in this State; or

B. An offer to sell is made and accepted in this State.

3. Offer made in this State. For the purpose of this section, an offer to sell or to purchase is made in this State, whether or not either party is then present in this State, when the offer:

A. Originates from this State; or

B. Is directed by the offeror to this State and received at the place to which it is directed, or at any post office in this State in the case of a mailed offer.

4. Offer accepted in this State. For the purpose of this section, an offer to purchase or to sell is accepted in this State when acceptance:

A. Is communicated to the offeror in this State; and

B. Has not previously been communicated to the offeror, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed, or at any post office in this State in the case of a mailed acceptance.

5. Newspapers and other publications. For the purpose of subsection 1, an offer to sell or to purchase is not made in this State when the publisher circulates or there is circulated on his behalf, in this State, any bona fide newspaper or other publication of general, regular and paid circulation:

A. Which is not published in this State; or

B. Which is published in this State, but has had more than 2/3 of its circulation outside this State during the past 12 months.

For the purpose of this subsection, when a publication is published in editions, each edition shall be considered a separate publication except for material common to all editions.

6. Electronic communications. For the purpose of subsection 1, an offer to sell or to purchase is not made in this State when a radio or television program or other electronic communication originating outside this State is received in this State.

For the purpose of this subsection, a radio or television program or other electronic communication shall be considered having originated from this State if either the broadcast studio or means of transmission is located within this State, unless:

A. The program or communication is syndicated and distributed from outside this State for re-distribution to the general public in this State;

B. The program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from out-

side this State for redistribution to the general public in this State;

C. The program or communication is an electronic signal that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, television or other electronic system; or

D. The program or communication consists of an electronic signal which originates from within this State, but which is not intended for redistribution to the general public in this State.

This subsection shall not apply to any changes, alterations or additions made locally to a radio or television program or other electronic communications.

§10708. Procedure for entry of an order

1. Notice of intent, summary order. The superintendent shall commence an administrative proceeding under 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 may be entered without notice, without opportunity for hearing and need not be supported by findings of fact or conclusions of law, but must be in writing. A summary order is subject to the requirements of section 10602, must be supported by allegations and must be in writing.

2. Notification of parties. Upon entry of a notice of intent or summary order, the superintendent shall promptly notify in writing all interested parties that the notice or summary order has been entered and the reasons for that notice or order. If the proceeding is pursuant to a notice of intent, the superintendent shall notify all interested parties of the date, time and place set for the hearing in the notice. If the proceeding is pursuant to a summary order, the superintendent shall notify all interested parties that they have 30 calendar days from the entry of the order to file a written request for a hearing on the matter with the superintendent and that the hearing will be scheduled to commence within 15 calendar days after the receipt of the written request.

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

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

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

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

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

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

6. Notice; opportunity for hearing; findings of fact. No final order or order after hearing may be entered without:

A. Appropriate notice to all interested persons;

B. Opportunity for hearing by all interested persons; and

C. Entry of written findings of fact and conclusions of law.

§10709. Judicial review of orders

Any person aggrieved by a final order of the superintendent 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.

§10710. Repeal and saving provisions

1. When former law governs. Former chapter 13, subchapters I to V, exclusively govern all suits, actions, prosecutions or proceeding which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this Act, except that no civil suit or action may be maintained to enforce any liability under that former law unless brought within any period of limitation which applied when the cause of action accrued.

2. Licenses, registrations, orders preserved.
All effective licenses and registrations under former chapter 13, subchapters I to V, all administrative orders relating to those licenses and registrations and all conditions imposed upon those licenses and registrations remain in effect so long as they would have remained in effect if this Act had not been passed. They are considered to have been filed, entered or imposed under this Act, but are governed by that former law.

3. Exemptions. Former chapter 13, subchapters I to V, apply in respect of any offer or sale made within one year after the effective date of this Act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under that former law.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1985-86</u>	<u>1986-87</u>
<u>BUSINESS, OCCUPATIONAL AND</u> <u>PROFESSIONAL REGULATION,</u> <u>DEPARTMENT OF</u>		
Bureau of Banking		
Positions	(2)	(2)
Personal Services	\$50,400	\$70,000
All Other	7,500	12,600
Capital Expenditures	2,000	
Total	<u>\$59,900</u>	<u>\$82,600</u>

Effective September 19, 1985.

CHAPTER 401

H.P. 1084 - L.D. 1575

AN ACT to Amend the Laws Related to Motor
Vehicle Dealers and to Address Certain
Problems Related to Motor Vehicle
Auctions in Maine.

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

Sec. 1. 29 MRSA §57, as amended by PL 1971, c. 360, §6, is further amended to read: