

# MAINE STATE LEGISLATURE

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**LAWS**

OF THE

**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

**FIRST REGULAR SESSION**

December 7, 1988 to July 1, 1989

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
SEPTEMBER 30, 1989

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

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J.S. McCarthy Company  
Augusta, Maine  
1989

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION  
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ONE HUNDRED AND FOURTEENTH LEGISLATURE  
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(c) The person may be eligible to receive free legal assistance in pursuing an appeal. This statement shall also provide a list of organizations that provide legal assistance to persons of low income.

B. Any person who requests or receives training or supportive services under this section may obtain a review of any decision made by the job training agency related to those services. When an individual requests a review, the agency shall promptly investigate and attempt to resolve the complaint informally. If the problem is not resolved to the complainant's satisfaction through this informal process, a hearing to review the agency's decision shall be scheduled before an impartial hearing officer as provided in paragraph C.

C. Hearings provided under this subsection shall be held pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

**Sec. 14. 26 MRSA §2015-A, sub-§12**, as enacted by PL 1987, c. 775, §3, is repealed.

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

Effective July 7, 1989.

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## CHAPTER 542

### H.P. 189 - L.D. 254

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

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

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 B, §54, is repealed and the following enacted in its place:

#### §212-A. Securities Division

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

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

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

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

#### **§4696. Registration**

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

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

**4. Administrative orders; rules; forms.** ~~The superintendent~~ Securities Administrator may make, amend and rescind rules, forms and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing disclosure documents, applications and reports and defining any terms, whether or not used in this chapter insofar as the definitions are not inconsistent with this chapter. For the purpose of rules and forms, the ~~superintendent~~ Securities Administrator may classify business opportunities, persons and matters within his jurisdiction and prescribe different requirements for different classes.

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

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

#### **§4700-A. Service of process**

~~The Superintendent of Banking or any person designated by the superintendent~~ Securities Administrator shall be an agent of each seller who sells, offers for sale, advertises

or promotes business opportunities in this State for service of any process, notice or demand required or permitted by law to be served and this service shall be binding upon the seller. Service of any such process, notice or demand shall be made as provided for service upon the Secretary of State under the Maine Rules of Civil Procedure, Rule 4(d)(8).

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

**§10204. Misleading filings**

No person may make or cause to be made, in any document filed with the ~~superintendent~~ administrator 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.

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

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~~ administrator 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~~ administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

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

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

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

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

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

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

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

**2. Employment of suspended and barred persons.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### §10307. Examinations

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

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

B. Any class of applicants; and

C. Any class of employees of applicants for licensing as to whom the ~~superintendent~~ administrator 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~~ administrator or a designee of the ~~superintendent~~ administrator. Examinations may be oral, written or both and may differ for each class of applicants.

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

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

**1. Effective date of license.** Unless a proceeding under section 10313 has been instituted, the license of any broker-dealer, sales representative or investment adviser becomes effective 30 days after an application for licensing and the last of any additional information requested by the ~~superintendent~~ administrator or the ~~superintendent's~~ administrator's designee has been filed and provided that all

examination requirements imposed under section 10307 have been satisfied. The ~~superintendent~~ administrator may, by order, authorize an earlier effective date of licensing.

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

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

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

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

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

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

### §10309. Annual report and fee

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

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

### §10310. Post-licensing requirements

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

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 administrator 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 administrator of its current financial condition.

**4. Fidelity bonds.** The superintendent administrator 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 administrator 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 administrator determines, by rule, are necessary or appropriate.

A. Unless the superintendent administrator 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 administrator.

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

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

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

**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 administrator.

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

**§10312. Inspection power**

**1. Broker-dealers; investment advisers.** The superintendent administrator, 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 administrator in a readable form.

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

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

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

**1. Denial, suspension, revocation.** The superintendent administrator 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 administrator 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 administrator or the designee of the superintendent administrator 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~~ administrator denying, suspending or revoking the person's license as a broker-dealer, sales representative or investment adviser;

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

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

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

(3) A United States Postal Service fraud order;

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

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

under the United States Commodity Exchange Act; or

(6) An order entered by a court of competent jurisdiction or entered after notice and opportunity for hearing by a federal or state licensing agency denying, suspending, revoking or restricting the person's license to sell real estate, insurance or any investment other than securities, provided that the order resulted from allegations of misconduct. This subparagraph shall also apply when the denial, suspension, revocation or restriction of the license is pursuant to a consent agreement between the person and the licensing agency, whether or not the agency also issues an order;

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~~ administrator 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~~ administrator shall vacate any order under this paragraph when the deficiency has been corrected.

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

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

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

A. The ~~superintendent~~ administrator 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 administrator 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 administrator 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 administrator 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 administrator 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 administrator may, by order, summarily suspend a license or postpone the effective date of a license. Upon the entry of the order, the superintendent administrator 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 administrator 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 guardian, or cannot be located after reasonable search, the superintendent administrator 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 administrator of an application to withdraw or within such shorter period of time as the superintendent administrator 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 administrator 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 administrator may determine. If no proceeding is pending or instituted and withdrawal becomes effective, the superintendent administrator 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.

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

**§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 administrator, 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 administrator, 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.

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

**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 administrator determines.

**Sec. 29. 32 MRSA §10403, sub-§2, 1B**, as enacted by PL 1985, c. 400, §2, is amended to read:

B. If the superintendent administrator, 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;

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

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

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

**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 administrator for at least 10 days, except that, if the registration statement is not filed with the superintendent administrator 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 administrator for 30 days or any shorter period the superintendent administrator, 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 administrator permits, by rule or order, and the offering is made within those limitations.

The registrant shall promptly supply to the superintendent administrator written notification of the date and time when the federal registration statement became effective and the 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 administrator 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 administrator must promptly notify the registrant by telephone or telegram, and promptly confirm by letter or telegram when the superintendent administrator 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 administrator 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 administrator of the date when the federal registration statement is expected to become effective, the superintendent administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the superintendent administrator contemplates the institution of a proceeding under section 10406; but this advice by the superintendent administrator does not preclude the institution of such a proceeding at any time.

**4. Modification of requirements.** The superintendent administrator 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 administrator finds the waiver or modification necessary for the administration of the Act and consistent with the protection of investors.

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

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

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

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

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

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

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

**4. Delay of effectiveness.** The superintendent administrator may delay effectiveness for a single period of not more than 90 days if the superintendent administrator determines that the registration statement is not complete in all material respects and promptly notifies the registrant of that determination. The superintendent administrator may delay

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

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

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

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

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

- A. Any security issued within the 3 years immediately preceding the offering or to be issued to a promoter for a consideration substantially less than the offering price; or
- 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 administrator may, by rule or order, determine the conditions of any required escrow under this subsection, but the superintendent administrator may not reject a depository solely because of location in another state.

**7. Impounding of proceeds.** The superintendent administrator 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 administrator may, by rule or order, determine the conditions of any required impounding under this section, but the superintendent administrator 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 administrator, 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 administrator, 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 administrator. 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 administrator provides otherwise by rule or order. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this State, unless the superintendent administrator provides otherwise by rule or order. No registration statement is effective during the time a stop order is in effect under section 10406, subsection 1.

**11. Reports.** So long as a registration statement is effective, the superintendent administrator 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.

**13. Increasing number of securities registered by qualification.** A registration statement filed under 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 administrator previously had been informed. The amendment becomes effective when the superintendent administrator so orders and relates back to the date or dates of sale of the additional securities being registered. Each person filing such an amendment shall pay a filing fee of \$300, with respect to the additional securities to be offered and sold.

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

**1. Stop orders.** The superintendent administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the superintendent administrator 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 administrator 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 administrator 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 administrator may enter only a denial order under this clause and shall vacate any such order when the deficiency has been corrected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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 administrator 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 administrator or, upon a finding by the superintendent administrator 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 administrator a notice containing the name and address of the person intending to offer the security and identifica-

tion of the security, together with a notice filing fee in the amount of \$300;

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

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 Exchange 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 administrator 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 administrator 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 administrator, 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;

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, nontransferable 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 administrator 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~~ administrator 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~~ administrator 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 States 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~~ administrator at least 10 days prior to the consummation of the transaction and the ~~superintendent~~ administrator does not, by order, disallow the exemption within the next 10 days on the ground that the disallowance is necessary or appropriate for the protection of investors;

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~~ administrator a notification for exemption which shall be in such form as may be prescribed by the ~~superintendent~~ administrator 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 issuer 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 administrator shall prescribe, notifying the offeree that the securities have not been registered with the superintendent administrator, 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 administrator 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 Act of 1933, as amended, and any transaction constituting a nonpublic offering under rules adopted by the superintendent administrator 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 administrator a notification of exemption, upon such form as the superintendent administrator may prescribe and pay a filing fee of \$300.

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

**3. Additional exemptions.** The superintendent administrator 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. In any rule establishing an exemption for which a notice must be filed, the superintendent administrator may provide for a filing fee of \$300.

To keep any rules adopted by the superintendent administrator 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 consideration 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 administrator may by order deny or revoke any exemption specified in subsection 1, paragraph J, L or M, or in subsection 2 or 3, with respect to a specific security or transaction if the superintendent administrator 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.

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

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

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

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

The superintendent administrator, 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 qualifies for an exemption under section 10502 for which the filing of a notice with the superintendent administrator is not required.

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

**§10601. Investigations**

**1. Investigations.** The superintendent administrator may make any public or private investigation, within or without this State, as the superintendent administrator 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 administrator; or
- B. Aid in enforcement of this Act.

**2. Publication.** The superintendent administrator may publish information concerning any violation of this Act or any rule or final order of the superintendent administrator 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 administrator 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 administrator may require or permit any person to file a statement in writing, under oath or otherwise as the superintendent administrator 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 administrator or a designated employee pursuant to an administrative subpoena, the superintendent administrator 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.

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

**1. Violation of Act.** If the superintendent administrator 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 administrator 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 administrator 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.~~ Request that the Attorney General bring an action for any relief authorized by section 10603 or bring any other civil or criminal action which the Attorney General is authorized to bring in the courts of this State, another state or the United States.

~~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.~~

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

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

**1. Remedies for violation of Act.** Upon showing of violation of this Act or a rule or order of the superintendent administrator, 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 administrator 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 administrator to post a bond in any official action under this Act.



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

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

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

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

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

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

**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~~ administrator 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.

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

**3. Form of offer.** The ~~superintendent~~ administrator, 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.

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

**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~~ administrator, or who has acquired any purported right under any contract with knowledge of the facts by reasons of which its making or performance was in violation, may base any suit on the contract.

**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~~ administrator is void.

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

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

**2. Use of information.** Neither the ~~superintendent~~ administrator nor any employee of the ~~superintendent~~ administrator may use any information which is filed with or obtained by the ~~superintendent~~ administrator which is not public information for personal gain or benefit, nor may the ~~superintendent~~ administrator nor any employee of the ~~superintendent~~ administrator conduct any securities 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~~ administrator 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~~ administrator 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~~ administrator may disclose any information obtained in connection with an investigation pursuant to section 10601 that would otherwise be nonpublic information to the securities agencies and 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 pre-

serve 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 administrator or any employee of the superintendent administrator.

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

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

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

**1. Cooperation.** The superintendent administrator and the employees of the superintendent administrator 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.

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

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

**1. Authority.** In addition to specific authority granted elsewhere in this Act, the superintendent administrator 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 administrator may classify securities, persons and matters within the superintendent administrator'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 administrator 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 administrator 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 administrator 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 administrator, notwithstanding that the rule, order or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

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

**§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 administrator, in a form prescribed by rule, an irrevocable consent appointing the superintendent administrator to be that person's attorney to receive service of any lawful process in any noncriminal proceeding against the person, a successor or personal representative, which arises under this Act or any rule or order of the superintendent administrator after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

**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 administrator 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 administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor or personal representative which grows out of that conduct and which is brought under the Act or any rule or order of the superintendent administrator with the same force and validity as if served personally.

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

A. The plaintiff, who may be the superintendent administrator, 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 administrator; 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 administrator in a proceeding before the superintendent administrator, allows.

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

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

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

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

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

**2. Declaratory rulings.** The superintendent administrator, in his the administrator's 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 administrator 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 administrator.

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

**1. Register.** The superintendent administrator 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 administrator shall retain in his the 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.

**4. Photocopies.** The superintendent administrator 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 administrator 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 administrator 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.

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

**1. Notice of intent, summary order.** The superintendent administrator 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.

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

**2. Notification of parties.** Upon entry of a notice of intent or summary order, the ~~superintendent administrator~~ 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 administrator~~ shall notify all interested parties of the date, time and place set for the hearing in the notice, or if no hearing has been scheduled, the ~~superintendent administrator~~ shall notify all interested parties that they have 30 calendar days from the entry of the notice of intent to file a written request with the ~~superintendent administrator~~ for a hearing. If the proceeding is pursuant to a summary order, the ~~superintendent administrator~~ 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 administrator~~ 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 administrator~~ may give notice of the entry of the notice of intent or summary order to such parties as ~~he~~ the administrator may determine to be necessary or appropriate.

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

**3. Hearing on summary order.** If the proceeding is pursuant to a summary order, the ~~superintendent administrator~~, 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 administrator's~~ own motion.

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

A. Thirty days after the ~~superintendent administrator~~ mails notice to the interested parties of the right to request a hearing if they fail to request a hearing; 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 administrator~~, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

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

**7. Appointment of presiding officer.** For purposes of any hearing conducted pursuant to this section, the administrator may appoint a qualified person to preside at the hearing and to make proposed findings of fact and

conclusions of law. The responsibility for the entry of the final findings of fact and conclusions of law and for the issuance of any final order shall remain with the administrator.

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

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

**§10709. Judicial review of orders**

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

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

**§10711. Acts of Superintendent of Banking**

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

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

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

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

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

A. A numismatic coin whose fair market value is at least 15% higher than the value of the metal it contains;

B. Real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property; or

C. Any work of art offered or sold by art dealers at public auction or offered or sold through a private sale by the owner.

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

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

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

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

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

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

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

- (1) A financial institution;
- (2) A depository, the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission;
- (3) A storage facility licensed or regulated by the United States or any agency of the United States; or

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

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

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

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

**§11208. Securities laws unaffected**

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

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

**§11301. Investigations**

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

- A. Determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the superintendent administrator; or
- B. Aid in enforcement of this chapter.

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

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

**4. Court order.** If a person does not give testimony or produce the documents required by the ~~superintendent~~ administrator or a designated employee pursuant to an administrative subpoena, the ~~superintendent~~ administrator 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:

A. The Superior Court located in the County of Kennebec 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

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

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

#### §11302. Enforcement of chapter

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

A. Issue a cease and desist order; or

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

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

A. An action for declaratory judgment;

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

C. An action for disgorgement; or

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

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

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

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

B. Disgorgement;

C. Declaratory judgment;

D. Restitution to investors wishing restitution; or

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

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

A. A temporary restraining order;

B. A temporary or permanent injunction; or

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

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

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

#### §11304. Criminal penalties

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

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

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

**§11305. Administration of chapter**

**1. Administrator.** This chapter shall be administered by the ~~Superintendent of Banking~~ Securities Administrator.

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

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

A. The following are exceptions to this subsection:

(1) Information obtained in private investigations pursuant to section 11301;

(2) Information made confidential by rule or order of the ~~superintendent administrator~~; or

(3) Information obtained from federal agencies which may not be disclosed under federal law.

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

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

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

**1. Cooperation.** To encourage uniform application and interpretation of this chapter and commodities regulation and enforcement in general, the ~~superintendent administrator~~ and the employees of the ~~superintendent administrator~~ may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the Commodity

Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies and any governmental law enforcement agency.

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

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

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

A. Rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. For the purpose of rules or forms, the ~~superintendent administrator~~ may classify commodities and commodity contracts, persons and matters within the ~~superintendent's~~ administrator's jurisdiction.

**2. Adoption of rules; forms; orders.** Unless specifically provided in this chapter, no rule, form or order may be adopted, amended or rescinded unless the ~~superintendent administrator~~ 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 provisions of this chapter.

**3. Publication.** All rules and forms of the ~~superintendent administrator~~ shall be published.

**4. Liability.** No provision of this chapter 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 administrator~~, notwithstanding that the rule, order or form may later be amended or rescinded, or be determined by judicial or other authority to be invalid for any reason.

**Sec. 82. 32 MRSA §11308**, as enacted by PL 1985, c. 643, is amended to read:

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

**1. Appointment of administrator.** When a person, including a nonresident of this State, engages in conduct prohibited or made actionable by the chapter or any rule or order of the ~~superintendent administrator~~, the engaging in the conduct shall constitute the appointment of the ~~superintendent administrator~~ as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor or personal representative, which grows out of that conduct and which is brought

under the chapter or any rule or order of the ~~superintendent~~ administrator with the same force and validity as if served personally.

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

A. The plaintiff, who may be the ~~superintendent~~ administrator in a suit, action or proceeding instituted by ~~him~~ the administrator, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at ~~his~~ the last address known to the plaintiff; and

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

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

**1. Notice of intent, summary order.** The ~~superintendent~~ administrator shall commence an administrative proceeding under this chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order 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.

**2. Notification of parties.** Upon entry of a notice of intent or summary order, the ~~superintendent~~ administrator 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~~ administrator shall notify all interested parties of the date, time and place set for the hearing in the notice or, if no hearing has been scheduled, the ~~superintendent~~ administrator shall notify all interested parties that they have 30 calendar days from the entry of the notice of intent to file a written request with the ~~superintendent~~ administrator for a hearing. If the proceeding is pursuant to a summary order, the ~~superintendent~~ administrator 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~~ administrator 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~~ administrator may give notice of the entry of the notice of intent or summary order to such parties as ~~he~~ the administrator may determine to be necessary or appropriate.

**3. Hearing.** If the proceeding is pursuant to a summary order, the ~~superintendent~~ administrator, whether or not a written request for a hearing is received from any

interested party, may set the matter down for hearing on the ~~superintendent's~~ administrator's own motion.

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

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

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

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

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

**§11311. Judicial review of orders**

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

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

**§11312. Orders issued by Superintendent of Banking**

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

See title page for effective date.

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**CHAPTER 543**

**H.P. 753 - L.D. 1057**

**An Act to Provide Financial Assistance to Expedite the Removal of Underground Oil Tanks**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** owners of certain underground oil storage facilities and tanks are required to remove them by October 1, 1989; and

**Whereas,** this legislation provides assistance to certain residential and commercial owners of underground