

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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

J.S. McCarthy Company
Augusta, Maine
2001

employees, or have them trained, in a manner the administrator determines desirable, to carry out the purposes of the office.

Sec. 11. 32 MRSA §10702, sub-§3, as enacted by PL 1999, c. 184, §23, is amended to read:

3. Contracts with other agencies. The administrator may employ and engage experts, professionals and other personnel of other state and federal regulatory agencies as necessary to assist the Office of Securities Division in carrying out its regulatory functions. The administrator may contract office staff to other state and federal agencies to assist those agencies in carrying out their regulatory functions. Contracts for services under this subsection are designated sole source contracts and are not subject to the procurement requirements of Title 5, chapter 155.

Sec. 12. 32 MRSA §10708, sub-§8, as enacted by PL 1989, c. 542, §65, is repealed.

Sec. 13. 32 MRSA §11210 is enacted to read:

§11210. Short title

This chapter is known and may be cited as the "Maine Commodity Code."

Sec. 14. 33 MRSA §1604-106, as enacted by PL 1981, c. 699, is amended to read:

§1604-106. Public offering statement; condominium securities

If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States or the Office of Securities Division of the Bureau of Banking of this State, a declarant satisfies all requirements relating to the preparation of a public offering statement of this Act if he the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission or the Office of Securities Division. When a condominium is located in a state other than Maine, under the laws of which a public offering statement is required in detail similar to the requirements of this Act, a declarant satisfies all requirements relating to the preparation of a public offering statement if he the declarant delivers to the purchaser a copy of such that public offering statement.

Sec. 15. Transition. The following provisions apply to the reassignment of the duties and responsibilities of the Department of Professional and Financial Regulation, Bureau of Banking, Securities Division to the Office of Securities.

1. The Office of Securities is the successor in every way to the powers, duties and functions

transferred under this Act and formerly held by the Securities Division.

2. All rules, regulations and procedures of the Securities Division in effect upon the effective date of this Act remain in effect until rescinded, revised or amended.

3. All contracts, agreements and compacts of the Securities Division in effect upon the effective date of this Act remain in effect until they expire or are altered by the parties involved in the contracts, agreements or compacts.

4. Any positions authorized and allocated, subject to the personnel laws, to the Securities Division are transferred to the Office of Securities and may continue to be authorized.

5. All records, property and equipment previously belonging to or allocated for the use of the Securities Division become, on the effective date of this Act, the property of the Office of Securities.

Sec. 16. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Securities Division" appear or reference is made to those words or that division, they are amended to read and mean "Office of Securities" or that office, and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 183

S.P. 518 - L.D. 1637

An Act to Amend the Revised Maine Securities Act

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

PART A

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

§10303. Investment adviser and investment adviser representative licensing requirement

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

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

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

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

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

1. Consent to service of process. An applicant for licensing as a broker-dealer, sales representative ~~or investment adviser or investment adviser representative~~ shall file with the administrator or the designee of the 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 administrator determines, ~~by rule,~~ is necessary or appropriate to facilitate the administration of this Act.

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

B. Sales representative, \$40; ~~and~~

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

C. Investment adviser, \$200; ~~and~~

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

D. Investment adviser representative, \$40.

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

B. Sales representative, \$40; ~~and~~

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

C. Investment adviser, \$100; ~~and~~

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

D. Investment adviser representative, \$40.

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

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

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

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

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

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

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

C. Determining, either individually or as a member of the investment advisor's investment

committee, which recommendations or advice regarding securities should be given to clients;

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

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

Sec. A-12. 32 MRSA §10713, sub-§1, ¶A, as enacted by PL 1993, c. 410, Pt. K, §6, is amended to read:

A. All annual renewal license fees for sales representatives and investment adviser representatives received pursuant to this chapter; and

Sec. A-13. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	2001-02	2002-03
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Bureau of Banking		
All Other	\$20,000	\$40,000
Provides funds to support the activities of the Securities Administrator within the Securities Division.		

Sec. A-14. Effective date. This Part takes effect January 1, 2002.

PART B

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

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

- (1) The issuer of the security is:
 - (a) Actually engaged in business;
 - (b) Not in the organizational stage;
 - (c) Not a development stage company, a blank check, blind pool or shell company, the primary plan of business of which is to engage in a merger or combination with, or an acquisition of, an unidentified person or persons; and

(d) Not in bankruptcy or receivership;

(2) A licensed agent of a licensed broker-dealer effects the transaction;

(3) The security is sold at a price reasonably related to the current market price of the security;

(4) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, a broker-dealer as an underwriter of the security;

(5) A nationally recognized securities manual designated by order of the administrator or a document filed with the United States Securities and Exchange Commission that is publicly available through the United States Securities and Exchange Commission's Electronic Data Gathering and Retrieval system contains:

(a) A description of the issuer's business and operations;

(b) The names of the issuer's officers and directors or, in the case of a non-United States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(c) An audited balance sheet of the issuer as of a date within the last 18 months or, in the case of a reorganization or merger where the parties had audited balance sheets, a pro forma balance sheet; and

(d) An audited income statement for each of the issuer's immediately preceding 2 fiscal years or for the issuer's period of existence if less than 2 years or, in the case of a reorganization or merger where the parties had audited income statements, a pro forma income statement; and

(6) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the United States Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

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

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

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

D. Any nonissuer transaction effected by or through a licensed broker-dealer pursuant to an unsolicited order or offer to buy; but ~~the 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 must preserve a signed copy of each such acknowledgment form be preserved by that broker dealer for a specified period 6 years;~~ that must preserve a signed copy of each such acknowledgment form

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

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

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

Q. Any offer or sale of securities of a corporation, limited partnership or limited liability company, organized under the laws of this State or any issuer determined by the administrator by order to have its principal executive office in 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 administrator a notification for exemption that must be in such form as may be prescribed by the administrator

and requires 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 are kept and whether they are 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 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 is held, the location and time of the meeting, a description of how the shareholders are notified and if an annual financial statement and report of activity is available to shareholders; a brief description of how the proceeds of the offering will be used and whether proceeds will 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 must be ~~made available provided~~ to each offeree of securities sold in reliance on this exemption and must contain such legends as the administrator prescribes, notifying the offeree that the securities have not been registered with the administrator, that they may be considered 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 administrator may adopt such rules as are considered necessary to further define or implement this subsection consistent with the intent of this subsection;

See title page for effective date, unless otherwise indicated.