

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2004 to March 30, 2005**

**FIRST SPECIAL SESSION**  
**April 4, 2005 to June 18, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 29, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 17, 2005**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2005**

**CHAPTER 63****H.P. 694 - L.D. 984****An Act To Amend the Crime of  
Escape**

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

**Sec. 1. 17-A MRSA §755, sub-§1-D**, as repealed and replaced by PL 2001, c. 667, Pt. D, §20 and affected by §36, is amended to read:

**1-D.** A person is guilty of escape from arrest or escape during transport following arrest if without official permission the arrested person intentionally:

A. ~~Escapes from arrest or escapes from custody while being transported to a jail, police station or any other facility enumerated in subsection 3 pursuant to an arrest. Leaves following arrest prior to being transported, or while being transported to a jail, police station or other initial place of detention or to a courthouse when a court has ordered that the person be arrested and transported directly to court.~~ Violation of this paragraph is a Class D crime; or

B. Violates paragraph A and at the time of the escape the person uses physical force against another person, threatens to use physical force or is armed with a dangerous weapon. Violation of this paragraph is a Class B crime.

See title page for effective date.

**CHAPTER 64****H.P. 695 - L.D. 985****An Act To Amend Appellate Review  
Jurisdiction of the Superior Court**

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

**Sec. 1. 15 MRSA §1, sub-§2**, as enacted by PL 1999, c. 731, Pt. ZZZ, §9 and affected by §42, is amended to read:

**2. Appellate and review jurisdiction.** The Superior Court has jurisdiction to hear appeals and petitions ~~of from only the District Court.~~ Its jurisdiction is limited to the following:

- A. Petitions pursuant to section 1028;
- B. Petitions pursuant to section 1029;
- C. Appeals pursuant to section 1097;

D. Appeals pursuant to section 3402;

E. Appeals pursuant to section 2111 and Maine Rules of Criminal Procedure, Rule 35(f); ~~and~~

F. Appeals pursuant to Title 17-A, section 1207, subsection 1 and Maine Rules of Criminal Procedure, Rule ~~37F~~; 36;

G. Appeals pursuant to Title 17-A, section 1233 and Maine Rules of Criminal Procedure, Rule 36;

H. Appeals pursuant to Title 17-A, section 1349-F and Maine Rules of Criminal Procedure, Rule 36; and

I. Appeals pursuant to section 2111 and Maine Rules of Criminal Procedure, Rule 44A(c).

See title page for effective date.

**CHAPTER 65****H.P. 384 - L.D. 509****An Act To Adopt the Maine Uniform  
Securities Act**

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

**PART A**

**Sec. A-1. 32 MRSA c. 105**, as amended, is repealed.

**Sec. A-2. 32 MRSA c. 135** is enacted to read:

**CHAPTER 135****MAINE UNIFORM SECURITIES ACT****SUBCHAPTER 1****GENERAL PROVISIONS****§16101. Short title**

This chapter may be known and cited as "the Maine Uniform Securities Act."

**§16102. Definitions**

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

**1. Administrator.** "Administrator" means the Securities Administrator under section 16601.

**2. Agent.** "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer or director of a broker-dealer or issuer or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the meaning of the term "agent." "Agent" does not include an individual excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**3. Bank.** "Bank" means:

A. A banking institution organized under the laws of the United States;

B. A member bank of the Federal Reserve System;

C. A banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of United States Public Law 87-722, 12 United States Code, Section 92a, and that is supervised and examined by a state or federal agency having supervision over banks and that is not operated for the purpose of evading this chapter; and

D. A receiver, conservator or other liquidating agent of any institution or firm described in paragraph A, B or C.

**4. Broker-dealer.** "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

A. An agent;

B. An issuer;

C. A bank, credit union or savings institution if its activities as a broker-dealer are limited to those specified in Section 3(a)(4)(B)(i) to (vi) and (viii) to (x); Section 3(a)(5)(B); and Section 3(a)(5)(C) of the federal Securities Exchange Act of 1934, 15 United States Code, Sections 78c(a)(4) and (5);

D. An international banking institution; or

E. Any other person the administrator excludes, by rule or order, consistent with the public interest and protection of investors. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**5. Depository institution.** "Depository institution" means:

A. A bank; or

B. A savings institution, trust company, credit union or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a successor authorized by federal law.

"Depository institution" does not include an insurance company or other organization primarily engaged in the business of insurance; a Morris Plan bank; or an industrial loan company.

**6. Federal covered investment adviser.** "Federal covered investment adviser" means a person registered under the federal Investment Advisers Act of 1940.

**7. Federal covered security.** "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b) or rules or regulations adopted pursuant to that provision.

**8. Filing.** "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

**9. Fraud; deceit; defraud.** "Fraud," "deceit" and "defraud" are not limited to common law deceit.

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

**11. Institutional investor.** "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

A. A depository institution or international banking institution;

B. An insurance company;

C. A separate account of an insurance company;

D. An investment company as defined in the federal Investment Company Act of 1940;

E. A broker-dealer registered under the federal Securities Exchange Act of 1934;

F. An employee pension, profit-sharing or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the federal Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution or an insurance company;

G. A plan established and maintained by a state, a political subdivision of a state or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the federal Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution or an insurance company;

H. A trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution and its participants are exclusively plans of the types identified in paragraph F or G, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

I. An organization described in Section 501(c)(3) of the Internal Revenue Code, 26 United States Code, Section 501(c)(3), a corporation, a Massachusetts trust or similar business trust, a limited liability company or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

J. A small business investment company licensed by the United States Small Business Administration under Section 301(c) of the federal Small Business Investment Act of 1958, 15 United States Code, Section 681(c) with total assets in excess of \$5,000,000;

K. A private business development company as defined in Section 202(a)(22) of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-2(a)(22) with total assets in excess of \$5,000,000;

L. A federal covered investment adviser acting for its own account;

M. A qualified institutional buyer as defined in 17 Code of Federal Regulations, 230.144A(a)(1), except as defined in 17 Code of Federal Regulations 230.144A(a)(1)(i)(H);

N. A major U.S. institutional investor as defined in 17 Code of Federal Regulations, 240.15a-6(b)(4)(i);

O. Any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this chapter; or

P. Any other person specified by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**12. Insurance company.** "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that is subject to supervision by the Superintendent of Insurance or a similar official or agency of a state.

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

**14. International banking institution.** "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the federal Securities Act of 1933.

**15. Investment adviser.** "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. "Investment adviser" does not include:

A. An investment adviser representative;

B. A lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

C. A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

D. A publisher of a bona fide newspaper, news magazine or business or financial publication of general and regular circulation;

E. A federal covered investment adviser;

F. A bank or savings institution;

G. Any other person that is excluded by the federal Investment Advisers Act of 1940 from the definition of investment adviser; or

H. Any other person excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**16. Investment adviser representatives.** "Investment adviser representatives" means individuals employed by or associated with an investment adviser or federal covered investment adviser and who make any recommendations or otherwise give investment advice regarding securities, manage accounts or portfolios of clients, determine which recommendation or advice regarding securities should be given, provide investment advice or hold themselves out as providing investment advice, receive compensation to solicit, offer or negotiate for the sale of or for selling investment advice or supervise employees who perform any of the foregoing. "Investment adviser representatives" does not include individuals who:

A. Perform only clerical or ministerial acts;

B. Are agents whose performance of investment advice is solely incidental to the individuals acting as agents and who do not receive special compensation for investment advisory services;

C. Are employed by or associated with a federal covered investment adviser, unless the individuals have a "place of business" in this State as that term is defined by rule adopted under Section 203A of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-3a, and are:

(1) "Investment adviser representatives" as that term is defined by rule adopted under Section 203A of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-3a; or

(2) Not "supervised persons" as that term is defined in Section 202(a)(25) of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-2(a)(25); or

D. Are excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**17. Issuer.** "Issuer" means a person that issues or proposes to issue a security, subject to the following:

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

B. The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for ensuring payment of the certificate;

C. The issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production under a lease, right or royalty is the owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale; or

D. The issuer of a fractional or pooled interest in a viatical or life settlement contract is the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical or life settlement contract that is not fractionalized or pooled is the person effecting the transaction with the investor in such a contract but does not include a broker-dealer or sales representative.

**18. Nonissuer transaction; nonissuer distribution.** "Nonissuer transaction" or "nonissuer distribu-

tion" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

**19. Offer to purchase.** "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. "Offer to purchase" does not include a tender offer that is subject to Section 14(d) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78n(d).

**20. Person.** "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

**21. Place of business.** "Place of business" of a broker-dealer, an investment adviser or a federal covered investment adviser means:

A. An office at which the broker-dealer, investment adviser or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients; or

B. Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser or federal covered investment adviser provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients.

**22. Predecessor act.** "Predecessor act" means the former Revised Maine Securities Act.

**23. Price amendment.** "Price amendment" means the amendment to a registration statement filed under the federal Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the federal Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price.

**24. Principal place of business.** "Principal place of business" of a broker-dealer, an investment adviser or an issuer means the executive office of the broker-dealer, investment adviser or issuer from which the officers, partners or managers of the broker-dealer, investment adviser or issuer direct, control and coordinate the activities of the broker-dealer, investment adviser or issuer.

**25. Record.** "Record," except in the phrases "of record," "official record" and "public record," means information that is inscribed on a tangible medium or

that is stored in an electronic or other medium and is retrievable in perceivable form.

**26. Sale; offer to sell.** "Sale" includes every contract of sale of, contract to sell or disposition of a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. "Sale" and "offer to sell" include:

A. A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

B. A gift of assessable stock involving an offer and sale; and

C. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

**27. Securities and Exchange Commission.** "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

**28. Security.** "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment in a viatical or life settlement contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; documents of title to or certificates of interest or participation in an oil, gas or other mineral title or lease or in payments out of production under any title, lease, right or royalty; put, call, straddle, option or privilege on a security, certificate of deposit or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. "Security";

A. Includes both a certificated and an uncertificated security;

B. Does not include an insurance or endowment policy or annuity contract under which an insur-

ance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period;

C. Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the federal Employee Retirement Income Security Act of 1974;

D. Includes as an investment contract an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. For purposes of this paragraph, "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a 3rd party or other investors; and

E. Includes as an investment contract, among other contracts, an interest in a limited partnership and a limited liability company.

**29. Self-regulatory organization.** "Self-regulatory organization" means a national securities exchange registered under the federal Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the federal Securities Exchange Act of 1934, a clearing agency registered under the federal Securities Exchange Act of 1934 or the Municipal Securities Rulemaking Board established under the federal Securities Exchange Act of 1934.

**30. Sign.** "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or

B. To attach or logically associate with the record an electronic symbol, sound or process.

**31. State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

**32. Viatical or life settlement contract.** "Viatical or life settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of an insurance policy or certificate of insurance. "Viatical or life settlement contract":

A. Includes a contract for a loan or other financing transaction secured primarily by an indi-

vidual or group life insurance policy other than a loan by a life insurance company pursuant to the terms of the life insurance contract or a loan secured by the cash value of a policy;

B. Includes an agreement to transfer ownership or change the beneficiary designation of an insurance policy at a later date regardless of the date that compensation for the transfer or change is paid; and

C. Does not include:

(1) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider pursuant to the Viatical and Life Settlements Act;

(2) The assignment, transfer, sale, devise or bequest of a life insurance policy, for any value less than the expected death benefit, by the viator to a friend or family member who enters into no more than one such agreement in a calendar year;

(3) An assignment of a life insurance policy to a supervised lender, as defined in Title 9-A, section 1-301, subsection 39, as collateral for a loan; or

(4) The exercise of accelerated benefits pursuant to the terms of the Maine Insurance Code and of a life insurance policy.

For purposes of this chapter, the individual insured who is the subject of the insurance policy or certificate of insurance does not have to be diagnosed as terminally ill or chronically ill at the time a settlement contract is executed.

### **§16103. References to federal statutes**

Securities Act of 1933, 15 United States Code, Section 77a et seq., Securities Exchange Act of 1934, 15 United States Code, Section 78a et seq., Public Utility Holding Company Act of 1935, 15 United States Code, Section 79 et seq., Investment Company Act of 1940, 15 United States Code, Section 80a-1 et seq., Investment Advisers Act of 1940, 15 United States Code, Section 80b-1 et seq., Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1001 et seq., National Housing Act, 12 United States Code, Section 1701 et seq., Commodity Exchange Act, 7 United States Code, Section 1 et seq., Internal Revenue Code, 26 United States Code, Section 1 et seq., Securities Investor Protection Act of 1970, 15 United States Code, Section 78aaa et seq., Securities Litigation Uniform Standards Act of 1998, 112 Stat. 3227, Small Business



Investment Act of 1958, 15 United States Code, Section 661 et seq. and Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq. mean those federal laws of those names, those statutes and the rules and regulations adopted under those laws and statutes, as amended.

#### **§16104. References to federal agencies**

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

#### **§16105. Electronic records and signatures**

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with Section 104(a) of that Act, 15 United States Code, Section 7004(a). Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **SUBCHAPTER 2**

#### **EXEMPTIONS FROM REGISTRATION OF SECURITIES**

##### **§16201. Exempt securities**

The following securities are exempt from the requirements of sections 16301 to 16306 and section 16504:

**1. United States Government, state and municipal securities.** A security, including a revenue obligation or a separate security as defined in 17 Code of Federal Regulations, 230.131 adopted under the federal Securities Act of 1933, issued, insured or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;

**2. Foreign government securities.** A security issued, insured or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the

security is recognized as a valid obligation by the issuer, insurer or guarantor;

**3. Depository institution and international banking institution securities.** A security issued by and representing or that will represent an interest in or a direct obligation of or be guaranteed by:

A. An international banking institution;

B. A banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution, a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of United States Public Law 87-722, 12 United States Code, Section 92a or a holding company of such a depository institution; or

C. Any other depository institution, unless by rule or order the administrator proceeds under section 16204;

**4. Insurance company securities.** A security issued by and representing an interest in, or a debt of, or insured or guaranteed by an insurance company authorized to do business in this State;

**5. Common carriers and public utility securities.** A security issued or guaranteed by a railroad, other common carrier, public utility or public utility holding company that is:

A. Regulated in respect to its rates and charges by the United States or a state;

B. Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada or a Canadian province or territory; or

C. A public utility holding company registered under the federal Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that Act;

**6. Federal covered securities.** A federal covered security specified in Section 18(b)(1) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(1) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract, a warrant or a

subscription right on or with respect to such a federal covered security; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the federal Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange or a facility of a national securities association registered under the federal Securities Exchange Act of 1934 or an offer or sale of the underlying security in connection with the offer, sale or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78i(b);

**7. Nonprofit organization securities.** A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the federal Investment Company Act of 1940, 15 United States Code, Section 80a-3(c)(10)(B); except that with respect to the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by such a person a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons and transactions and imposing different requirements for different classes;

**8. Cooperatives.** A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate or like security sold to persons other than bona fide members of the cooperative; and

**9. Equipment trust certificates.** An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(1).

Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## **§16202. Exempt transactions**

The following transactions are exempt from the requirements of sections 16301 to 16306 and 16504:

**1. Isolated nonissuer transaction.** An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

**2. Manual exemption.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter and a resale transaction by a sponsor of a unit investment trust registered under the federal Investment Company Act of 1940 in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, on the date of the transaction:

A. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership and the issuer is not a blank check, blind pool or shell company that has no specific business plan or purpose or that has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

B. The security is sold at a price reasonably related to its current market price;

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

D. A nationally recognized securities manual or its electronic equivalent designated by routine technical rule as defined in Title 5, chapter 375, subchapter 2-A adopted under this chapter or order issued under this chapter or a publicly available record filed with the Securities and Exchange Commission contains:

(1) A description of the business and operations of the issuer;

(2) The names of the issuer's executive officers and the names of the issuer's directors, if any;

(3) An audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(4) An audited income statement for each of the issuer's 2 immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case

of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

E. Any one of the following requirements is met:

(1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the federal Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;

(2) The issuer of the security is a unit investment trust registered under the federal Investment Company Act of 1940;

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

(4) 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 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

**3. Nonissuer transactions in specified foreign transactions.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

**4. Nonissuer transactions in securities where guarantor is subject to Securities Exchange Act reporting.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78m or 78o(d);

**5. Nonissuer transactions in specified fixed income securities.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in a security that:

A. Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its 4 highest rating categories; or

B. Has a fixed maturity or a fixed interest or dividend if:

(1) A default has not occurred during the current fiscal year or within the 3 previous fiscal years or during the existence of the issuer and any predecessor if less than 3 fiscal years in the payment of principal, interest or dividends on the security; and

(2) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership and is not and has not been within the previous 12 months a blank check, blind pool or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

**6. Unsolicited brokerage transactions.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter effecting an unsolicited order or offer to purchase;

**7. Nonissuer transactions by pledgees.** A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

**8. Nonissuer transactions with federal covered investment advisers.** A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

**9. Specified exchange transactions.** A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims or property interests or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing. The administrator may impose actual costs and a reasonable fee for conducting a hearing under this subsection;

**10. Underwriter transactions.** A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

**11. Mortgage secured unit transactions.** A transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if:

A. The note, bond, debenture or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

B. A general solicitation or general advertisement of the transaction is not made;

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person not licensed under this chapter as a broker-dealer or as an agent; and

D. The outstanding principal amount of all notes or other evidence of indebtedness that is secured by the mortgage or other security agreement does not exceed the fair market value of the property at the time of the transaction, or the issuer otherwise proves that it relied on reasonable evidence that the fair market value was not so exceeded at the time of the transaction;

**12. Personal representative, guardian transactions.** A transaction by a personal representative, as defined in Title 18-A, section 1-201, subsection 30, executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator acting in their official capacities;

**13. Transactions with specified investors.** A sale or offer to sell to:

A. An institutional investor;

B. A federal covered investment adviser; or

C. Any other person exempted by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted or order issued under this chapter;

**14. Limited private offering transactions, any issuer.** A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

A. Not more than 10 purchasers are present in this State during any 12 consecutive months, other than those designated in subsection 13;

B. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer licensed under this chapter or an agent licensed under this chapter for soliciting a prospective purchaser in this State; and

D. The issuer reasonably believes that all the purchasers in this State, other than those design-

ated in subsection 13, are purchasing for investment;

**15. Limited private offering transactions, Maine issuer.** A sale or an offer to sell 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 place of business in this State, if the transaction is part of a single issue in which:

A. Not more than 25 purchasers are present in this State during any 12 consecutive months, other than those designated in subsection 13;

B. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer licensed under this chapter or an agent licensed under this chapter for soliciting a prospective purchaser in this State;

D. The issuer reasonably believes that all the purchasers in this State, other than those designated in subsection 13, are purchasing for investment;

E. The issuer files with the administrator a notification for exemption that must be in such form as may be prescribed by the administrator by order or by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A; and

F. The issuer provides a copy of the notification of exemption to each offeree of securities sold in reliance on this exemption, which 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;

**16. Transactions with existing securities holders.** A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;

**17. Offerings filed but not effective, nonexempt securities.** An offer to sell, but not a sale, of a security not exempt from registration under the federal Securities Act of 1933 if:

A. A registration or offering statement or similar record as required under the federal Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with 17 Code of Federal Regulations, 230.165; and

B. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission and an audit, inspection or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

**18. Offerings filed but not effective, exempt securities.** An offer to sell, but not a sale, of a security exempt from registration under the federal Securities Act of 1933 if:

A. A registration statement has been filed under this chapter, but is not effective;

B. A solicitation of interest is provided in a record to offerees in compliance with a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted by the administrator under this chapter; and

C. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission and an audit, inspection or proceeding that may culminate in a stop order is not known by the offeror to be pending;

**19. Control transactions.** A 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;

**20. Rescission offers.** A rescission offer, sale or purchase under section 16510;

**21. Not violative of laws of foreign state or jurisdiction.** An offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter.

**22. Employee benefit plans.** An employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan, including any securities, plan interests and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries or

the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

A. Directors; general partners; trustees, if the issuer is a business trust; officers; and consultants and advisors, as permitted by 17 Code of Federal Regulations, 230.701(c)(1) (2003);

B. Family members who acquire such securities from those persons through gifts or domestic relations orders;

C. Former employees, directors, general partners, trustees, officers and consultants and advisors, as permitted by 17 Code of Federal Regulations, 230.701(c)(1) (2003), if those individuals were employed by or providing services to the issuer when the securities were offered; and

D. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50% of their annual income from those organizations;

**23. Specified dividends, tender offers, judicially recognized reorganizations.** A transaction involving:

A. A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property or stock;

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

C. The solicitation of tenders of securities by an offeror in a tender offer in compliance with 17 Code of Federal Regulations, 230.162;

**24. Nonissuer transactions in specified foreign issuers securities.** A nonissuer transaction in an outstanding security by or through a broker-dealer licensed under or exempt from licensing under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; the issuer has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days

before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto Stock Exchange, Inc. is a designated securities exchange. After an administrative hearing in compliance with the Maine Administrative Procedure Act, the administrator, by order issued under this chapter, may revoke the designation of a securities exchange under this paragraph if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

**25. Investments in viatical or life settlement contracts.** Any offer or sale of an investment in a viatical or life settlement contract, if:

A. The underlying viatical or life settlement transaction with the viator was not in violation of the Viatical and Life Settlements Act;

B. Such disclosure documents as the administrator, by rule or order, requires are delivered to each offeree or purchaser; and

C. Prior to any offer in this State, a notice specifying the terms of the offer is filed with the administrator together with a consent to service of process complying with section 16611, signed by the issuer, and a nonrefundable filing fee of \$300 for each type or class of security being offered in this State and the administrator does not by order disallow the exemption within the next 5 full business days; or

**26. Nonpublic offerings under 4(2).** A security offered in a nonpublic offering under Section 4(2) of the federal Securities Act of 1933, 15 United States Code, Section 77d(2) if, no later than 15 days after the first sale in this State, a notice on "Form D," including the Appendix, as promulgated by the Securities and Exchange Commission, is filed with the administrator together with a consent to service of process complying with section 16611, signed by the issuer, and a nonrefundable filing fee of \$300 for each type or class of security sold. An additional nonrefundable late filing fee of \$500 must be paid for a filing made between 16 and 30 days after the first sale in this State.

#### **§16203. Additional exemptions and waivers**

If the administrator finds that it is consistent with the public interest and the protection of investors, a

rule adopted or order issued under this chapter may: exempt a security, transaction or offer; exempt a class of securities, transactions or offers from any or all of the requirements of sections 16301 to 16306 and 16504; and waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 16201 and 16202. In any rule or order establishing an exemption for which a filing is required, the administrator may provide for a nonrefundable filing fee not to exceed \$500. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§16204. Denial, suspension, revocation, condition or limitation of exemptions**

**1. Enforcement related powers.** Notwithstanding the Maine Administrative Procedure Act, an order under this chapter may deny, suspend application of, condition, limit or revoke an exemption created under section 16201, subsection 3, paragraph C, section 16201, subsection 7 or 8 or section 16202 or an exemption or waiver created under section 16203 with respect to a specific security, transaction or offer if the administrator finds that the order is consistent with the public interest and the protection of the public. An order under this section may be issued only pursuant to the procedures in section 16306, subsection 4 or section 16604 and only prospectively.

**2. Knowledge of order required.** A person does not violate section 16301, sections 16303 to 16306, section 16504 or section 16510 by an offer to sell, offer to purchase, sale or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

### **SUBCHAPTER 3**

#### **REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES**

#### **§16301. Securities registration requirement**

It is unlawful for a person to offer or sell a security in this State unless:

**1. Federal covered security.** The security is a federal covered security;

**2. Exempt from registration.** The security, transaction or offer is exempted from registration under sections 16201 to 16203; or

**3. Registered.** The security is registered under this chapter.

#### **§16302. Notice filing**

**1. Notice filings for federal covered securities under Section 18(b)(2) of the federal Securities Act of 1933.** A federal covered security, as defined in Section 18(b)(2) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(2), that is not otherwise exempt under sections 16201 to 16203 may not be offered or sold in this State unless before the initial offer in this State the following are filed with the administrator:

- A. The uniform investment company notice filing form;
- B. A consent to service of process complying with section 16611 signed by the issuer; and
- C. The payment of a nonrefundable fee of \$1,000 for each type or class of security offered.

**2. Notice filing effectiveness and renewal.** A notice filing under subsection 1 is effective for one year commencing on the date of the notice filing, the date of effectiveness of the offering filed with the Securities and Exchange Commission or a date selected by the filer, whichever date is latest. On or before expiration, a notice filing may be renewed by filing the uniform investment company notice filing form and by paying a nonrefundable renewal fee of \$1,000 for each type or class of security offered. A previously filed consent to service of process complying with section 16611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

**3. Notice filings for federal covered securities under Section 18(b)(4)(D).** A security that is a federal covered security under Section 18(b)(4)(D) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(4)(D) that is not otherwise exempt under sections 16201 to 16203 may not be sold in this State unless the following records are filed with the administrator no later than 15 days after the first sale in this State:

- A. A notice on "Form D," including the Appendix, as promulgated by the Securities and Exchange Commission;
- B. A consent to service of process complying with Section 16611, signed by the issuer; and
- C. The payment of a nonrefundable fee of \$300 per type or class of security sold.

A notice filer making a filing between 16 and 30 days after the first sale in this State shall pay an additional nonrefundable late filing fee of \$500.

**4. Stop orders.** Except with respect to a federal covered security under Section 18(b)(1) of the federal

Securities Act of 1933, 15 United States Code, Section 77r(b)(1), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section or any rule adopted under this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this State. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

**5. Other federal covered securities.** Unless the administrator provides otherwise by rule, any other federal covered security may be offered and sold in this State in reliance on its being a federal covered security without the filing of a notice or the payment of a fee.

**6. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **§16303. Securities registration by coordination**

**1. Registration permitted.** A security for which a registration statement has been filed under the federal Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

**2. Required records.** A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 16305 and a consent to service of process complying with section 16611:

A. A copy of the latest form of prospectus filed under the federal Securities Act of 1933;

B. If requested by the administrator, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy or description of the security;

C. Copies of any other information or any other records filed by the issuer under the federal Securities Act of 1933 requested by the administrator; and

D. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

**3. Conditions for effectiveness of registration statement.** A registration statement under this section

becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

A. A stop order under subsection 4 or section 16306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under section 16306; and

B. The registration statement has been on file for at least 20 days or a shorter period provided by order issued under this chapter.

**4. Notice of federal registration statement effectiveness.** The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section within 15 days of the issuance of the stop order, the stop order is void as of the date of its issuance.

**5. Effectiveness of registration statement.** If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 16306. The notice by the administrator does not preclude the institution of such a proceeding.

**6. Prospectus delivery.** When a security is registered under this section, the prospectus filed under the federal Securities Act of 1933 must be delivered at the time mandated by the prospectus delivery requirements of that Act to each purchaser in this State.

#### **§16304. Securities registration by qualification**

**1. Registration permitted.** A security may be registered by qualification under this section.

**2. Required records.** A registration statement under this section must contain the information or records specified in section 16305, a consent to service of process complying with section 16611 and the following information or records:

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

B. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address and principal occupation for the previous 5 years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous 3 years or proposed to be effected;

C. With respect to persons covered by paragraph B, the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer and all predecessors, parents, subsidiaries and affiliates of the issuer;

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

E. With respect to a promoter, if the issuer was organized within the previous 3 years, the information or records specified in paragraph B, any amount paid to the promoter within that period or intended to be paid to the promoter and the consideration for the payment;

F. With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 3 years or proposed to be ef-



fectured; and a statement of the reasons for making the offering;

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

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

I. The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

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

K. The dates of, parties to and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous 2 years and a copy of the contract;

L. A description of any pending litigation, action or proceeding to which the issuer is a party and that materially affects its business or assets and any litigation, action or proceeding known to be contemplated by governmental authorities;

M. A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 16202, subsection 18, paragraph B;

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

O. A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, that states whether the security when sold will be validly issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer;

P. A signed or conformed copy of a consent of any accountant, engineer, appraiser or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public and that is used in connection with the registration statement;

Q. A balance sheet of the issuer as of a date within 4 months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the bal-

ance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

R. Any additional information or records required by rule adopted or order issued under this chapter.

**3. Conditions for effectiveness of registration statement.** A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed if:

A. A stop order is not in effect and a proceeding is not pending under section 16306;

B. The administrator has not issued an order under section 16306 delaying effectiveness; or

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

**4. Delay of effectiveness of registration statement.** The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.

**5. Prospectus or offering document distribution may be required.** An order issued under this chapter may require as a condition of registration under this section that a prospectus or offering document containing a specified part of the information or record specified in subsection 2 be sent or given to each person to whom an offer is made, before or concurrently, with the earliest of:

A. The first offer made in a record to the person otherwise than by means of a public advertisement by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

B. The confirmation of a sale made by or for the account of the person;

C. Payment pursuant to such a sale; or

D. Delivery of the security pursuant to such a sale.

**6. Simplified statement.** For purposes of simplifying the registration statement for smaller offerings and promoting uniformity with other states, the administrator may adopt, by rule, a form to be used as the registration statement for securities being registered under this section and sold in offerings in which the aggregate offering price does not exceed the maximum amount specified in the rule. The form need not require all the information included in this section and may require information not included in this section.

**7. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## **§16305. Securities registration filings**

**1. Who may file.** A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made or a broker-dealer licensed under this chapter.

**2. Filing fee.** A person filing a registration statement shall pay a nonrefundable filing fee of \$1,000 for each type or class of security offered, except that for a registration statement filed under section 16304 for an offering for which the total amount raised in state and out of state does not exceed \$1,000,000 the nonrefundable filing fee is \$300 for each type or class of security offered.

**3. Status of offering.** A registration statement filed under section 16303 or 16304 must specify:

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

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

C. Any adverse order, judgment or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission or a court; and

D. The states in which a registration statement was filed and withdrawn.

**4. Incorporation by reference.** A record filed under this chapter or the predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

**5. Nonissuer distribution.** In the case of a nonissuer distribution, information or a record may not be required under subsection 9 or section 16304 unless

it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

**6. Escrow and impoundment.** A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous 5 years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and 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 conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator may not reject a depository institution solely because of its location in another state.

**7. Form of subscription.** A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than 5 years.

**8. Effective period.** Except while a stop order is in effect under section 16306, a registration statement is effective for one year after its effective date or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

**9. Periodic reports.** While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

**10. Posteffective amendments.** A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a nonrefundable registration fee of \$300. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

**11. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## **§16306. Denial, suspension and revocation of securities registration**

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

A. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 16305, subsection 10 as of its effective date or a report under section 16305, subsection 9 is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

B. This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer or director of the issuer or a person having a similar status or performing a similar function or a promoter of the issuer or a 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 by an underwriter;

C. The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign or state law other than this chapter applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date

of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

D. The issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

E. With respect to a security sought to be registered under section 16303, there has been a failure to comply with the undertaking required by section 16303, subsection 2, paragraph D;

F. The applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected; or

G. The offering:

(1) Will work or tend to work a fraud upon purchasers or would so operate;

(2) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(3) Is being made on terms that are unfair, unjust or inequitable.

## **2. Standards under subsection 1, paragraph**

G. For purposes of promoting uniformity in the application of subsection 1, paragraph G, the administrator may take into consideration, among other factors, any relevant rules promulgated by the Securities and Exchange Commission and by the administrators in other jurisdictions.

**3. Institution of stop order.** The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

**4. Summary process.** The administrator may summarily revoke, deny, postpone or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection 5 that the order has been issued, the reasons for the revocation, denial, postponement or suspension and

that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

**5. Procedural requirements for stop order.** A stop order may not be issued under this section without:

A. Appropriate notice to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered;

B. An opportunity for hearing; and

C. Findings of fact and conclusions of law in a record in accordance with the Maine Administrative Procedure Act.

**6. Modification or vacation of stop order.** The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

## **§16307. Waiver and modification**

By rule issued or order adopted under this chapter, the administrator may waive or modify, in whole or in part, any or all of the requirements of sections 16302, 16303, and 16304 or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 16305, subsection 9. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## **SUBCHAPTER 4**

### **BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES AND FEDERAL COVERED INVESTMENT ADVISERS**

#### **§16401. Broker-dealer licensing requirement and exemptions**

**1. Licensing requirement.** It is unlawful for a person to transact business in this State as a broker-dealer unless the person is licensed under this chapter as a broker-dealer or is exempt from licensing as a broker-dealer under subsection 2 or 4.

**2. Exemptions from licensing.** The following persons are exempt from the licensing requirement of subsection 1:

A. A broker-dealer without a place of business in this State if its only transactions effected in this State are with:

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

(2) A broker-dealer licensed as a broker-dealer under this chapter or not required to be licensed as a broker-dealer under this chapter, except when the person is acting as a clearing broker-dealer;

(3) An institutional investor;

(4) A nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(5) A bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the federal Securities Exchange Act of 1934 or not required to be registered under the federal Securities Exchange Act of 1934 and is registered or licensed under the securities act of the state in which the customer maintains a principal place of residence;

(6) A bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if:

(a) The broker-dealer is registered under the federal Securities Exchange Act of 1934 or not required to be registered under the federal Securities Exchange Act of 1934 and is registered or licensed under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(b) Within 45 days after the customer's first transaction in this State, the person files an application for licensing as a broker-dealer in this State and no further transactions are effected until the license is effective. Any broker-dealer may seek an order granting a temporary exemption under

subparagraph (7) while the application is pending; and

(7) Any other person exempted by rule adopted or order issued under this chapter; and

B. A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the United States Department of the Treasury, Office of Thrift Supervision or Comptroller of the Currency.

**3. Limits on employment or association.** It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the license of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser or a federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission or a self-regulatory organization. A broker-dealer or issuer does not violate 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, revocation or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

**4. Foreign transactions.** A rule adopted or order issued under this chapter may permit:

A. A broker-dealer that is registered or licensed in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(1) An individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(2) An individual from Canada or other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of

which the individual is the holder or contributor in that foreign jurisdiction; or

(3) An individual who is present in this State with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

B. An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this State as permitted for a broker-dealer described in paragraph A.

5. Rulemaking. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§16402. Agent licensing requirement and exemptions**

**1. Licensing requirement.** It is unlawful for an individual to transact business in this State as an agent unless the individual is licensed under this chapter as an agent or is exempt from licensing as an agent under subsection 2.

**2. Exemptions from licensing.** The following individuals are exempt from the licensing requirement of subsection 1:

A. An individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78(o)(2);

B. An individual who represents a broker-dealer that is exempt under section 16401, subsection 2 or 4;

C. An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

D. An individual who is a bona fide officer, director, partner or member of the issuer, or an individual occupying a similar status or performing similar functions, or a bona fide employee of the issuer who represents an issuer and who effects transactions in the issuer's securities exempted by section 16202, other than section 16202, subsections 11, 25 and 26;

E. An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(3) or 77r(b)(4)(D) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

F. An individual who represents a broker-dealer licensed in this State under section 16401, subsection 1 or exempt from licensing under section 16401, subsection 2 in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

G. An individual who represents an issuer in connection with the purchase of the issuer's own securities;

H. An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

I. Any other individual exempted by rule adopted or order issued under this chapter.

**3. License effective only while employed or associated.** The license of an agent is effective only while the agent is employed by or associated with a broker-dealer licensed under this chapter or an issuer that is offering, selling or purchasing its securities in this State and is effective only with respect to transactions effected as an employee or otherwise on behalf of said broker-dealer or issuer.

**4. Limit on employment or association.** It is unlawful for a broker-dealer, or an issuer engaged in offering, selling or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is licensed under subsection 1 or exempt from licensing under subsection 2.

**5. Limit on affiliations.** An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealers and the issuers for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

**6. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§16403. Investment adviser licensing requirement and exemptions**

**1. Licensing requirement.** It is unlawful for a person to transact business in this State as an investment adviser unless the person is licensed under this chapter as an investment adviser or is exempt from licensing as an investment adviser under subsection 2.

**2. Exemptions from licensing.** The following persons are exempt from the licensing requirement of subsection 1:

A. A person without a place of business in this State that is registered or licensed under the securities act of the state in which the person has its principal place of business if its only clients in this State are:

(1) Federal covered investment advisers, investment advisers licensed under this chapter or broker-dealers licensed under this chapter;

(2) Institutional investors;

(3) Bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered or licensed under the securities act of the state in which the clients maintain principal places of residence; or

(4) Any other client exempted by rule adopted or order issued under this chapter;

B. A person without a place of business in this State if the person has had, during the preceding 12 months, not more than 5 clients that are resident in this State in addition to those specified under paragraph A; or

C. Any other person exempted by rule adopted or order issued under this chapter.

**3. Limits on employment or association.** It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this State if the license of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser or broker-dealer by an order under this chapter, the Securities and Exchange Commission or a self-regulatory organization, unless 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, revocation or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in

whole or in part, the application of the prohibitions of this subsection to the investment adviser.

**4. Investment adviser representative licensing required.** It is unlawful for an investment adviser to employ or associate with an individual required to be licensed under this chapter as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is licensed under section 16404, subsection 1 or is exempt from licensing under section 16404, subsection 2.

**5. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§16404. Investment adviser representative licensing requirement and exemptions**

**1. Licensing requirement.** It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is licensed under this chapter as an investment adviser representative or is exempt from licensing as an investment adviser representative under subsection 2.

**2. Exemptions from licensing.** The following individuals are exempt from the licensing requirement of subsection 1:

A. An individual who is employed by or associated with an investment adviser that is exempt from licensing under section 16403, subsection 2 or a federal covered investment adviser that is excluded from the notice filing requirements of section 16405; and

B. Any other individual exempted by rule adopted or order issued under this chapter.

**3. License effective only while employed or associated.** The license of an investment adviser representative is effective only while the investment adviser representative is employed by or associated with an investment adviser licensed under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section 16405 and is effective only with respect to conduct engaged in as an employee or otherwise on behalf of said investment adviser.

**4. Limit on affiliations.** An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

**5. Limits on employment or association.** It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the license of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

**6. Referral fees.** An investment adviser licensed under this chapter, a federal covered investment adviser that has filed a notice under section 16405 or a broker-dealer licensed under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser licensed under this chapter, a federal covered investment adviser who has filed a notice under section 16405 or a broker-dealer licensed under this chapter with which the individual is employed or associated as an investment adviser representative.

**7. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§16405. Federal covered investment adviser notice filing requirement**

**1. Notice filing requirement.** Except with respect to a federal covered investment adviser described in subsection 2, it is unlawful for a federal covered investment adviser to transact business in this State as a federal covered investment adviser unless the federal covered investment adviser complies with subsection 3.

**2. Notice filing requirement not required.** The following federal covered investment advisers are not required to comply with subsection 3:

A. A federal covered investment adviser without a place of business in this State if its only clients in this State are:

(1) Federal covered investment advisers, investment advisers licensed under this chapter and broker-dealers licensed under this chapter;

(2) Institutional investors;

(3) Bona fide preexisting clients whose principal places of residence are not in this State; or

(4) Other clients specified by rule adopted or order issued under this chapter;

B. A federal covered investment adviser without a place of business in this State if the person has had, during the preceding 12 months, not more than 5 clients that are resident in this State in addition to those specified under paragraph A; and

C. Any other person excluded by rule adopted or order issued under this chapter.

**3. Notice filing procedure.** A person acting as a federal covered investment adviser that is not excluded under subsection 2 shall file a notice, a consent to service of process complying with section 16611, and such records as have been filed with the Securities and Exchange Commission under the federal Investment Advisers Act of 1940 and pay the fees specified in section 16410, subsection 1, paragraph E.

**4. Effectiveness of filing.** The notice under subsection 3 becomes effective upon its filing.

**5. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§16406. Licensing of broker-dealers, agents, investment advisers and investment adviser representatives**

**1. Application for initial license.** A person becomes licensed as a broker-dealer, agent, investment adviser or investment adviser representative by filing an application and a consent to service of process complying with section 16611 and paying the fee specified in section 16410 and any fees charged by the designee of the administrator for processing the filing. The application must contain:

A. The information or record required for the filing of a uniform application; and

B. Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

**2. Amendment.** If the information or record contained in an application filed under subsection 1 is or becomes inaccurate or incomplete in a material respect, the licensee shall promptly file a correcting amendment.

**3. Effectiveness of licensing.** If an order is not in effect and a proceeding is not pending under section 16412, a license becomes effective no later than noon



on the 45th day after a completed application is filed, provided that all examination and training requirements imposed under section 16412, subsection 5 have been satisfied and provided that the license has not been denied. The administrator may authorize an earlier effective date of licensing.

**4. License renewal.** A license is effective until midnight on December 31st of the year for which the application for licensing is filed. Unless an order is in effect under section 16412, a license may be automatically renewed each year by filing such records as are required by the administrator, by paying the fee specified in section 16410 and by paying costs charged by the designee of the administrator for processing the filings.

**5. Additional conditions or waivers.** A rule adopted or order issued under this chapter may impose other conditions on licensing or may waive, in whole or in part, specific requirements in connection with licensing as are in the public interest and for the protection of investors. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§16407. Succession and change in licensing of broker-dealer or investment adviser**

**1. Succession.** A broker-dealer or investment adviser may succeed to the current license of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current license of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for licensing pursuant to section 16401 or 16403 or a notice pursuant to section 16405 for the unexpired portion of the current license or notice filing.

**2. Organizational change.** A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its license by filing an amendment to its license if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the licensee in its filing. The new organization is a successor to the original licensee for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for licensing. A predecessor licensed under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser licensing within 45 days after filing its amendment to effect succession.

**3. Name change.** A broker-dealer or investment adviser that changes its name may continue its license by filing an amendment to its license. The amendment becomes effective when filed or on a date designated by the licensee.

**4. Change of ownership or control.** A change of ownership or control of a broker-dealer or investment adviser may require the filing of a new application pursuant to a rule adopted or order issued under this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§16408. Termination of employment or association of agent and investment adviser representative and transfer of employment or association**

**1. Notice of termination.** If an agent licensed under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative licensed under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either licensee terminates activities that require licensing as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser or federal covered investment adviser shall promptly file a notice of termination. If the licensee learns that the broker-dealer, issuer, investment adviser or federal covered investment adviser has not filed the notice, the licensee shall promptly file it.

**2. Transfer of employment or association.** If an agent licensed under this chapter terminates employment by or association with a broker-dealer licensed under this chapter and begins employment by or association with another broker-dealer licensed under this chapter, or if an investment adviser representative licensed under this chapter terminates employment by or association with an investment adviser licensed under this chapter or a federal covered investment adviser that has filed a notice under section 16405 and begins employment by or association with another investment adviser licensed under this chapter or a federal covered investment adviser that has filed a notice under section 16405, upon the filing by or on behalf of the licensee, within 30 days after the termination, of an application for licensing that complies with the requirement of section 16406, subsection 1 and payment of the filing fee required under section 16410, the license of the agent or investment adviser representative is:

**A.** Immediately effective as of the date of the completed filing if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or suc-

cessor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or

B. Temporarily effective as of the date of the completed filing if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the previous 12 months.

**3. Withdrawal of temporary license.** The administrator may withdraw a temporary license if there are or were grounds for discipline as specified in section 16412 and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary license within the 30-day period, licensing becomes automatically effective on the 31st day after filing.

**4. Power to prevent licensing.** The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection 2, paragraph A or B based on the public interest and the protection of investors or based upon a request for other information pursuant to section 16406, subsection 1, paragraph B.

**5. Termination of license or application for licensing.** If the administrator determines that a licensee or applicant for licensing is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator or guardian, or can not reasonably be located, a rule adopted or order issued under this chapter may require the license be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated license, with or without hearing, and may make the license retroactive. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§16409. Withdrawal of licensing of broker-dealer, agent, investment adviser and investment adviser representative**

Withdrawal of licensing by a broker-dealer, agent, investment adviser or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period authorized by the administrator, unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, the administrator shall make a determination with respect to the withdrawal application as part of the proceeding. The administrator may institute a

revocation or suspension proceeding under section 16412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which licensing was effective.

**§16410. Filing fees**

**1. Fees established by administrator.** The administrator shall establish by rule fees in accordance with the following:

A. A fee not to exceed \$500 for an application for licensing as a broker-dealer and renewal of licensing as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain the fee;

B. A fee not to exceed \$200 for an application for licensing as an agent and renewal of licensing as an agent. If the filing results in a denial or withdrawal, the administrator shall retain the fee;

C. A fee not to exceed \$500 for an application for licensing as an investment adviser and renewal of licensing as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain the fee;

D. A fee not to exceed \$200 for an application for licensing as an investment adviser representative and renewal of licensing as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain the fee;

E. An amount not to exceed \$500 for an initial fee and annual notice fee for a federal covered investment adviser required to file a notice under section 16405. If the filing results in a withdrawal, the administrator shall retain the fee; and

F. A amount not to exceed \$200 for an initial fee and annual renewal fee for each branch office in this State. If the filing results in a withdrawal, the administrator shall retain the fee. For purposes of this paragraph, "branch office" means any office of a broker-dealer or investment adviser located in this State, other than the principal place of business of the broker-dealer or investment adviser. Only one branch office fee is due if an office is a branch office of both a broker-dealer and an investment adviser affiliated by direct or indirect common control.

**2. Payment.** A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

**3. Active duty renewal fee waiver.** The administrator may waive the renewal fee under subsection 1, paragraph B or D for a licensed agent or investment adviser representative who is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days.

**4. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§16411. Postlicensing requirements**

**1. Financial requirements.** A rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers licensed or required to be licensed under this chapter and investment advisers licensed or required to be licensed under this chapter. If a licensed broker-dealer or investment adviser believes, or has reasonable cause to believe, that any requirement imposed under this subsection is not being met, the licensed broker-dealer or investment adviser shall promptly notify the administrator of its current financial condition.

**2. Financial reports.** A broker-dealer licensed or required to be licensed under this chapter and an investment adviser licensed or required to be licensed under this chapter shall file such financial and other reports as are required by rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the licensee shall promptly file a correcting amendment.

**3. Record keeping.** Record-keeping requirements are as follows:

A. A broker-dealer licensed or required to be licensed under this chapter and an investment adviser licensed or required to be licensed under this chapter shall make and maintain those accounts, correspondence, memoranda, papers, books and other records that are:

(1) Required by rule adopted or order issued under this chapter; or

(2) If no rule or order as set forth in subparagraph (1) has been adopted under this chapter, in compliance with the record-keeping requirements of the federal Securities Exchange Act of 1934 in the case of a broker-dealer or the federal Investment Advisers Act of 1940 in the case of an investment adviser;

B. Broker-dealer records required to be maintained under paragraph A may be maintained in computer or microform format or any other form

of data storage, provided that the records are readily accessible to the administrator;

C. Investment adviser records required to be maintained under paragraph A may be maintained in any form of data storage required by rule adopted or order issued under this chapter; and

D. Records required to be maintained under this section must be preserved for 6 years unless the administrator, by rule, specifies either a longer or shorter period for a particular type or class of records.

**4. Audits or inspections.** The records of a broker-dealer licensed or required to be licensed under this chapter and of an investment adviser licensed or required to be licensed under this chapter are subject to such periodic, special or other audits or inspections by a representative of the administrator, within or without this State, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, require the licensee to copy and remove for audit or inspection copies of all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. Broker-dealers, agents, investment advisers and investment adviser representatives shall make their records available to the administrator in a readable form. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

**5. Custody and discretionary authority bond or insurance.** A rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security. The administrator may determine the requirements of the insurance, bond or other satisfactory form of security. The insurance, bond or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond or other satisfactory form of security if instituted within the time limitations in section 16509, subsection 10, paragraph B.

**6. Requirements for custody.** Subject to Section 15(h) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78o(h) or Section 222 of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b 22, an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client

except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

**7. Investment adviser brochure rule.** With respect to an investment adviser licensed or required to be licensed under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this State as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

**8. Continuing education.** A rule adopted or order issued under this chapter may require an individual licensed under section 16402 or 16404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or another continuing education program approved by the administrator.

**9. Privacy provisions.** A broker-dealer licensed or required to be licensed under this chapter and an investment adviser licensed or required to be licensed under this chapter shall comply with the privacy provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the implementing Regulation S-P, federal Privacy of Consumer Financial Information, 17 Code of Federal Regulations, Part 248 (2001) adopted by the Securities and Exchange Commission. This subsection is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24.

**10. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§16412. Denial, revocation, suspension, withdrawal, restriction, condition or limitation of licensing**

**1. Disciplinary conditions, applicants.** If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may deny an application, or may condition or limit licensing, of an applicant to be a broker-dealer, agent, investment adviser or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

**2. Disciplinary conditions, licensees.** If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may revoke, suspend, condition or limit the license of a licensee and, if the licensee is a broker-dealer or investment adviser, the license of a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. Notwithstanding this subsection, the administrator may not:

A. Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after that state's order is reported; or

B. Under subsection 4, paragraph E, subparagraph (1) or (2), issue an order on the basis of an order issued under the securities act of another state unless the other state's order was based on conduct for which subsection 4 would authorize the action had the conduct occurred in this State.

**3. Disciplinary penalties, licensees.** If the administrator finds that the order is in the public interest and subsection 4, paragraphs A to F, H, I and J or paragraphs L and M authorize the action, an order under this chapter may censure, impose a bar on or impose a civil penalty in an amount not to exceed a maximum of \$5,000 per violation on a licensee and, if the licensee is a broker-dealer or investment adviser, any partner, officer, director or person having a similar status or performing similar functions, or any person directly or indirectly in control, of the broker-dealer or investment adviser.

**4. Grounds for discipline.** A person may be disciplined under subsections 1 to 3 if the person:

A. Has filed an application for licensing in this State under this chapter or the predecessor act within the previous 10 years that, as of the effective date of licensing or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

B. Intentionally or knowingly violated or intentionally or knowingly failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years;

C. Has pleaded guilty or nolo contendere to or been convicted of murder or a Class A, B or C crime or a felony or within the previous 10 years

has pleaded guilty or nolo contendere to or been convicted of a Class D or E crime or a misdemeanor involving a security, a commodity future or option contract or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance or any crime indicating a lack of fitness to engage in the securities business;

D. Is enjoined or restrained by a court of competent jurisdiction in any action from engaging in or continuing an act, practice or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

E. Is the subject of an order, issued after notice and opportunity for hearing by:

(1) The securities or other financial services regulator of a state or by the Securities and Exchange Commission, a self-regulatory organization or other federal agency denying, revoking, barring or suspending registration or licensing as a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;

(2) The securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;

(3) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant or licensee from membership in the self-regulatory organization;

(4) A court adjudicating a United States Postal Service fraud order;

(5) The insurance regulator of a state denying, suspending or revoking registration or licensing as an insurance producer or its equivalent;

(6) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business; or

(7) The United States Commodity Futures Trading Commission denying, suspending or revoking registration under the federal Commodity Exchange Act;

F. Is the subject of an adjudication or determination, after notice and opportunity for hearing,

by the Securities and Exchange Commission, the United States Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator or a depository institution, insurance or other financial services regulator of a state that the person intentionally or knowingly violated the federal Securities Act of 1933, the federal Securities Exchange Act of 1934, the federal Investment Advisers Act of 1940, the federal Investment Company Act of 1940, the federal Commodity Exchange Act, the securities or commodities law of a state or a federal or state law under which a business involving investments, franchises, insurance, banking or finance is regulated;

G. Is insolvent, either because the person's liabilities exceed the person's assets or because the person can not meet the person's obligations as they mature. The administrator may not enter an order against an applicant or licensee under this paragraph without a finding of insolvency as to the applicant or licensee;

H. Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 16411, subsection 4 or refuses access to a licensee's office to conduct an audit or inspection under section 16411, subsection 4;

I. Has failed to reasonably supervise an agent, investment adviser representative or other individual if the agent, investment adviser representative or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act or engaged in conduct that would be grounds for discipline under this subsection within the previous 10 years;

J. Is subject to 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 paragraph also applies 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;

K. After notice and opportunity for a hearing, has been found within the previous 10 years:

(1) By a court of competent jurisdiction to have intentionally and knowingly violated

the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;

(2) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or

(3) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

L. Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;

M. Has engaged in unlawful, dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous 10 years; or

N. Is not qualified on the basis of factors such as training, experience and knowledge of the securities business; except that, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for licensing as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection 5. The administrator may require an applicant for licensing under section 16402 or 16404 who has not been registered or licensed in a state within the 2 years preceding the filing of an application in this State to successfully complete an examination.

**5. Examinations.** A rule adopted or order issued under this chapter may require that training or an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, training or an examination as to an individual or training or an examination as to a class of individuals if the administrator determines that the training or examination is not necessary or appropriate in the public interest and for the protection of investors.

**6. Summary process.** Notwithstanding Title 5, sections 10003 and 10004, if the public interest or the

protection of investors so requires, the administrator may suspend or deny an application summarily; restrict, condition, limit or suspend a license; or censure, bar or impose a civil penalty on a licensee before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

**7. Procedural requirements.** An order issued may not be issued under this section, except under subsection 6, without:

A. Appropriate notice to the applicant or licensee;

B. Opportunity for hearing; and

C. Findings of fact and conclusions of law in a record in accordance with Title 5, chapter 375.

**8. Control person liability.** A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections 1 to 3 to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

**9. Limit on investigation or proceeding.** The administrator may not institute a proceeding under subsection 1, 2 or 3 based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

## **SUBCHAPTER 5**

### **FRAUD AND LIABILITIES**

#### **§16501. General fraud**

It is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly:

**1. Device, scheme, artifice.** To employ a device, scheme or artifice to defraud;

**2. Untrue statement of or omission of material fact.** To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

**3. Fraud, deceit.** To engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

#### **§16502. Prohibited conduct in providing investment advice**

**1. Fraud in providing investment advice.** It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

A. To employ a device, scheme or artifice to defraud another person; or

B. To engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

**2. Rules defining fraud.** A rule adopted under this chapter may define an act, practice or course of business of a person described in subsection 1 as fraudulent, deceptive or manipulative and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives from engaging in acts, practices and courses of business defined as fraudulent, deceptive or manipulative.

**3. Rules specifying contents of advisory contract.** A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended or renewed by an investment adviser.

**4. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§16503. Evidentiary burden**

**1. Civil.** In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption or exclusion has the burden to prove the applicability of the exemption, exception, preemption or exclusion.

**2. Criminal.** In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption or exclusion has the burden to

prove by a preponderance of the evidence any such affirmative defense.

#### **§16504. Filing of sales and advertising literature**

**1. Filing requirement.** A rule adopted or order issued under this chapter may require the filing of a prospectus, a pamphlet, a circular, a form letter, an advertisement, sales literature, some other advertising record relating to a security or investment advice or a business plan addressed or intended for distribution to prospective investors, including clients or prospective clients of a person licensed or required to be licensed as an investment adviser under this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**2. Excluded communications.** This section does not apply to sales and advertising literature specified in subsection 1 that relates to a federal covered security, a federal covered investment adviser or a security or transaction exempted by section 16201, 16202 or 16203 except as required pursuant to section 16201, subsection 7 and section 16202, subsections 15 and 24.

#### **§16505. Misleading filings**

It is unlawful for a person to make or cause to be made in a record that is used in an action or proceeding or filed under this chapter a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

#### **§16506. Misrepresentations concerning licensing, registration or exemption**

The filing of an application for licensing, registration, a registration statement, a notice filing under this chapter, the licensing of a person, the notice filing by a person or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete and not misleading. The filing, licensing or registration or the availability of an exemption, exception, preemption or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security or transaction. It is unlawful to make or cause to be made to a purchaser, customer, client or prospective customer or client a representation inconsistent with this section.

#### **§16507. Qualified immunity**

A broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator or designee of the administrator, the Securities and Exchange Commission or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

### **§16508. Criminal penalties**

**1. Criminal penalties.** A person that intentionally or knowingly violates this chapter, or a rule adopted or order issued under this chapter, except section 16504 or the notice filing requirements of section 16302 or 16405, or that intentionally or knowingly violates section 16505 knowing the statement made to be false or misleading in a material respect, upon conviction, commits a Class C crime. An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

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

**3. No limitation on other criminal enforcement.** This chapter does not limit the power of this State to punish a person for conduct that constitutes a crime under other laws of this State.

**4. Venue.** When a person pursuant to one scheme or course of conduct, whether upon the same person or several persons, engages in fraudulent or other prohibited practices, engages in unlawful transactions of business or other unlawful conduct or engages in unlawful offers to sell or purchase or unlawful sales or purchases under this chapter, the State may opt for a single Class C count, and, in that circumstance, prosecution may be brought in any venue in which one or more of the unlawful acts were committed.

### **§16509. Civil liability**

**1. Securities Litigation Uniform Standards Act.** Enforcement of civil liability under this section

is subject to the federal Securities Litigation Uniform Standards Act of 1998.

**2. Liability of seller to purchaser.** A person is liable to the purchaser if the person sells a security in violation of section 16301; section 16303, subsection 6; section 16304, subsection 5; or section 16305, subsection 6 or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing of the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following.

**A.** The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and the interest at the legal rate of interest from the date of the purchase, costs and reasonable attorney's fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph C.

**B.** The tender referred to in paragraph A may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph C.

**C.** Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and the interest at the legal rate of interest from the date of the purchase, costs and reasonable attorney's fees determined by the court.

**3. Liability of purchaser to seller.** A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission and the purchaser not sustaining the burden of proof that the purchaser did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following.

**A.** The seller may maintain an action to recover the security and any income received on the security, costs and reasonable attorney's fees determined by the court, upon the tender of the



purchase price, or for actual damages as provided in paragraph C.

B. The tender referred to in paragraph A may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph C.

C. Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability and the interest at the legal rate of interest from the date of the sale of the security, costs and reasonable attorney's fees determined by the court.

**4. Liability of unlicensed broker-dealer and agent.** A person acting as a broker-dealer or agent that sells or buys a security in violation of section 16401, subsection 1; section 16402, subsection 1; or section 16506 is liable to the customer. The customer, if a purchaser, may maintain an action for a remedy as specified in subsection 2, paragraphs A to C or, if a seller, for a remedy as specified in subsection 3, paragraphs A to C.

**5. Liability of unlicensed investment adviser and investment adviser representative.** A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 16403, subsection 1; section 16404, subsection 1; or section 16506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs and reasonable attorney's fees determined by the court.

**6. Liability for investment advice.** A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme or artifice to defraud the other person or engages in an act, practice or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by the following.

A. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs and reasonable attorney's fees deter-

mined by the court, less the amount of any income received as a result of the fraudulent conduct.

B. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

**7. Joint and several liability.** The following persons are liable jointly and severally with and to the same extent as persons liable under subsections 2 to 6:

A. A person that directly or indirectly controls a person liable under subsections 2 to 6, unless the controlling person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist;

B. An individual who is a managing partner, executive officer or director of a person liable under subsections 2 to 6, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist;

C. An individual who is an employee of or associated with a person liable under subsections 2 to 6 and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist; and

D. A person that is a broker-dealer, agent, investment adviser or investment adviser representative that materially aids the conduct giving rise to the liability under subsections 2 to 6, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist.

**8. Right of contribution.** A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

**9. Survival of cause of action.** A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

**10. Statute of limitations.** A person may not obtain relief:

A. Under subsection 2 for violation of section 16301 or under subsection 4 or 5, unless the action is instituted within 2 years after the violation occurred; or

B. Under subsection 2, other than for violation of section 16301, or under subsection 3 or 6, unless the action is instituted within the earlier of 2 years after discovery of the facts constituting the violation or 5 years after the violation.

**11. No enforcement of violative contract.** A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

**12. No contractual waiver.** A condition, stipulation or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

**13. Survival of other rights or remedies.** The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 16411, subsection 5.

#### **§16510. Rescission offers**

**1. Requirements.** A purchaser, seller or recipient of investment advice may not maintain an action under section 16509 if:

A. The purchaser, seller or recipient of investment advice receives in a record, before the action is instituted:

(1) An offer stating the respect in which liability under section 16509 may have arisen and fairly advising the purchaser, seller or recipient of investment advice of that person's rights in connection with the offer and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale or investment advice;

(2) If the basis for relief under this section may have been a violation of section 16509, subsection 2, an offer to repurchase the se-

curity for cash, payable on delivery of the security, equal to the consideration paid and interest at the legal rate of interest from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an 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 of interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(3) If the basis for relief under this section may have been a violation of section 16509, subsection 3, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale, or, if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(4) If the basis for relief under this section may have been a violation of section 16509, subsection 4, an offer to pay as specified in subparagraph (2) if the customer is a purchaser or an offer to tender or to pay as specified in subparagraph (3) if the customer is a seller;

(5) If the basis for relief under this section may have been a violation of section 16509, subsection 5, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(6) If the basis for relief under this section may have been a violation of section 16509, subsection 6, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct and interest at the legal rate of interest from the date of the violation causing the loss;

B. The offer under paragraph A states that it must be accepted by the purchaser, seller or re-

recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller or recipient of investment advice or any shorter period, of not less than 3 days, that the administrator, by order, specifies;

C. The offeror has the present ability to pay the amount offered or to tender the security under paragraph A;

D. The offer under paragraph A is delivered to the purchaser, seller or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller or recipient of investment advice; and

E. The purchaser, seller or recipient of investment advice that accepts the offer under paragraph A in a record within the period specified under paragraph B is paid in accordance with the terms of the offer.

**2. Form of offer.** The administrator, by rule or order, may prescribe the form in which the information specified in subsection 1 must be contained in any offer made under subsection 1. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**3. Statute of limitation tolled.** If an offer is not performed in accordance with its terms, suit by the offeree under section 16509 is permitted without regard to this section, and the statute of limitations tolls from the time of receipt of the offer until 120 days after the rescission or settlement offer was to have been performed.

#### **§16511. Right to rescission applicable to sales of viatical or life settlement contracts**

**1. Right to rescind transaction.** In addition to any other rights provided for under this chapter or otherwise, an investor, other than an institutional investor, who purchases a viatical or life settlement contract may rescind the investment by giving written notice of rescission to the entity designated for such notice in the disclosure documents, by ordinary mail postage prepaid, within 30 business days following the later of:

A. The day on which the investor received the final disclosure document pertaining to the transaction as required under this chapter and the rules or orders under this chapter; and

B. The day on which the investor paid the required consideration for the purchase of the viatical or life settlement contract.

**2. Form of notice.** The notice is sufficient if addressed to the entity designated for such notice at

the address given in the disclosure statement pertaining to the transaction. Notice of rescission is effective upon deposit in the United States mail. The notice of rescission need not take a particular form and is sufficient if it expresses the intention of the purchaser to rescind the transaction.

### **SUBCHAPTER 6**

#### **ADMINISTRATION AND JUDICIAL REVIEW**

##### **§16601. Administration**

**1. Office of Securities; administrator.** There is created within the Department of Professional and Financial Regulation the Office of Securities. The Office of Securities is directed by the Securities Administrator, referred to in this chapter as the "administrator," who is responsible for the administration and enforcement of this chapter, the Maine Commodity Code and chapter 69-B.

A. The administrator is appointed by the Commissioner of Professional and Financial Regulation. The administrator is appointed for a term that is coterminous with the term of the Governor or until a successor is appointed and qualified. Any vacancy occurring must be filled by appointment for the unexpired portion of the term. The administrator may be removed from office for cause by the commissioner, and Title 5, section 931, subsection 2 does not apply. A person appointed as administrator must have knowledge of, or experience in, the theory and practice of securities.

B. With the approval of the Commissioner of Professional and Financial Regulation, the administrator shall organize the Office of Securities in such a manner as the administrator considers necessary to carry out the administrator's responsibilities.

C. The administrator may employ personnel as the business of the Office of Securities may require, subject to the Commissioner of Professional and Financial Regulation's approval and in accordance with the Civil Service Law. The qualifications of the personnel must reflect the needs and responsibilities of the Office of Securities' regulatory functions. The administrator may authorize senior personnel of the Office of Securities to carry out the administrator's duties and authority. The administrator may employ or engage such expert, professional or other assistance as may be necessary to assist the Office of Securities in carrying out its functions. In addition to salaries or wages, all employees of the Office of Securities must receive their actual ex-

penses incurred in the performance of their official duties.

D. At the expense of the Office of Securities, the administrator may train the Office of Securities' employees, or have them trained, in a manner the administrator determines desirable, to carry out the purposes of the Office of Securities.

**2. Unlawful use of records or information.** It is unlawful for the administrator or an employee or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that is not public under section 16607, subsection 2. This chapter does not authorize the administrator or an officer, employee or designee of the administrator to disclose the record or information, except in accordance with section 16602, section 16607, subsection 3 or section 16608.

**3. No privilege or exemption created or diminished.** This chapter does not create or diminish a privilege or exemption that exists at common law or by statute or rule or otherwise.

**4. Investor education.** The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

**5. Waiver of fee.** The administrator may, by order, waive the filing fee required to register a security, to perfect a notice filing for a federal covered 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.

**6. Nonlapsing operating fund.** There is established an operating fund to be used to carry out the purposes of this chapter and any other statutory duties of the administrator. The operating fund consists of all annual renewal license fees for agents and investment adviser representatives received pursuant to this chapter. Any balance in the operating fund does not

lapse, but must be carried forward to be used for the same purposes.

## **§16602. Investigations and subpoenas**

**1. Authority to investigate.** The administrator may:

A. Conduct public or private investigations within or outside of this State that the administrator considers necessary or appropriate to determine whether a person has violated, is violating or is about to violate this chapter or a rule adopted or order issued under this chapter or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

B. Require or permit a person to testify, file a statement or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

C. Publish a record concerning an action, proceeding or investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

**2. Administrator powers to investigate.** For the purpose of an investigation under this chapter, the administrator or the administrator's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements and require the production of any records that the administrator considers relevant or material to the investigation. It is unlawful to fail to provide any statement or record if requested.

**3. Procedure and remedies for noncompliance.** If a person does not appear or refuses to testify, file a statement or produce records or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may request that the Attorney General apply 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 or a court of another state to enforce compliance. The court may:

A. Hold the person in contempt;

B. Order the person to appear before the administrator;

C. Order the person to testify about the matter under investigation or in question;

D. Order the production of records;

E. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

F. Impose a civil fine not to exceed \$10,000 per violation; and

G. Grant any other necessary or appropriate relief.

**4. Application for relief.** This section does not preclude a person from applying to the Superior Court located in Kennebec County or a court of another state for relief from a request to appear, testify, file a statement, produce records or obey a subpoena.

**5. Assistance to securities regulator of another jurisdiction.** At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this State if occurring in this State. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this State and the availability of resources and employees of the administrator to carry out the request for assistance.

### **§16603. Civil enforcement**

**1. Civil action instituted by administrator.** If the administrator believes that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is or is about to engage in an act, practice or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may request that the Attorney General bring an action in the Superior Court of the county in which the person resides or has the principal place of business or in the Superior Court of Kennebec County to enjoin the act, practice or course of business and to enforce compli-

ance with this chapter or a rule adopted or order issued under this chapter.

**2. Relief available.** In an action under this section and on a proper showing, the court may:

A. Issue a permanent or temporary injunction, restraining order or declaratory judgment;

B. Order other appropriate or ancillary relief, which may include:

(1) An asset freeze, accounting, writ of attachment, writ of general or specific execution and appointment of a receiver or conservator, which may be the administrator, for the defendant or the defendant's assets;

(2) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents and profits, to collect debts and to acquire and dispose of property;

(3) Imposing a civil fine not to exceed \$10,000 per violation or an order of rescission, restitution or disgorgement directed to a person that has engaged in an act, practice or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act; and

(4) Ordering the payment of prejudgment and postjudgment interest; or

C. Order such other relief as the court considers appropriate.

**3. No bond required.** The administrator is not required to post a bond in an action or proceeding under this chapter.

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

### **§16604. Administrative enforcement**

**1. Issuance of order or notice.** If the administrator determines that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding or is about to materially aid an act,

practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

A. Issue an order directing the person to cease and desist from engaging in the act, practice or course of business or to take other action necessary or appropriate to comply with this chapter;

B. Issue an order denying, suspending, revoking or conditioning the exemptions for a broker-dealer under section 16401, subsection 2, paragraph A, subparagraph (4) or (6) or an investment adviser under section 16403, subsection 2, paragraph A, subparagraph (3); or

C. Issue an order under section 16204.

**2. Summary process.** An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil fine or costs of investigation the administrator will seek, a statement of the reasons for the order and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. A summary order issued against any person becomes a final order 30 days after the administrator mails notice to the interested parties of the right to request a hearing if they fail to request a hearing or on the date of the hearing if the person requesting the hearing fails to appear. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

**3. Procedure for final order.** If a hearing is requested or ordered pursuant to subsection 2, a hearing must be held pursuant to the Maine Administrative Procedure Act. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with the Maine Administrative Procedure Act. The final order may make final, vacate or modify the order issued under subsection 1.

**4. Civil fine; final orders and remedies.** In a final order under subsection 3, the administrator may: order remedies described in subsection 1; censure that person; bar that person from association with any

issuer, broker-dealer or investment adviser in this State; or impose a civil fine not to exceed \$5,000 per violation.

**5. Costs.** In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

**6. Filing of certified final order with court; effect of filing.** If a petition for judicial review of a final order is not filed in accordance with section 16609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced or satisfied in the same manner as a judgment of the court.

**7. Enforcement by court; further civil fine.** If a person does not comply with an order under this section, the administrator may request that the Attorney General petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in contempt of the order. The court may impose a further civil fine against the person for contempt in an amount not to exceed \$10,000 per violation and may grant any other relief the court determines is just and proper in the circumstances.

**8. 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 remain with the administrator.

## **§16605. Rules, forms, orders, interpretative opinions and hearings**

**1. Issuance and adoption of forms, orders and rules.** In addition to specific authority granted elsewhere in this chapter, the administrator may:

A. Issue forms and orders and, after notice and comment, adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports and other records;

B. By rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and

C. By rule, classify securities, persons and transactions and adopt different requirements for different classes.

**2. Findings and cooperation.** Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending and repealing rules and forms, section 16608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports and other records, including the adoption of uniform rules, forms and procedures.

**3. Financial statements.** The administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:

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

B. Whether unconsolidated financial statements must be filed; and

C. Whether required financial statements must be audited by an independent certified public accountant.

**4. Interpretative opinions.** The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations whether the administrator will institute an action or a proceeding under this chapter.

**5. Declaratory rulings.** The administrator, in the administrator's discretion, may conduct a hearing and issue a declaratory ruling under Title 5, section 9001, subsection 3 as to the applicability of this chapter, any provision of this chapter or any rule or order of the administrator to any person or transaction or as to the meaning of any term used in this chapter or any rule or order of the administrator.

**6. Conformity with rule, form or order.** 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 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.

**7. Presumption for public hearings.** A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

**8. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§16606. Administrative files and opinions**

**1. Public register of filings.** Subject to state record-keeping requirements, the administrator shall maintain, or designate a person to maintain, records or a register of: applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter. Records may be maintained in computer or microform format or any other form of data storage, as long as the records are readily accessible.

**2. Public availability.** The administrator shall make all rules, forms, interpretative opinions, advisory rulings, consent agreements and orders available to the public.

**3. Copies of public records.** The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record, not to exceed \$.50 per page, or for certification, not to exceed \$10 per certified record. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§16607. Public records; confidentiality**

**1. Presumption of public records.** Except as otherwise provided in subsection 2, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing or

report, are public records and are available for public examination in accordance with Title 1, chapter 13, subchapter 1.

**2. Nonpublic records.** The following records are not public records and are not available for public examination under subsection 1:

A. A record obtained by the administrator in connection with an audit or inspection under section 16411, subsection 4 or an investigation under section 16602;

B. A part of a record filed in connection with a registration statement under section 16301 and sections 16303 to 16305 or a record under section 16411, subsection 4 that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

C. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure;

D. A record received from a person specified in section 16608, subsection 1 that has been designated as confidential by the agency furnishing the record;

E. Any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed;

F. A record obtained by the administrator through a designee of the administrator that, pursuant to a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, or an order under this chapter, has been:

(1) Expunged from the administrator's records by the designee; or

(2) Determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors;

G. Records to the extent that they relate solely to the administrator's internal personnel rules and practices, including, but not limited to, protocols, guidelines, manuals and memoranda of procedure for employees of the Office of Securities;

H. Interagency or intra-agency memoranda or letters, including generally records that reflect discussions between or consideration by the administrator and employees of the Office of Securities of any action taken or proposed to be taken by the administrator or employees of the Office of Securities, including, but not limited to, reports, summaries, analyses, conclusions or other work product of the administrator or employees of the Office of Securities, except those that by law would routinely be discoverable in litigation; and

I. Records to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

**3. Administrator discretion to disclose.** If disclosure is for the purpose of a civil, administrative or criminal investigation, action or proceeding or to a person specified in section 16608, subsection 1, the administrator may disclose a record obtained in connection with an audit or inspection under section 16411, subsection 4 or a record obtained in connection with an investigation under section 16602. Prior to disclosure to a person specified in section 16608, subsection 1, the administrator may require the requesting agency to certify that under applicable law reasonable protections exist to preserve the integrity, confidentiality and security of the information comparable to the protections existing under the laws of this State.

**4. Public disclosure for enforcement purposes.** The administrator may disclose to the public any information obtained in connection with an investigation that would otherwise be nonpublic information, but only if the administrator determines that disclosure is necessary for the protection of investors or the public.

#### **§16608. Uniformity and cooperation with other agencies**

**1. Objective of uniformity and cooperation.** The administrator may, in the administrator's discretion, cooperate, coordinate, consult and, subject to section 16607, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking or insurance regulator or a governmental regulatory or law enforcement agency to, among other objectives, effectuate greater uniformity in securities matters among the Federal Government, self-



regulatory organizations, states and foreign governments.

**2. Policies to consider.** In cooperating, coordinating, consulting and sharing records and information under this section and in acting by rule, order or waiver under this chapter, the administrator may, in the administrator's discretion, take into consideration in carrying out the public interest the following general policies:

A. Maximizing effectiveness of regulation for the protection of investors;

B. Maximizing uniformity in federal and state regulatory standards; and

C. Minimizing burdens on the business of capital formation without adversely affecting essentials of investor protection.

**3. Subjects for cooperation.** The cooperation, coordination, consultation and sharing of records and information authorized by this section includes:

A. Establishing or employing one or more designees as a central depository for licensing, registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;

B. Developing and maintaining uniform forms;

C. Conducting a joint examination or investigation;

D. Holding a joint administrative hearing;

E. Instituting and prosecuting a joint civil or administrative proceeding;

F. Sharing and exchanging personnel;

G. Coordinating registrations under section 16301 and licensing under sections 16401 to 16404 and exemptions under section 16203;

H. Sharing and exchanging records, subject to section 16607;

I. Formulating rules, statements of policy, guidelines, forms and interpretative opinions and releases;

J. Formulating common systems and procedures;

K. Notifying the public of proposed rules, forms, statements of policy and guidelines;

L. Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation,

considered necessary or appropriate to promote or achieve uniformity; and

M. Developing and maintaining a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.

## **§16609. Judicial review**

**1. Judicial review of orders.** Notwithstanding Title 10, section 8003, subsection 5, any person aggrieved by a final order of the administrator may obtain judicial review of the order in the Superior Court of Kennebec County by filing a petition in accordance with Title 5, section 11001 and the Maine Rules of Civil Procedure, Rule 80C.

**2. Judicial review of rules.** A rule adopted under this chapter is subject to judicial review in accordance with the Maine Administrative Procedure Act.

## **§16610. Jurisdiction**

**1. Sales and offers to sell.** The following sections do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this State or the offer to purchase or the purchase is made and accepted in this State:

A. Section 16301;

B. Section 16302;

C. Section 16401, subsection 1;

D. Section 16402, subsection 1;

E. Section 16403, subsection 1;

F. Section 16404, subsection 1;

G. Section 16501;

H. Section 16506;

I. Section 16509; and

J. Section 16510.

**2. Purchases and offers to purchase.** The following sections do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this State or the offer to sell or the sale is made and accepted in this State:

A. Section 16401, subsection 1;

B. Section 16402, subsection 1;

C. Section 16403, subsection 1;

D. Section 16404, subsection 1;

E. Section 16501;

F. Section 16506;

G. Section 16509; and

H. Section 16510.

**3. Offers in this State.** For the purpose of this section, an offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer:

A. Originates from within this State; or

B. Is directed by the offeror to a place in this State and received at the place to which it is directed.

**4. Acceptances in this State.** For the purpose of this section, an offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance:

A. Is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed; and

B. Has not previously been communicated to the offeror, orally or in a record, outside this State.

**5. Publications, radio, television or other electronic communications.** An offer to sell or to purchase a security is not made in this State when a publisher circulates or there is circulated on the publisher's behalf in this State a bona fide newspaper or other publication of general, regular and paid circulation that is not published in this State or that is published in this State but has had more than 2/3 of its circulation outside this State during the previous 12 months or when a radio or television program or other electronic communication, except specifically addressed electronic mail or messaging, originating outside this State is received in this State. A radio or television program or other electronic communication is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:

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

B. The program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State;

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

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

For purposes of this subsection, when a publication is published in editions, each edition is considered a separate publication except for material common to all editions. Radio or television programs, or other electronic communications, with changes, alterations or additions made prior to local redistribution, are considered as originating in this State.

**6. Investment advice and misrepresentations.** The following sections apply to a person if the person engages in an act, practice or course of business instrumental in effecting prohibited or actionable conduct in this State, whether or not either party is then present in this State:

A. Section 16403, subsection 1;

B. Section 16404, subsection 1;

C. Section 16405, subsection 1;

D. Section 16502;

E. Section 16505; and

F. Section 16506.

## **§16611. Service of process**

**1. Signed consent to service of process.** A consent to service of process must be signed and filed on a form designated by the administrator. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for licensing or registration or a previous exemption or notice filing need not file an additional consent.

**2. Conduct constituting appointment of agent for service.** If a person, including a nonresident of this State, engages in an act, practice or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter

and the person has not filed a consent to service of process under subsection 1, the act, practice or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

**3. Procedure for service of process.** Service under subsection 1 or 2 may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

A. The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address or takes other reasonable steps to give notice; and

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

**4. Service in administrative proceedings or civil actions by administrator.** Service pursuant to subsection 3 may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

**5. Opportunity to defend.** If process is served under subsection 3, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

#### **§16612. Liability of control persons**

In an administrative action brought by the administrator, or a civil action brought by the Attorney General for a violation of any provision of this chapter or any rule or order adopted or issued by the administrator pursuant to this chapter, every person who directly or indirectly controls another person liable for the violation, every partner, officer or director of that other person, every person occupying a similar status or performing similar functions, every employee of that other person who materially aids in the act or transaction constituting the violation and every broker-dealer, agent, investment adviser or investment adviser representative who materially aids in the act or transaction constituting the violation is liable to the same extent as that other person, unless the person otherwise secondarily liable under this chapter proves that the person did not know, and in the exercise of

reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. Any of the remedies authorized by section 16603, subsection 2 may be granted with respect to a person secondarily liable under this section. This section is not intended to abrogate any right to contribution that may exist at common law with respect to an award of restitution.

#### **§16613. Administrative determination of abandonment**

A pending license application, registration statement, exemption filing or notice filing may be considered abandoned if the administrator has not received a response to inquiries or deficiency notices for a period of at least 120 days. The administrator shall send an abandonment notice to the last known address of the applicant or filer. The applicant or filer must respond to the abandonment notice within 30 days to avoid an abandonment determination. The abandonment of an application does not preclude the filing of a subsequent application for licensing, registration statement, exemption filing or notice filing.

### **SUBCHAPTER 7**

#### **TRANSITION**

#### **§16701. Effective date**

This chapter takes effect December 31, 2005.

#### **§16702. Application**

The application of this chapter to existing proceedings and existing rights and duties is described in this section.

**1. Applicability of predecessor act to pending proceedings and existing rights.** The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this chapter or may be instituted on the basis of conduct occurring before the effective date of this chapter, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within 5 years after the effective date of this chapter, whichever is earlier.

**2. Continued effectiveness under predecessor act.** All effective licenses and registrations under any predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations and conditions imposed on the licenses and registrations under any predecessor act remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to

have been filed, issued or imposed under this chapter, but are exclusively governed by that predecessor act.

**3. Applicability of predecessor act to offers or sales.** The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this chapter pursuant to an offering made in good faith before the effective date of this chapter on the basis of an exemption available under the predecessor act.

## PART B

**Sec. B-1. 24-A MRSA §2517, sub-§3** is enacted to read:

**3.** The superintendent shall adopt rules regarding the suitability of sales of annuities for the purpose of protecting the consumer and furthering uniformity of laws with other states. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

## PART C

**Sec. C-1. 4 MRSA §152, sub-§9**, as amended by PL 2001, c. 229, §1, is further amended to read:

**9. Licensing jurisdiction.** Except as provided in Title 5, section 10004; Title 8, section 279-B; Title 10, section 8003, subsection 5; Title 20-A, sections 10712 and 10713; Title 29-A; Title 32, chapters 2-B, ~~405~~ and 114 and 135; and Title 35-A, section 3132, exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency. The District Court has original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused. The District Court has original concurrent jurisdiction to grant equitable relief in proceedings initiated by an agency or the Department of the Attorney General alleging any violation of a license or licensing laws or rules.

Notwithstanding any other provisions of law, a licensing agency may not reinstate or otherwise affect a license suspended, revoked or modified by the District Court pursuant to a complaint filed by the Attorney General without the approval of the Attorney General;

**Sec. C-2. 5 MRSA §194-B, sub-§2, ¶B**, as enacted by PL 2001, c. 550, Pt. A, §2, is amended to read:

B. Sales or transfers for fair market value of:

(1) Any interest in property owned by the public charity or any wholly owned subsidiary, the net proceeds of which are paid solely to the public charity or any wholly owned subsidiary; or

(2) Money or monetary equivalents owned by a public charity or any wholly owned subsidiary in exchange for an interest in property, including securities as defined in Title 32, section ~~40504~~ 16102, subsection ~~48~~ 28, to be held by the public charity or any wholly owned subsidiary;

**Sec. C-3. 5 MRSA §10051, sub-§1**, as amended by PL 2003, c. 505, §1, is further amended to read:

**1. Jurisdiction.** Except as provided in section 10004; Title 8, section 279-B; Title 10, section 8003; Title 20-A, sections 10712 and 10713; Title 29-A; and Title 32, chapters 2-B, ~~405~~ and 114 and 135, the District Court has exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency and has original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

**Sec. C-4. 9-A MRSA §3-506**, as amended by PL 1987, c. 129, §62, is further amended to read:

### §3-506. Limitation

This Part ~~shall~~ does not apply to any transaction covered by section 8-204, nor ~~shall~~ does it apply to any sale, by any dealer or agent or salesman of a registered dealer, registered pursuant to Title 32, chapter ~~405~~ 135, of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to Title 32, chapter ~~405~~ 135 or expressly exempt from registration thereof.

**Sec. C-5. 9-B MRSA §1053, sub-§4, ¶B**, as enacted by PL 1993, c. 257, §6, is amended to read:

B. Offers or sales that are exempt from registration by virtue of Title 32, section ~~40502~~, ~~subsection 2, paragraph L, N or R~~ 16202, subsections ~~16, 19 or 26~~.

**Sec. C-6. 10 MRSA §1210-B, sub-§3**, as enacted by PL 2001, c. 471, Pt. E, §2, is amended to read:

**3. Securities.** A sale by a dealer or agent or salesman of a dealer registered pursuant to Title 32, chapter ~~405~~ 135 of stocks, bonds, debentures or securities representing stocks, bonds or debentures

registered pursuant to Title 32, chapter ~~405~~ 135 or expressly exempt from registration pursuant to Title 32, chapter ~~405~~ 135;

**Sec. C-7. 13 MRSA §1756, last ¶**, as enacted by PL 1993, c. 300, §1, is amended to read:

Notwithstanding any other provision of law to the contrary, the offer of membership, shares or other ownership interests in a cooperative affordable housing corporation or any other corporation or unincorporated association organized for the primary purpose of providing housing on a cooperative basis as a consumer cooperative under subchapter ~~1~~ 1 or otherwise is not the offer of a security pursuant to Title 32, chapter ~~405~~ 135 or any other provision of law.

**Sec. C-8. 14 MRSA §1522, sub-§1, ¶L**, as enacted by PL 1991, c. 9, Pt. G, §2, is amended to read:

L. Title 32, section ~~40602~~ 16603;

**Sec. C-9. 20-A MRSA §11482**, as enacted by PL 1997, c. 732, §4, is amended to read:

**§11482. Exemption from registration**

A participation agreement offered pursuant to this chapter is not a security as defined in Title 32, section ~~40501~~ 16102, subsection ~~48~~ 28. The authority may obtain written advice of legal counsel or written advice from the United States Securities and Exchange Commission, or both, that the offering of a participation agreement is not subject to federal securities laws but is in compliance with those laws and is not in violation of other applicable laws.

**Sec. C-10. 24-A MRSA §1402, sub-§4, ¶D**, as amended by PL 1999, c. 225, §2, is further amended to read:

D. "Consultant" does not include:

- (1) An attorney licensed to practice who is actively practicing law in this State;
- (2) An insurance actuary and member or associate of the Society of Actuaries or American Academy of Actuaries;
- (3) A public accountant certified under Title 32, chapter 113 or a certified public accountant who is certified under Title 32, chapter 113 and in active public practice;
- (4) A licensed insurance producer who receives a fee in lieu of a commission pursuant to section 1450 if the insurance producer receives a fee for the insurance

transaction and not for other services provided;

(5) A financial institution or a financial institution holding company if the insurance advice is given as part of its trust department rendering insurance advice in a fiduciary capacity; or

(6) A person authorized to act as or on behalf of an investment advisor in accordance with Title 32, section ~~40303 and 40304, subsection 2-A~~ 16403 and 16404 to the extent such activities entail providing insurance advice incidental to financial planning advice.

**Sec. C-11. 24-A MRSA §3489, sub-§1, ¶C**, as enacted by PL 1999, c. 656, §5, is amended to read:

C. "Public offering" means an offer that includes an offer to individuals that is made by means of public advertising or general solicitation. "Public offering" does not include:

(1) Issuance of stock to the mutual holding company or any related stock holding company; or

(2) An offer or sale that is exempt from registration by virtue of Title 32, section ~~40502, subsection 2, paragraph I, L, N, Q or R~~ 16202, subsections 13, 15, 16, 19 or 26.

**Sec. C-12. 24-A MRSA §3489, sub-§6**, as enacted by PL 1999, c. 656, §5, is amended to read:

**6. Membership interest.** A membership interest in a mutual holding company does not constitute a security under Title 32, section ~~40501~~ 16102, subsection ~~48~~ 28 or any other law of this State and is not transferable.

**Sec. C-13. 24-A MRSA §6208, 2nd ¶**, as amended by PL 2001, c. 182, §8, is further amended to read:

If a registration statement for the cooperative is filed with the Office of Securities, pursuant to the ~~Revised~~ Maine Uniform Securities Act, Title 32, chapter ~~405~~ 135, a copy must be simultaneously filed with the superintendent and a copy must be given to every purchaser of a membership interest or share in the cooperative at least 10 days prior to the sale of the interest or share. Any information required to be filed with the superintendent pursuant to this chapter and contained in the referenced registration materials may be filed in that format with the superintendent and need not be submitted under separate cover. If a registration statement is not filed with the Office of

Securities, a disclosure statement containing, to the extent applicable, all the information required to register a security by qualification, pursuant to Title 32, section ~~40404~~ 16304, must be filed with the superintendent and given to every subscriber at least 10 days prior to the sale. In the alternative, a provider may elect to provide each subscriber a disclosure statement containing those provisions stated in section 6209 determined to be required by the superintendent.

**Sec. C-14. 24-A MRSA §6815, sub-§2**, as amended by PL 2003, c. 636, §15, is further amended to read:

**2. Securities registration.** Any sale by a settlement provider of settlement contracts, policies acquired pursuant to settlement contracts or interests therein that constitute a "security" within the meaning of the United States Securities Act of 1933, as amended, or the Revised Maine Uniform Securities Act, as amended, must be registered under those statutes unless there is an available exemption from registration under those statutes.

**Sec. C-15. 24-A MRSA §6815-A**, as enacted by PL 2003, c. 636, §16, is amended to read:

**§6815-A. Regulatory requirements under Maine Uniform Securities Act**

This chapter does not preempt the regulatory requirements set forth in the Revised Maine Uniform Securities Act, as amended, including but not limited to the regulation of securities transactions in settlement contracts or viatical settlement contracts and the licensing of any person or entity engaged in the sale of securities.

**Sec. C-16. 32 MRSA §1401, sub-§1, ¶B**, as enacted by PL 1999, c. 258, §2 and affected by §3, is amended to read:

B. The payee shall deposit the money in either a federally insured deposit or share account or a trust account; the type of account must be disclosed to the payor or the payor's representative and a deposit in a trust account may be invested in or used to purchase only the following:

- (1) Federally insured deposit or share accounts;
- (2) Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;
- (3) Municipal securities that are exempt from registration under Title 32, section ~~40502~~ 16201, subsection 1, ~~paragraph A~~; and

(4) Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of Title 24-A, chapter 27. A payee or mortuary trustee may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

Except for fees allowed by this section, all investments made with trust assets remain trust assets.

**Sec. C-17. 32 MRSA §4668, sub-§1, ¶C**, as enacted by PL 2001, c. 276, §1, is amended to read:

C. A sale by a dealer or agent or salesman of a dealer registered pursuant to chapter ~~405~~ 135 of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to chapter ~~405~~ 135 or expressly exempt from registration pursuant to chapter ~~405~~ 135;

**Sec. C-18. 32 MRSA §11208**, as amended by PL 1989, c. 542, §74, is further amended to read:

**§11208. Securities laws unaffected**

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

**Sec. C-19. 32 MRSA §14701, sub-§4**, as enacted by PL 2001, c. 324, §12, is amended to read:

**4. Merchandise.** "Merchandise" includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food or technical or vocational schools located outside of the State that are registered pursuant to Title 20-A, section 9501. "Merchandise" does not include securities that are registered or exempt from registration pursuant to chapter ~~405~~ 135, the Revised Maine Uniform Securities Act and rules adopted pursuant to that Act.

**Sec. C-20. 38 MRSA §2212, sub-§15**, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

**15. Application.** Provide financial assistance by means of revenue obligation securities which are not subject to Title 32, chapter ~~405~~ 135, relating to dealers in securities.

See title page for effective date.