

**Summary:** This chapter outlines licensing procedures and other requirements for broker-dealers and agents licensed with the State of Maine Office of Securities.

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### SECTION 1. Definitions

For the purposes of this chapter, the following definitions shall apply:

1. **Act.** “Act” means the Maine Uniform Securities Act, 32 M.R.S.A. §§ 16101 to 16702.
2. **Administrator.** “Administrator” has the same meaning as in 32 M.R.S.A. §16102(1).
3. **Agent.** “Agent” has the same meaning as in 32 M.R.S.A. §16102(2).
4. **Branch office.** “Branch office” has the same meaning as in 32 M.R.S.A. §16410(1)(F).
5. **Broker-dealer.** “Broker-dealer” has the same meaning as in 32 M.R.S.A. §16102(4).
6. **CRD.** “CRD” means the Internet-based Central Registration Depository.
7. **Form BD.** “Form BD” means the Uniform Application for Broker-Dealer Registration, a uniform form that is hereby adopted for use in the State of Maine.
8. **Form BDW.** “Form BDW” means the Uniform Request for Broker-Dealer Withdrawal, a uniform form that is hereby adopted for use in the State of Maine.
9. **Form BR.** “Form BR” means the Uniform Branch Office Registration Form, a uniform form that is hereby adopted for use in the State of Maine.
10. **Form U-4.** “Form U-4” means the Uniform Application for Securities Industry Registration or Transfer, a uniform form that is hereby adopted for use in the State of Maine.
11. **Form U-5.** “Form U-5” means the Uniform Termination Notice for Securities Industry Registration, a uniform form that is hereby adopted for use in the State of Maine.
12. **NASD.** “NASD” means the self-regulatory agency commonly known as the National Association of Securities Dealers.
13. **SEC.** “SEC” means the United States Securities and Exchange Commission.

## SECTION 2. Electronic filing with designated entity

1. **Designation.** Pursuant to Section 16406(1) of the Act, the Administrator designates the CRD to receive and store filings and collect related fees from broker-dealers and agents on behalf of the Administrator.
2. **Use of CRD.** Unless otherwise provided, all broker-dealer and agent applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator shall be filed electronically with and transmitted to CRD.
3. **Electronic signature.** When a signature or signatures are required by the particular instructions of any filing made through CRD, the applicant or a duly authorized officer of the applicant, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD. Submission of a filing in this manner shall constitute evidence of legal signature by any individuals whose names are typed on the filing.
4. **Non-CRD filings.** Notwithstanding subsection 2, any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by CRD shall be filed directly with the Administrator.

## SECTION 3. Application for licensure

1. **Initial application.** The application for initial licensure pursuant to Section 16406(1)(A) of the Act shall be made by a broker-dealer completing Form BD or an agent completing Form U-4, in accordance with the form instructions, and by filing the form with CRD. The application for initial licensure shall also include the fee required by Rule Chapter 541.
2. **Annual renewal.** Pursuant to Section 16406(4) of the Act, a license is effective until midnight on December 31st of the year for which the application for licensing was filed. A licensee shall renew a license through CRD and pay the fee required by Rule Chapter 541.
3. **Amendments.** Pursuant to Section 16406(2) of the Act, if the information or record contained in an application filed under this section is or becomes inaccurate or incomplete in a material respect, the licensee shall promptly file a correcting amendment. An amendment will be considered to be filed “promptly” if it is filed within thirty (30) days of the event that requires the filing.
4. **Completion of filing.** An application for initial licensure or a renewal is not considered filed for purposes of Section 16406 of the Act until all required forms have been completed and filed, all required fees have been paid, and all additional information and records requested by the Administrator under Section 16406 have been received.
5. **Branch offices.** Each broker-dealer shall file with CRD a Form BR, in accordance with the form instructions, for each branch office in Maine and shall pay the initial fee required by Rule Chapter 541. The filing is effective until midnight on December 31<sup>st</sup> of the year in which the filing was made. Each broker-dealer shall renew its branch office filings with CRD and shall pay the renewal fee required by Rule Chapter 541.

**SECTION 4. Termination, transfer and withdrawal.**

1. **Termination of agent's employment or association.** Pursuant to Section 16408(1) of the Act, if an agent licensed under the Act terminates (A) employment by or association with a broker-dealer or (B) activities that require licensing as an agent, the broker-dealer shall complete Form U-5 in accordance with the form instructions and promptly file the form with CRD. If the agent learns that the broker-dealer has not filed the form, then the agent shall promptly file it. The form will be considered to be filed "promptly" if it is filed within thirty (30) days of the termination.
2. **Transfer of agent's employment or association.** Pursuant to Section 16408(2) of the Act, if an agent licensed under the Act terminates employment by or association with a broker-dealer licensed under the Act and begins employment by or association with another broker-dealer licensed under the Act, an initial application for licensure must be filed in compliance with Section 16406 of the Act and Section 3 of this chapter.
3. **Withdrawal of broker-dealer or agent licensing.** The application for withdrawal of licensing pursuant to Section 16409 of the Act shall be made by a broker-dealer completing Form BDW or Form U-5, or by an agent completing Form U-5, in accordance with the form instructions, and by filing the form with CRD.

**SECTION 5. Broker-dealers not members of NASD and their agents; agents of issuers.**

1. **Limited application of section.** This section applies only to:
  - A. broker-dealers that are licensed or required to be licensed under the Act and are not members of a self-regulatory organization registered under the United States Securities Exchange Act of 1934;
  - B. agents of such broker-dealers; and
  - C. agents of issuers.
2. **Licensing requirements**
  - A. Broker-dealer applications for initial licensure and renewals pursuant to Section 16406(1) of the Act shall be made in the same manner as prescribed by Section 3 of this chapter except that all required forms and fees that are not permitted to be filed with or cannot be accepted by CRD shall be filed directly with the Administrator. Applications for initial licensure shall also include the following:
    - (1) A financial statement demonstrating compliance with the minimum financial requirements of Subsection 3 below, if necessary; and
    - (2) For sole proprietors, proof of compliance by the applicant with the examination requirements of Section 6 of this chapter, unless such proof is available to the Administrator through CRD.
  - B. Agent applications for initial licensure and renewals pursuant to Section 16406(1) of the Act shall be made in the same manner as prescribed by Section 3

of this chapter except that all required forms and fees that are not permitted to be filed with or cannot be accepted by CRD shall be filed directly with the Administrator. Applications for initial licensure shall also include the following:

- (1) Proof of compliance by the agent applicant with the examination requirements of Section 6 of this chapter unless such proof is available to the Administrator through CRD; and
  - (2) A complete set of fingerprints taken by an authorized law enforcement officer. In Maine, authorized law enforcement officers are set forth in Title 25, Section 1549. Applicants who are residents of other jurisdictions shall use law enforcement officers in their home jurisdiction who are authorized by law to take fingerprints. This requirement shall be waived if the applicant is currently registered or licensed by a state securities regulator at the time application for licensure in this state is made and the applicant has previously submitted fingerprint impressions to NASD, CRD, or another securities regulator in connection with registration or licensure.
- C. Sole proprietor broker-dealers are required to apply for licensure as an agent pursuant to this section. Initial and annual renewal agent fees are waived for sole proprietors.

3. **Minimum financial requirements for broker-dealers with custody of client funds or securities**

- A. Broker-dealers shall maintain at all times a minimum net worth of \$35,000.
- B. Unless otherwise exempted, as a condition of the right to transact business in this state, broker-dealers shall by the close of business on the next business day notify the Administrator if their net worth is less than the minimum required. After transmitting such notice, each such broker-dealer shall file by the close of business on the next business day a report with the Administrator of its financial condition, including the following:
- (1) A trial balance of all ledger accounts;
  - (2) A statement of all client funds or securities which are not segregated;
  - (3) A computation of the aggregate amount of client ledger debit balances; and
  - (4) A statement as to the number of client accounts.
- C. For purposes of this section, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles.
- (1) Net worth shall not include the following assets:
    - (a) prepaid expenses, except as to items properly classified assets under generally accepted accounting principles;

- (b) deferred charges;
  - (c) goodwill;
  - (d) franchise rights;
  - (e) organizational expenses;
  - (f) patents;
  - (g) copyrights;
  - (h) marketing rights;
  - (i) unamortized debt discount and expense; and
  - (j) all other assets of intangible nature.
- (2) In addition, for individuals, net worth shall not include homes, home furnishings, automobiles and any other personal items not readily marketable.
- (3) In addition, for corporations and limited liability companies, net worth shall not include advances or loans to stockholders, officers or members.
- (4) In addition, for partnerships, net worth shall not include advances or loans to partners.
- D. For purposes of this section, a person will be deemed to have custody if he or she directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.
- E. The Administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

## **SECTION 6. Examination and training requirements**

1. **Examinations required.** Every individual applicant for a license shall take and pass:
- A. The NASAA Series 63 Uniform Securities Agent State Law Examination or the NASAA Series 66 Uniform Combined State Law Examination;
  - B. The Securities Industry Essentials (“SIE”) examination; and
  - C. A securities representative-level qualification examination or examinations administered by FINRA for the types of activity in which the applicant will be engaged, except that:
    - (1) an applicant who is not required to be registered with FINRA or who is applying to be an agent of a non-FINRA member broker-dealer or of an

issuer may substitute a Series 7 General Securities Representative Examination for the examination or examinations that would otherwise be required under this paragraph; and

- (2) a licensed agent who has passed only one or more of the limited representative-level qualification examinations administered by FINRA shall be deemed to be licensed in Maine only for those business activities for which those examinations would qualify the agent under FINRA rules, and it shall be unlawful for that person to effect any other securities transactions in Maine as an agent.

An applicant whose license has been invalid for a period of two years or more must retake and receive a passing grade on the State Law Examination and representative-level qualifying examinations. Applicants for licensure whose license has been invalid for a period of four years or more must also retake and receive a passing grade on the SIE examination.

2. **Non-fractionalized certificates of deposit.** Agents who effect securities transactions only in non-fractionalized certificates of deposit and who are not agents of the issuer of those certificates of deposit are required only to pass the NASAA Series 63 Uniform Securities Agent State Law Examination or the NASAA Series 66 Uniform Combined State Law Examination.
3. **Agents of issuer.** An agent who effects securities transactions only with respect to the offer and sale of securities of an issuer and who is a bona fide officer, director, partner, or member of the issuer, or occupies a similar status or performs similar functions, or is a bona fide employee of the issuer, is required only to pass the NASAA Series 63 Uniform Securities Agent State Law Examination or the NASAA Series 66 Uniform Combined State Law Examination.
4. **Requirements inapplicable to currently licensed agents.** The requirements established in Subsection 1(A) shall not apply to any person licensed as an agent in Maine on the date this rule took effect unless that person later ceases to be licensed for a continuous period of at least two years.
5. **Training required prior to licensing.** Each individual who either resides or has an office in Maine applying for an initial license as an agent shall attend a seminar conducted by the Administrator for agent and investment adviser representative applicants.
6. **Waivers.** The Administrator may by rule or order waive some or all of the examination and training requirements for any applicant or group of applicants.

## **SECTION 7. Reasonable supervision.**

In determining whether a person has failed to reasonably supervise an agent or other individual under Section 16412(4)(I) of the Act, the Administrator shall consider among other things whether the broker-dealer in question has met the requirements described in this section.

1. **Supervisory system.** Each broker-dealer shall establish, maintain and enforce a system for supervising the activities of its agents and other persons subject to its supervision and for supervising the operations of each Maine office. The system shall be reasonably designed to achieve compliance with applicable securities laws and regulations and shall provide, at a minimum, for the following:
  - A. The establishment, implementation and maintenance of written supervisory procedures in accordance with Subsection 2 below;
  - B. The designation of one or more principals or managers with authority to carry out the supervisory responsibilities of the broker-dealer for each type of business in which it engages and for which broker-dealer licensing is required;
  - C. For each branch office and for its principal place of business, if located in Maine, the designation of one or more principals or managers who have authority to carry out the supervisory responsibilities assigned to that location by the broker-dealer, and who shall be located in such office unless the broker-dealer has implemented a system of adequate supervisory controls over its branch office operations, designed to ensure a level of oversight comparable to that which would have existed had the designated supervisors been located in their assigned offices. A system of adequate supervisory controls may include, without limitation:
    - (1) a computerized tracking system through which the broker-dealer monitors trading, handling of funds, new accounts, registration status, exceptions, outside business activity, selling away, customer complaints, and other branch office activity;
    - (2) the monitoring and surveillance of internal and external communications to and from branch office locations;
    - (3) the designation of regional managers; and
    - (4) frequent visits to the location by an off-site manager.
  - D. The assignment of each agent to a principal or manager who shall be responsible for supervising the activities of that agent;
  - E. Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities; and
  - F. The participation by each agent, either individually or collectively, no less than annually, in interviews or meetings conducted by persons designated by the broker-dealer, at which compliance matters relevant to the activities of the agent(s) are discussed. The meetings or interviews may occur in conjunction with a discussion of other matters and may be conducted at a central or regional location or at the agent's place of business.
2. **Written procedures.** Each broker-dealer shall establish, maintain and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of agents and others. The procedures shall be reasonably designed to achieve compliance with applicable securities laws and regulations and shall set forth the broker-

dealer's supervisory system and shall include the titles, licensing status, and locations of required supervisory personnel as well as the responsibilities of each supervisory person as these relate to the types of business in which the broker-dealer is engaged and applicable securities laws and regulations. The broker-dealer shall also maintain on an internal record the names of all persons designated as supervisory personnel and the dates on which each such designation became or was effective.

3. **Amendments to written procedures.** Each broker-dealer shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations and as changes occur in its supervisory system. Each broker-dealer shall communicate such amendments through its organization.
4. **Internal inspections**
  - A. Each broker-dealer shall conduct a review, at least annually, of the businesses in which it engages. The review shall be reasonably designed to detect and prevent violations of, and to achieve compliance with, securities laws and regulations.
  - B. Each broker-dealer shall review the activities of each Maine office. The review shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and an on-site inspection of each office at least annually. In determining the need to conduct more frequent inspections of any office, the broker-dealer shall consider the nature and complexity of the securities activities for which the office is responsible, the volume of the office's business, and the number of agents assigned to the office.
  - C. The broker-dealer shall make and retain a written record of the dates upon which each review and inspection is conducted and a written report of each review and inspection which shall include a description of the testing and verification of the broker-dealer's policies and procedures.
5. **Review of agent transactions and correspondence.** Each broker-dealer shall establish, maintain and enforce procedures reasonably designed to supervise each agent in connection with the agent's securities transactions and incoming and outgoing written and electronic correspondence with the public relating to investments or the securities business of the broker-dealer. These procedures shall require that a principal or manager review each such transaction and piece of correspondence and make a written endorsement of the transaction or piece of correspondence on an internal record.

## **SECTION 8. Dishonest and unethical practices**

Broker-dealers and agents shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business and shall give particular consideration to any conflicts of interest that may arise or exist. The practices listed below are examples of practices that may be considered contrary to such standards and may thus constitute grounds for discipline under Section 16412 of the Act.

This section is not intended to be all inclusive, and thus practices not enumerated herein may also be deemed dishonest or unethical. This section is also not intended to limit or define fraudulent and other prohibited practices under Subchapter 5 of the Act or to preclude application of the



general anti-fraud provisions contained therein against any person for practices similar in kind to those listed below.

For purposes of this section, the delivery of a prospectus, in and of itself, shall not be dispositive that the broker-dealer or agent provided the customer full and fair disclosure.

A person may be deemed to have engaged in “dishonest or unethical practices” under Section 16412(4)(M) of the Act if the person has engaged in practices including but not limited to one or more of the following:

1. Engaging in any unreasonable or unjustifiable delay or failure in executing orders, liquidating customer accounts, making delivery of securities purchased, or in paying upon request free credit balances reflecting completed transactions of any customer;
2. Switching or churning of securities in a customer’s account or inducing trading in a customer’s account which is excessive in size or frequency in view of the financial situation and needs of the customer and the character of the account;
3. Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s other securities holdings, investment objectives, financial situation and needs, and any other relevant information known by the person;
4. Marking any order tickets or confirmations as unsolicited when in fact the person recommended the transaction to the customer or introduced the customer to the security;
5. Effecting a transaction in a customer’s account without authority to do so;
6. Exercising any discretionary power in effecting a transaction for a customer’s account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the executing of orders, or both;
7. Executing any transaction in a margin account without obtaining from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or failing, prior to or at the opening of a margin account, to explain to a non-institutional customer the operation of a margin account and to disclose the risks associated with trading on margin;
8. Hypothecating a customer’s securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent, except as permitted by rules of the United States Securities and Exchange Commission;
9. Extending, arranging for, or participating in arranging for credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the Federal Reserve Board;
10. Entering into a transaction with or for a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission, markup or profit;

11. Charging unreasonable and inequitable fees for services performed, including but not limited to miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities;
12. Charging a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or non-payment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;
13. Offering to buy or sell any security at a stated price unless the person is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
14. Representing that a security is being offered to a customer "at the market price" or a price related to the market price unless the person knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled either by such person, by any other person for whom such person is acting or with whom such person is associated, or by any other person controlled by, controlling or under common control with such person;
15. Representing that securities will be listed, or that application for listing will be made, on a securities exchange or quotation system without a reasonable basis in fact for the representation;
16. Guaranteeing a customer against loss in any securities account of such customer or in any securities transaction effected by the person with or for such customer;
17. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the person believes that such transaction was a bona fide purchase or sale of such security, or which purports to quote the bid price or asked price for any security unless the person believes that such quotation represents a bona fide bid for, or offer of, such security;
18. Using any advertising, research materials or sales presentation in such a fashion as to be deceptive or misleading or which would detract from, supersede or defeat the purpose or effect of any prospectus or disclosure document. An example of this practice would be a distribution of any non-factual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise;
19. Failing to accurately describe or disclose, in advertising or other promotional materials (including business cards, stationery or signs) relating to an agent's business, the identity of the broker-dealer or issuer with whom the agent is associated or the nature of the securities services offered by the agent;
20. Holding oneself out as representing any person other than the broker-dealer with whom the agent is associated and, in the case of an agent whose normal place of business is not

on the premises of such broker-dealer, failing to conspicuously disclose the name of such broker-dealer when representing the broker-dealer in effecting or attempting to effect purchases or sales of securities;

21. Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, or if such disclosure is not made in writing, failing to give or send a written disclosure at or before the completion of the transaction;
22. Failing to segregate a customer's free securities or securities held in safekeeping;
23. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution by, among other things, (A) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or (B) parking or withholding securities;
24. Establishing, maintaining or permitting a person to open or use a fictitious or nominee account in order to execute otherwise prohibited transactions, or permitting a person to open an account for another person or to transact business in that account without prior written authorization from the person in whose name the account is carried;
25. Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, or making oral or written statements contrary to or inconsistent with the disclosures contained in the prospectus or additional documents furnished;
26. Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written demand or complaint;
27. Entering into an agreement with any unlicensed broker-dealer or agent to receive selling concessions, discounts, commissions or allowances as consideration for services in connection with the distribution or sale of a security, or dividing or otherwise splitting agent commissions, profits or other compensation from the purchase or sale of securities with any person not also licensed as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;
28. Failing to disclose to a customer in writing, before a transaction is effected, any compensation agreement connected with that security which is in addition to compensation from the customer for that transaction;
29. In a principal transaction, stating or implying to the customer that the agent would not receive a commission or other similar remuneration when, in fact, the agent would receive such commission or remuneration;
30. Engaging or aiding in high pressure tactics in connection with the solicitation of a sale or purchase of a security by means of an intensive telephone, e-mail or fax campaign or unsolicited calls to persons not known by, nor having an account with, the agent or broker-

dealer represented by the agent, whereby the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his or her investment needs and objectives;

31. Soliciting prospective customers who have informed the person that they do not want to be solicited, contacting customers or prospective customers by telephone at times before 8:00 a.m. or after 9:00 p.m. or at any other time that the person knows or should know is unreasonable with respect to the person being called, or soliciting by telephone prospective customers who have had their telephone numbers registered on the Federal Trade Commission's national do-not-call registry;
32. Misrepresenting to any customer or prospective customer the qualifications of the broker-dealer, agent, or any other employee or person associated with the broker-dealer, or misrepresenting the nature of services being offered or the fees to be charged for such services, or omitting a material fact necessary to make any such representations not misleading in light of the circumstances under which they are made;
33. In connection with the offer, purchase, or sale of a security, leading a customer to believe that the person is in possession of material, non-public information that would affect the value of the security;
34. In connection with the solicitation of a purchase or sale of a security, engaging in a pattern or practice of making contradictory recommendations to different investors with similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;
35. Failing to protect the security and confidentiality of the non-public personal information of any client;
36. As an agent, lending money or securities to, or borrowing money or securities from, a customer, or acting as a custodian for money, securities or an executed stock power of a customer, unless:
  - A. The broker-dealer has written procedures allowing such an arrangement; and
  - B. The customer is:
    - (1) a member of the agent's immediate family or another person whom the agent supports, directly or indirectly, to a material extent;
    - (2) a financial institution regularly engaged in the business of providing credit, financing, or loans, or other person that regularly arranges or extends credit in the ordinary course of business; or
    - (3) a licensed agent of the same broker-dealer, if the broker-dealer has given advance written authorization for the arrangement;
37. As an agent, effecting a securities transaction where the transaction is not recorded on the regular books or records of the broker-dealer that the agent represents, unless the broker-dealer has given advance written authorization;

38. As an agent, sharing directly or indirectly in profits or losses in the account of any customer without first obtaining the written authorization of the customer and the broker-dealer that the agent represents;
39. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative; or employing a device, scheme or artifice to defraud, making an untrue statement of material fact, omitting a material fact necessary to state in order to make other statements not misleading, or engaging in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person;
40. Including in any contract or agreement with a customer any condition, stipulation, or provision binding the customer to waive compliance with any provision of the Act or any rule of the Office of Securities;
41. Failing to comply with any securities-related arbitration award, unless a proceeding to vacate or modify such award is pending or unless the time limit to commence such a proceeding has not yet expired;
42. Violating any of the conduct or fair practice rules of the NASD or any ethical rules or standards promulgated by the Securities and Exchange Commission, the Commodity Futures Trading Commission or a self-regulatory organization approved by either the Securities and Exchange Commission or the Commodity Futures Trading Commission;
43. Engaging in conduct prohibited by Chapter 512 of the Rules of the Office of Securities; or
44. Accessing a client's account by using the client's own unique identifying information (such as username and password).

### **SECTION 9. Dishonest or Unethical Practices: Investment Company Shares**

Broker-dealers and agents shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business and shall give particular consideration to any conflicts of interest that may arise or exist. The practices listed below are examples of practices relating to investment company shares which may be considered contrary to such standards and may thus constitute grounds for discipline under Section 16412 of the Act.

This section is not intended to be all inclusive, and thus practices not enumerated herein may also be deemed dishonest or unethical. This section is also not intended to limit or define fraudulent and other prohibited practices under Subchapter 5 of the Act or to preclude application of the general anti-fraud provisions contained therein against any person for practices similar in kind to those listed below.

For purposes of this section, the delivery of a prospectus, in and of itself, shall not be dispositive that the broker-dealer or agent provided the customer full and fair disclosure.

A person may be deemed to have engaged in "dishonest or unethical practices" under Section 16412(4)(M) of the Act by engaging in one or more of the following practices in connection with the solicitation of investment company shares:

1. Failing to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares;
2. Stating or implying to a customer that the shares are sold without a commission, are "no load" or have "no sales charge" if there is associated with the purchase of the shares:
  - A. A front-end load;
  - B. A contingent deferred sales load;
  - C. A SEC Rule 12b-1 fee or a service fee if such fees in total exceeds .25% of average net fund assets per year; or
  - D. In the case of closed-end investment company shares, underwriting fees, commissions or other offering expenses;
3. Failing to disclose to any customer any relevant:
  - A. Sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint; or
  - B. Letter of intent feature, if available, which will reduce the sales charges;
4. Recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and the associated transaction or other fees;
5. Recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees;
6. Recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing another investment without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings and any associated transaction charges or other fees;
7. Stating or implying to a customer the fund's current yield or income without disclosing the fund's most recent average annual return, calculated in a manner prescribed in SEC Form N-1A, for one, five and ten year periods and fully explaining the difference between current yield and total return;
8. Stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or

other bank deposit account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal and/or return, and any other factors which are necessary to ensure that such comparisons are fair, complete and not misleading;

9. Stating or implying to a customer the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer other kinds of relevant investment risks, including but not limited to, interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities;
10. Stating or implying to a customer: (A) that the purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described tax or other advantages to the customer; or (B) that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares; or
11. Making:
  - A. Projections of future performance;
  - B. Statements not warranted under existing circumstances; or
  - C. Statements based upon non-public information.

#### **SECTION 10. Location of forms**

Copies of the forms referred to in this rule are available at no charge on the website of the Office of Securities, [http://www.maine.gov/pfr/sec/sec\\_forms.htm](http://www.maine.gov/pfr/sec/sec_forms.htm).

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STATUTORY AUTHORITY: 32 M.R.S. §§ 16406, 16411, 16412 and 16605

**EFFECTIVE DATE:**

December 31, 2005 – filing 2005-505

**NON-SUBSTANTIVE CORRECTIONS:**

February 23, 2006 – capitalizations and punctuation only

**AMENDED:**

November 3, 2008 – Section 8 sub-sections 41, 42, 43, filing 2008-520

December 14, 2019 – filing 2019-221