

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

032 OFFICE OF SECURITIES

Chapter 510: BROKER-DEALERS, INVESTMENT ADVISERS, AND OTHERS USING THE INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ABOUT SECURITIES PRODUCTS AND SERVICES

Summary: This rule clarifies when broker-dealers, agents, investment advisers, investment adviser representatives, and others are transacting business in this State for purposes of Sections 16401 through 16404, respectively, of the Maine Uniform Securities Act by distributing information on available products and services through Internet communications available to persons in this State.

Section 1. Definitions.

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

1. “Internet” means ~~the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or “common carrier” electronic delivery systems, or similar medium~~ the single interconnected world-wide system of commercial, governmental, educational, and other computer networks that share the set of protocols specified by the Internet Architecture Board (IAB) and the name and address spaces managed by the Internet Corporation for Assigned Names and Numbers (ICANN).
2. “Internet communication” means ~~a communication made on~~ the sharing of information over the Internet which is directed generally to anyone ~~who has access to the Internet,~~ including persons in Maine, ~~to include~~ accessing, without limitation, postings on web pages, social media, emails, instant messages, advertising platforms, Bulletin Boards, messages in chat rooms, displays on Home Pages or similar methods.

Section 2. Licensing Exemption.

Broker-dealers, investment advisers, agents and investment adviser representatives (“IA representatives”) who use the Internet to distribute information on available products and services through Internet communications shall not be considered to be “transacting business” in this State for purposes of Sections 16401 through 16404 of the Maine Uniform Securities Act based solely on that fact, if the following conditions are observed:

1. The Internet communication contains a legend in which it is clearly stated that:
 - A. The broker-dealer, investment adviser, agent or IA representative may only transact business in this State if first licensed, excluded or exempted from state

broker-dealer, investment adviser, agent or IA representative licensing requirements; and

- B. Follow-up, individualized responses to persons in this State by the broker-dealer, investment adviser, agent or IA representative that involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, will not be made absent compliance with state broker-dealer, investment adviser, agent or IA representative licensing requirements, or an applicable exemption or exclusion;
2. The Internet communication contains a mechanism, including and without limitation, technical “firewalls” or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this State, the broker-dealer, investment adviser, agent or IA representative is first licensed in this State or qualifies for an exemption or exclusion from licensing. Nothing in this subparagraph shall be construed to relieve a state-licensed broker-dealer, investment adviser, agent or IA representative from any applicable securities registration requirement in this State;
 3. The Internet communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, in this State over the Internet, but is limited to the dissemination of general information on products and services; and
 4. In the case of an agent or IA representative:
 - A. The affiliation of the agent or IA representative with the broker-dealer or investment adviser, respectively, is prominently disclosed within the Internet communication;
 - B. The broker-dealer or investment adviser with whom the agent or IA representative is associated retains responsibility for reviewing and approving the content of any Internet communication by an agent or IA representative;
 - C. The broker-dealer or investment adviser with whom the agent or IA representative is associated first authorizes the distribution of information on the particular products and services through the Internet communication; and
 - D. In disseminating information through the Internet communication, the agent or IA representative acts within the scope of the authority granted by the broker-dealer or investment adviser.

Section 3. Limitations of Exemption.

The ~~exclusion~~ exemption provided in ~~Section 4~~ Section 2 extends to broker-dealer, investment adviser, agent and IA representative licensing requirements only and does not excuse compliance with applicable securities registration, antifraud or related provisions.

STATUTORY AUTHORITY:

32 M.R.S.A. §§ 16401-16404 and 16605

EFFECTIVE DATE:

November 26, 2000 - under 02-029, Bureau of Banking, Securities Division

EFFECTIVE DATE (ELECTRONIC CONVERSION):

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NON-SUBSTANTIVE CORRECTIONS:

October 22, 2001 - to reflect move to new Office of Securities, 02-032, mandated by P.L.
2001 c.182

AMENDED:

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