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OFFICE OF SECURITIES
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AUGUSTA, ME
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BASIS STATEMENT AND SUMMARY OF COMMENTS
Amendment to Chapter 515: Investment Adviser Licensing

Basis Statement

The Securities Administrator proposed changes to Chapter 515 to update references to FINRA examinations following updates to FINRA's examination program and to add to the list of dishonest and unethical practices an Investment Adviser's or Investment Adviser Representative's use of a client's unique identifying information to access a client's account.

On July 31, 2019, public notice of the proposed changes to Chapter 515, and the opportunity to comment, were provided in the Secretary of State's consolidated advertisement in Maine newspapers, pursuant to 5 M.R.S.A. § 8053. Notice was further provided to interested parties on August 1, 2019, by posting on the Office of Securities website and by electronic distribution via Granicus. The public comment period ended September 3, 2019.

The Securities Administrator received one comment on the proposed changes submitted by email.

Comments and Responses

Comment: Clifford P. Ryan of Elder Planning Advisors of Maine, Inc. commented that a blanket prohibition on an Investment Adviser Representative's use of a client's credentials to access client accounts is too drastic a step. Mr. Ryan offered that many clients request that IARs manage or monitor their accounts, that without access IARs have incomplete information about these accounts, and that companies and custodians often do not provide access to IARs under separate credentials. Mr. Ryan also commented that companies and custodians generally do not allow withdrawals or important changes to an account without a client signature, providing protection against unscrupulous advisers. Mr. Ryan also offered that, as fiduciaries, IARs serve their clients under heightened scrutiny. Mr. Ryan suggested that rather than prohibiting an IAR's use of client credentials, it would be preferable to allow the practice but only when the client has provided specific, written consent.

Office of Securities' response: The Office of Securities appreciates Mr. Ryan's comments and is sympathetic to the challenges a prohibition of the use of client credentials presents to IARs. Although slowing unscrupulous activities is an intended effect of this rulemaking, the practice's conflict with other important duties and obligations is the reason the Office finds it unacceptable. Using a client's credentials to access a client account can constitute custody for the IA/IAR; it can allow an IA/IAR to exercise discretion without authority; it can violate the customer's agreement with the company or custodian, potentially voiding client fraud protections and violating the IA/IAR's fiduciary duty; and it





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makes accurate record-keeping on account activity difficult or impossible. The Office supports the expansion of separate IA and IAR credentials to access client account information, when clients request it, but unfortunately, even with permission, logging in as the client is not a good solution. The language being adopted mirrors model language adopted by the North American Securities Administrators Association.

The changes to Rule 515 were adopted as proposed.

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