

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**032 OFFICE OF SECURITIES**

**Chapter 515: INVESTMENT ADVISER LICENSING**

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**Summary:** This chapter outlines the procedures for the licensing of investment advisers and investment adviser representatives 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. **CRD.** “CRD” means the Internet-based Central Registration Depository.
4. **Federal Covered Investment Adviser.** “Federal Covered Investment Adviser” has the same meaning as in 32 M.R.S.A. §16102(6).
5. **Form ADV.** “Form ADV” means the Uniform Application for Investment Adviser Registration, a uniform form which is hereby adopted for use in the State of Maine.
6. **Form ADV-H.** “Form ADV-H” means the Uniform Application for a temporary or continuing Hardship Exemption, a uniform form which is hereby adopted for use in the State of Maine.
7. **Form ADV-W.** “Form ADV-W” means the Uniform Notice of Withdrawal from Registration as Investment Adviser, a uniform form which is hereby adopted for use in the State of Maine.
8. **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.
9. **Form U-4.** “Form U-4” means the Uniform Application for Securities Industry Registration or Transfer, a uniform form which is hereby adopted for use in the State of Maine.
10. **Form U-5.** “Form U-5” means the Uniform Termination Notice for Investment Adviser licensure or registration, a uniform form which is hereby adopted for use in the State of Maine.
11. **IARD.** “IARD” means the Internet-based Investment Adviser Registration Depository.

12. **Investment Adviser.** “Investment Adviser” has the same meaning as in 32 M.R.S.A. §16102(15).
13. **Investment Adviser Representative.** “Investment Adviser Representative” has the same meaning as in 32 M.R.S.A. §16102(16).
14. **Investment Advisory Contract.** “Investment Advisory Contract” means any contract or agreement whereby a person agrees to act as investment adviser to or manage any investment or trading account of another person other than an investment company registered under the United States Investment Company Act of 1940.
15. **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 IARD and the CRD to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Administrator.
2. **Use of the IARD and the CRD.** Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator shall be filed electronically with and transmitted to the IARD or the CRD.
3. **Electronic Signature.** When a signature or signatures are required by the particular instructions of any filing made through the IARD or the 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 the IARD or the 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-IARD and non-CRD Filings.** Notwithstanding Sub-section 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 the IARD or the CRD shall be filed directly with the Administrator.
5. **Hardship Exemptions.** This sub-section provides two "hardship exemptions" from the requirements to make electronic filings:
  - A. **Temporary hardship exemption**
    - (1) Investment advisers licensed or required to be licensed under the Act that experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.
    - (2) To request a temporary hardship exemption, the investment adviser must:

- (a) file the Form ADV-H in paper format with the Administrator no later than one (1) business day after the filing that is the subject of the Form ADV-H was due; and
  - (b) submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven (7) business days after the filing was due.
- (3) The temporary hardship exemption will be deemed effective upon receipt by the Administrator of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Administrator.

**B. Continuing hardship exemption**

The Administrator may exclude, by order, an investment adviser from the requirement to make electronic filings with the IARD. Such order will be granted only if the Administrator determines that such an exemption is consistent with the public interest and the protection of investors.

**SECTION 3. Application for investment adviser licensure**

1. **Initial Application.** The application for initial licensure as an investment adviser pursuant to Section 16406(1) of the Act shall be made by completing the Form ADV in accordance with the form instructions, and by filing the form with the IARD. Until the IARD provides for the filing of Form ADV, Part II, it shall be filed directly with the Administrator. Once the IARD can accept such filings, Form ADV, Part II shall be filed with the IARD. The application for initial licensure shall also include the following:
  - A. A financial statement demonstrating compliance with the requirements of Section 12, if necessary;
  - B. The fee required by Rule Chapter 541;
  - C. For sole proprietors, proof of compliance by the applicant with the examination requirements of Section 10 of this chapter unless such proof is available to the Administrator through the CRD; and
  - D. Any other information required by the Administrator.
2. **Annual Renewal.** Pursuant to Section 16406(4) of the Act, a license is effective until midnight on December 31<sup>st</sup> of the year for which the application for licensing was filed. An investment adviser may renew a license through the IARD and shall pay the fee required by Rule Chapter 541.
3. **Amendments**
  - A. 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 in accordance with the instructions in the Form ADV.

- B. 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 renewal is not considered filed for purposes of Section 16406 of the Act until the required fee and all additional information requested by the Administrator has been received by the Administrator.
- 5. **Branch Offices.** Each investment adviser shall file with the CRD a Form BR, in accordance with the form instructions, for every branch office in Maine and shall pay the initial fee required by Rule Chapter 541. The filing is effective until midnight on December 31st of the year in which the filing was made. Each investment adviser shall renew its branch office filings with the CRD and shall pay the renewal fee required by Rule Chapter 541.

#### **SECTION 4. Application for investment adviser representative licensure**

- 1. **Initial Application.** The application for initial licensure pursuant to Section 16406(1) of the Act shall be made by completing Form U-4 in accordance with the form instructions and by filing the Form U-4 with the CRD. The application for initial licensure shall also include the following:
  - A. Proof of compliance by the investment adviser representative applicant with the examination requirements set out in Section 10 of this chapter unless such proof is available to the Administrator through the CRD;
  - B. The fee required by Rule Chapter 541; and
  - C. 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, the CRD, or another securities regulator in connection with registration or licensure.
- 2. **Annual Renewal.** Pursuant to Section 16406(4) of the Act, a license is effective until midnight on December 31<sup>st</sup> of the year for which the application for licensing was filed. An investment adviser representative license may be renewed through the CRD with payment of the fee required by Rule Chapter 541.
- 3. **Sole Proprietors.** Sole proprietor investment advisers are required to apply for licensure as an investment adviser representative pursuant to this section. Initial and annual renewal investment adviser representative fees are waived for sole proprietors.

4. **Amendments**
  - A. 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 investment adviser or investment adviser representative shall “promptly” file a correcting amendment in accordance with the instructions in the Form U-4. The investment adviser and the investment adviser representative are under a continuing obligation to update information required by the Form U-4 as changes occur.
  - B. An amendment will be considered to be filed “promptly” if the amendment is filed within thirty (30) days of the event that requires the filing.
5. **Completion of Filing.** An application for initial licensure or a renewal is not considered filed for purposes of Section 16406 of the Act until the required fee and all additional information and records requested by the Administrator under Section 16406 have been received.

#### **SECTION 5. Notice filing requirements for Federal Covered Investment Advisers**

1. **Notice Filing.** The notice filing for a Federal Covered Investment Adviser under Section 16405(3) of the Act shall be filed with the IARD on an executed Form ADV. A notice filing shall be deemed filed when the fee required by Rule Chapter 541 and the complete Form ADV are filed with and accepted by the IARD on behalf of the State.
2. **Portions of Form ADV Not Yet Accepted by the IARD.** Until the IARD provides for the filing of Form ADV, Part II, the Administrator will deem Form ADV, Part II filed if a Federal Covered Investment Adviser provides, within five (5) days of a request by the Administrator, Form ADV, Part II.
3. **Annual Renewal.** The annual renewal of the notice filing for a Federal Covered Investment Adviser pursuant to Section 16405(3) of the Act shall be filed with the IARD. The renewal of the notice filing for a Federal Covered Investment Adviser shall be deemed filed when the fee required by Rule Chapter 541 is filed with and accepted by the IARD on behalf of the state.
4. **Updates and Amendments**
  - A. A Federal Covered Investment Adviser shall file with the IARD, in accordance with the instructions in the Form ADV, any amendments to the Federal Covered Investment Adviser’s Form ADV by filing an annual updating amendment within ninety (90) days after the end of its fiscal year.
  - B. In addition to filing its annual updating amendment, the Federal Covered Investment Adviser shall amend its Form ADV by filing additional amendments “promptly” with the IARD if:
    - (1) information provided in response to items 1, 3, 9, or 11 of Part 1A or items 1, 2.A through 2.F, or 2I or Part 1B of Form ADV become inaccurate in any way;

- (2) information provided in response to items 4, 8, 10 of Part 1A or item 2.G of Part 1.B of Form ADV become materially inaccurate; or
  - (3) information provided in its brochure becomes materially inaccurate.
- C. An amendment shall be considered to be filed “promptly” if filed within thirty (30) days of the event that requires the filing of the amendment.

## **SECTION 6. Advertising**

1. It is unlawful to publish, circulate, or distribute any advertisement that:
- A. Refers either directly or indirectly to any testimonial of any kind concerning the investment adviser or investment adviser representative, or concerning any advice, analysis, report or other service rendered by such investment adviser or investment adviser representative;
  - B. Refers either directly or indirectly to past specific recommendations of such investment adviser or investment adviser representative which were or would have been profitable to any person. However, this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by an investment adviser or investment adviser representative within the immediately preceding period of not less than one year if such advertisement or list is furnished separately and:
    - (1) states
      - (a) the name of each such security recommended;
      - (b) the date and nature of each such recommendation, for example, whether to buy, sell or hold;
      - (c) the market price at that time;
      - (d) the price at which the recommendation was to be acted upon; and
      - (e) the market price of each such security as of the most recent practicable date; and
    - (2) contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: “it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list”;
  - C. Either directly or indirectly represents that any graph, chart, formula or other device being offered can, in and of itself, be used to determine which securities to buy or sell, or when to buy or sell them;

- D. Represents, either directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his or her own decisions as to which securities to buy, sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use;
  - E. Contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or
  - F. Contains any untrue statement of a material fact, or is otherwise false or misleading.
2. For the purposes of this sub-section, the term, "advertisement" shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio, television or the internet which offers:
- A. Analysis, reports, or publications concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;
  - B. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
  - C. Any other investment advisory service with regard to securities.

## **SECTION 7. Record keeping requirements for investment advisers**

1. **Record Keeping Requirements for All Investment Advisers.** Every investment adviser licensed or required to be licensed under the Act shall make and keep true, accurate and current the following books, ledgers and records:
- A. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
  - B. General and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income and expense accounts.
  - C. A record of the investment adviser's securities transactions.
    - (1) The investment adviser shall prepare a memorandum setting forth:
      - (a) each order given by the investment adviser for the purchase or sale of any security;
      - (b) any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security; and,



- (c) any modification or cancellation of any such order or instruction.
- (2) The memorandum shall:
  - (a) show the terms and conditions of the order, instruction, modification or cancellation;
  - (b) identify the person:
    - (i) connected with the investment adviser who recommended the transaction to the client, and
    - (ii) who placed the order;
  - (c) show:
    - (i) the account for which entered;
    - (ii) the date of entry; and
    - (iii) the bank or broker-dealer by or through which executed where appropriate; and
  - (d) designate orders entered pursuant to the exercise of discretionary power.
- D. All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
- E. All bills or statements, or copies of bills or statements, paid or unpaid, relating to the investment adviser's business as an investment adviser.
- F. All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this paragraph, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation, if applicable, as required by Section 12 of this chapter.
- G. Records of the investment adviser's written communications
  - (1) The investment adviser shall keep originals of all written communications received and copies of all written communications sent by the investment adviser relating to:
    - (a) any recommendation made or proposed to be made and any advice given or proposed to be given;
    - (b) any receipt, disbursement, or delivery of funds or securities; and

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- (c) the placing or execution of any order to purchase or sell any security.
  - (2) The investment adviser shall not be required to keep any unsolicited market letters and other similar communications or general public distribution not prepared by or for the investment adviser.
  - (3) If the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than ten (10) persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent. However, if the notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.
- H. A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.
- I. A copy of all powers of attorney and other evidence of the granting of any discretionary authority by any client to the investment adviser.
- J. A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.
- K. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser. If the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, the investment adviser shall retain a memorandum of the investment adviser indicating the reasons for the recommendation.
- L. Records of transactions in securities in which the investment adviser or an affiliated person has a beneficial ownership interest.
- (1) The investment adviser shall keep a record of every transaction in a security in which:
    - (a) the investment adviser; and
    - (b) any person described in Subparagraphs (2) or (3), whichever is applicable;
- has, or by reason of any transaction acquires, any direct or indirect beneficial ownership.

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- (2) For all investment advisers except those that are primarily engaged in a business or businesses other than advising investment advisory clients, records of transactions shall include records of the transactions of:
- (a) any partner, officer, or director of the investment adviser;
  - (b) any employee who participates in any way in the determination of which recommendations are made;
  - (c) any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and
  - (d) any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:
    - (i) any person in a control relationship to the investment adviser;
    - (ii) any affiliated person of a controlling person; and
    - (iii) any affiliated person of any affiliated person.
- (3) For investment advisers that are primarily engaged in a business or businesses other than advising investment advisory clients, records of transactions shall include records of the transactions of:
- (a) any partner, officer, director, employee of the investment adviser:
    - (i) who participates in any way in the determination of which recommendations are made, or
    - (ii) who, in connection with his or her functions or duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and
  - (b) any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:
    - (i) any person in a control relationship to the investment adviser;

- (ii) any affiliated person of a controlling person; and
  - (iii) any affiliated person of an affiliated person.
- (4) For the purposes of this paragraph, the following definitions apply:
  - (a) “Affiliated person” with respect to another person means:
    - (i) any person directly or indirectly controlling, controlled by, or under common control with the other person;
    - (ii) any officer, director, or partner of the other person; or
    - (iii) any spouse or relative, by blood or marriage, of the other person.
  - (b) “Control” means the power to direct or influence the management or policies of a company through the ownership of voting securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five (25) percent of the voting securities of a company shall be presumed to control such company.
  - (c) “Primarily engaged in a business or businesses other than advising investment advisory clients” means an investment adviser that, for each of its most recent three (3) fiscal years or for the period of time since organization, whichever is lesser, derived, on an unconsolidated basis, more than fifty (50) percent of its:
    - (i) total sales and revenues; and
    - (ii) income or loss before income taxes and extraordinary items; from such other business or businesses.
- (5) The investment adviser shall record each transaction no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.
- (6) The investment adviser is not required to keep records of transactions:
  - (a) effected in any account over which neither the investment adviser nor any person described in Subparagraphs (2) or (3) has any direct or indirect influence or control; and
  - (b) in securities which are direct obligations of the United States.
- (7) The record shall state:
  - (a) the title and amount of the security involved;

- (b) the date and nature of the transaction, such as purchase, sale or other disposition; and
  - (c) the name of the broker-dealer or bank with or through which the transaction was effected.
- (8) An investment adviser shall not be deemed to have violated the provisions of this paragraph because of the failure to record securities transactions of any person described in Subparagraphs (2) and (3) if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.
- M. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Section 8 of this chapter, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.
- N. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons, other than persons connected with the investment adviser. However, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.
- O. A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative, or employee, and regarding any written customer or client complaint.
- P. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.
- Q. Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.
- R. A file containing a copy of each document, other than any notices of general dissemination, that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the licensee or its investment adviser representatives. The file shall contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

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- S. A record of the investment adviser's privacy policies, all privacy notices sent to consumers or customers and the date such notices were sent.
2. **Additional Record Keeping Requirements for Investment Advisers That Have Custody of Client Securities or Funds.** If an investment adviser subject to Sub-section 1 of this section has custody or possession of securities or funds of any client, the records required to be made and kept under Sub-section 1 above shall include:
- A. A journal or other record showing all purchases, sales, receipts and deliveries of securities, including certificate numbers, for all accounts and all other debits and credits to the accounts;
- B. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;
- C. Copies of confirmations of all transactions effected by or for the account of any client; and
- D. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.
3. **Additional Record Keeping Requirements for Investment Advisers That Render Investment Management Services.** Every investment adviser subject to Sub-section 1 of this section that renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current: and
- A. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale;
- B. Information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client, for each security in which any client has a current position.
4. **Client Codes or Designations.** Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
5. **Manner of Record Preservation.** Every investment adviser subject to Sub-section 1 of this section shall preserve the following records in the manner prescribed:
- A. All books and records required to be made under the provisions of Sub-sections 1 and 2, and Paragraph 3(A) of this section, except for books and records required to be made under the provisions of Paragraphs 1(K) and 1(N) of this section, shall be maintained and preserved in an easily accessible place for a period of not less than six (6) years from the end of the fiscal year during which the last entry

was made on record, the first two (2) years in the principal office of the investment adviser.

- B. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least six (6) years after termination of the enterprise.
- C. Books and records required to be made under the provisions of Paragraphs 1(K) and 1(N) of this section shall be maintained and preserved in an easily accessible place for a period of not less than six (6) years, the first two (2) years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.
- D. Notwithstanding other record keeping requirements of this section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:
  - (1) records required to be preserved under Paragraphs 1(C), 1(G)-1(J), 1(M), 1(O) -1(Q), and Sub-sections 2 and 3 inclusive, of this section; and
  - (2) records or copies required under the provision of Paragraphs 1(K) and 1(N) of this section which records or related records identify:
    - (a) the name of the investment adviser representative providing investment advice from that business location, or
    - (b) the business locations' physical address, mailing address, electronic mailing address, or telephone number.

The records shall be maintained for the period described in Subparagraphs (A), (B) and (C) of this sub-section.

- 6. **Preservation of Records upon Cessation.** An investment adviser subject to Sub-section 1 of this section, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

- 7. **Preservation of Records by Alternative Media**

- A. The records required to be maintained and preserved pursuant to this sub-section may be immediately produced by any form of data storage, as provided below, and maintained and preserved for the required time by an investment adviser on:
  - (1) micrographic media, including microfilm, microfiche, or any similar medium; or

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- (2) electronic storage media, including any digital storage medium or system that meets the terms of this sub-section.
  - B. The investment adviser must:
    - (1) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
    - (2) provide promptly any of the following that the Administrator may request:
      - (a) a legible, true, and complete copy of the record in the medium and format in which it is stored;
      - (b) a legible, true, and complete printout of the record; and
      - (c) means to access, view, and print the records; and
    - (3) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this sub-section.
  - C. In the case of records on electronic storage media, the investment adviser may maintain and preserve records which, in the ordinary course of the investment adviser's business, are created by the investment adviser on electronic media or are received by the investment adviser solely on electronic media or by electronic data transmission. The investment adviser must establish and maintain procedures:
    - (1) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;
    - (2) to limit access to the records to properly authorized personnel and the Administrator, including examiners and other representatives; and
    - (3) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.
8. **Sectional Definitions.** For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.



**SECTION 8. Investment adviser brochure rule**

1. **Sectional Definitions.** For the purposes of this section, the following definitions shall apply:
  - A. "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments, containing at least as much information then required by Form ADV, Part II, which may itself be used as the "current brochure."
  - B. "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.
  - C. "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.
  - D. "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers, and the execution of client transactions.
2. **General Requirements**
  - A. An investment adviser licensed or required to be licensed pursuant to the Act shall offer and deliver to each client and prospective client a current brochure and one or more supplement(s) as required by this section.
  - B. If the investment adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then, for purposes of this sub-section, the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."
  - C. The brochure and supplement(s) must contain all information required by Form ADV, Part II, and such other information as the Administrator may require.
3. **Offer and Delivery Requirements**
  - A. An investment adviser shall deliver:
    - (1) the current brochure required by this section to a client or prospective client; and
    - (2) the current brochure supplement(s) for each investment adviser representative who will provide advisory services to the client. For

purposes of this section, an investment adviser representative will provide advisory services to a client if the investment adviser representative will:

- (a) regularly communicate investment advice to that client; or
- (b) formulate investment advice for assets of that client; or
- (c) make discretionary investment decisions for assets of that client; or
- (d) solicit, offer or negotiate for the sale of or sell investment advisory services.

B. The documents required in Paragraph A above shall be delivered:

- (1) not less than forty-eight (48) hours prior to entering into any investment advisory contract with such client or prospective client; or
- (2) at the time of entering into any such contract, if the client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

C. An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplement(s) required by Paragraph 3(A) of this section. If a client accepts the written offer, the investment adviser must send to that client the current brochure and supplements within seven (7) days after the investment adviser is notified of the acceptance.

#### 4. **Wrap Fee Program Brochures**

A. If the investment adviser is a sponsor of a wrap fee program, then the brochure, required to be delivered by Paragraph 3(A) of this section to a client or prospective client of the wrap fee program, must be a wrap fee brochure containing all information required by Form ADV, Part II. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

B. The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information the investment adviser's wrap fee program brochure must contain.

C. A wrap fee brochure does not take the place of any brochure supplement(s) that the investment adviser is required to deliver under Subparagraph 3(A) (2) of this section.

5. **Delivery of Updates and Amendments.** The investment adviser shall amend its brochure and any brochure supplement(s) and deliver the amendments to clients "promptly" when information contained in the brochure or brochure supplement(s)

becomes materially inaccurate. The instructions to Form ADV, Part II contain updating and delivery instructions that the investment adviser must follow. An amendment is considered to be delivered “promptly” if the amendment is delivered within thirty (30) days of the event that requires the filing of the amendment.

6. **Multiple Brochures.** If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Form ADV, Part II if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.
7. **Other Disclosure Obligations.** Nothing in this section shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this section.
8. **Transition Delivery Rule.** All investment advisers licensed or required to be licensed under the Act must deliver to each of their clients their current brochure and all required brochure supplements within thirty (30) days from the date of their initial filing with the IARD.

## **SECTION 9. Termination, transfer and withdrawal**

1. **Termination of Investment Adviser Representative’s Employment or Association.** Pursuant to Section 16408(1) of the Act, if an investment adviser representative licensed under the Act terminates (A) employment by or association with an investment adviser or a Federal Covered Investment Adviser or (B) activities that require licensing as an investment adviser representative, the investment adviser or Federal Covered Investment Adviser shall complete the Form U-5 in accordance with the form instructions and “promptly” file the form with CRD. If the investment adviser representative learns that the investment adviser or Federal Covered Investment Adviser has not filed the form, then the investment adviser representative 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 Investment Adviser Representative’s Employment or Association.** Pursuant to Section 16408(2) of the Act, if an investment adviser representative licensed under the Act terminates employment by or association with an investment adviser or Federal Covered Investment Adviser and begins employment by or association with another investment adviser or Federal Covered Investment Adviser, an initial application for licensure must be filed in compliance with Section 16406 of the Act and Section 4 of this Chapter.
3. **Withdrawal**
  - A. The application for withdrawal of a license by an investment adviser pursuant to Section 16409 of the Act shall be made by following the instructions on Form ADV-W and filing the Form ADV-W with the IARD.

- B. The application for withdrawal of licensure as an investment adviser representative pursuant to Section 16409 of the Act shall be made by following the instructions on Form U-5 and filing the Form U-5 with the CRD.

## SECTION 10. Examination and training requirements

- 1. **Investment Adviser Examination Requirements.** Except as otherwise provided in Subsection ~~2~~ 3, every investment adviser applicant who is an individual and every investment adviser representative applicant shall take and must receive a passing grade on:

- A. The Uniform Investment Adviser Law Examination (Series 65 examination); or
- B. The Securities Industry Essentials (“SIE”) examination, the General Securities Representative Examination (Series 7 examination), and the Uniform Combined State Law Examination (Series 66 examination).

Applicants for licensure whose license has been invalid for a period of two years or more must retake and receive a passing grade on either the Series 65 examination or the Series 7 and Series 66 examinations. Applicants for licensure whose license has been invalid for a period of four years or more, and who are relying on passage of the Series 7 and Series 66 examinations, must also retake and receive a passing grade on the SIE examination.

- 2. **Training Required Prior to Licensing.** Each individual Maine resident applying for an initial license as an investment adviser representative shall attend a seminar conducted by the Administrator for agent and investment adviser representative applicants.

- 3. **Waivers**

- A. The examination requirement shall not apply to any individual who, at the time of application, holds one of the following professional certifications or designations:
  - (1) Certified Financial Planner (CFP certification) awarded by Certified Financial Planner Board of Standards, Inc.;
  - (2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
  - (3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
  - (4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; or
  - (5) Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association, formerly the Investment Counsel Association of America, Inc.
- B. The Administrator may by rule or order waive the examination or training requirements for any individual or group of individuals.

**SECTION 11. Custody of client funds or securities by investment advisers**

1. **Sectional Definitions.** For purposes of this section, the following definitions shall apply:
  - A. “Custody” means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or having the ability to appropriate them.
    - (1) Custody includes:
      - (a) Possession of client funds or securities, unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;
      - (b) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the adviser’s instruction to the custodian; and
      - (c) Any capacity (such as a general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser, an owner of the investment adviser, or a supervised person of the investment adviser legal ownership of or access to client funds or securities.
    - (2) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains the records required.
  - B. “Independent representative” means a person who:
    - (1) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle, and by law or contract is obligated to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;
    - (2) Does not control, is not controlled by, and is not under common control with the adviser; and
    - (3) Does not have, and has not had within the past two years, a material business relationship with the adviser.

- C. “Qualified custodian” means:
- (1) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;
  - (2) A licensed broker-dealer holding the client assets in customer accounts;
  - (3) A registered futures commission merchant under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients’ funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
  - (4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients’ assets in customer accounts segregated from its proprietary assets.
- D. “Supervised person” means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.
2. **General Provision.** It shall be unlawful and a fraudulent or deceptive act, practice, or course of business for any investment adviser licensed or required to be licensed in Maine to take or have custody of any securities or funds of any client unless the investment adviser complies with the provisions of this section.
  3. **Notice to Administrator.** The investment adviser shall promptly notify the Administrator in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.
  4. **Qualified custodian.** The funds and securities shall be maintained by a qualified custodian:
    - A. In a separate account for each client under that client’s name; or
    - B. In accounts that contain only the funds and securities of the adviser’s clients, under the adviser’s name as agent or trustee for the clients.
  5. **Notice to clients.** When the investment adviser opens an account with a qualified custodian for maintaining a client’s funds or securities, the adviser shall notify the client promptly in writing of the qualified custodian’s name and address and of the manner in which the funds and securities are maintained. The adviser shall notify the client promptly in writing of any changes to this information.
  6. **Account statements**
    - A. Account statements must be sent to clients, either by:

- (1) A qualified custodian. The investment adviser must have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions during that period; or
  - (2) The investment adviser.
- B. If the investment adviser sends account statements to its clients, the adviser must comply with the following requirements:
- (1) The investment adviser shall send an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period;
  - (2) An independent certified public accountant shall verify all of those funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and shall file a certificate on Form ADV-E [17 CFR 279.8] with the Administrator within 30 days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and the extent of the examination; and
  - (3) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, shall notify the Administrator within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Administrator.
- C. **Limited partnerships and limited liability companies.** If the investment adviser is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under this subsection must be sent to each limited partner (or member or other beneficial owner or their independent representative).
- D. **Revocable trusts.** If an investment adviser, owner of an investment adviser, or supervised person of an investment adviser is serving as trustee of a revocable trust and the investment adviser acts as the investment adviser to that trust, the account statements required under this subsection must be sent to the grantor of the trust. If the trust assets are being maintained by a qualified custodian, the adviser shall instruct the custodian to send the statements directly to the grantor and must have a reasonable basis for believing the statements are being sent.

E. **Irrevocable trusts**

- (1) If an investment adviser, owner of an investment adviser, or supervised person of an investment adviser is serving as trustee of an irrevocable trust and the investment adviser acts as the investment adviser to that trust, the investment adviser shall send a notice annually to every beneficiary entitled to receive the annual report of the trustee pursuant to 18-B M.R.S.A. §813(3). The investment adviser is not required to send this notice to beneficiaries for whom the trustee is also the legal guardian.
- (2) The notice must state that:
  - (a) The investment adviser or one of its owners or supervised persons is serving as the trustee for the trust;
  - (b) The investment adviser is providing advisory services to the trust; and
  - (c) The beneficiary may receive, upon request, a copy of the account statements required by this subsection.
- (3) The notice required by subparagraph (1) may be sent with the annual report of the trustee required by 18-B M.R.S.A. §813(3).
- (4) The investment adviser shall arrange for the account statements to be sent to each beneficiary requesting statements. If the trust assets are being maintained by a qualified custodian, the adviser shall instruct the custodian to send the statements directly to the requesting beneficiaries and must have a reasonable basis for believing the statements are being sent. If more than three beneficiaries request statements, the custodian may charge a fee, reflecting its actual costs of copying and mailing the statements, to each beneficiary receiving them.

F. **Co-trustees.** Compliance with paragraphs D and E of this subsection is not required if the trust has at least one co-trustee who is neither a relative of, nor within the past three years has had a material business relationship with, the investment adviser or any of its owners or supervised persons, and the trust's assets are maintained by a qualified custodian who is sending a copy of the account statements required by paragraph A of this subsection directly to the co-trustee.

7. **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under subsections 5 and 6 of this section.

8. **Direct fee deduction**

A. An adviser who has custody by virtue of having fees directly deducted from client advisory accounts must also provide the following safeguards:



- (1) The investment adviser must have written authorization from the client to deduct advisory fees from the account with the qualified custodian.
  - (2) Each time a fee is directly deducted from a client account, the investment adviser must concurrently:
    - (a) Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and
    - (b) Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee. Invoices need not be sent more frequently than every quarter, provided that the invoice must show the calculation of each fee deducted during the quarter.
- B. An investment adviser is not required to comply with paragraph A(2)(b) of this subsection for any client who waives in writing the right to receive an itemized invoice. The waiver must describe the right being waived and must be on a document that does not address any other matter.
- C. Whenever account statements are required to be sent to a grantor or beneficiary of a trust pursuant to subsection 6(D) or (E), the adviser shall send to that person the itemized invoice required by paragraph A(2)(b) of this subsection unless the person has executed a waiver in accordance with this subsection.
- D. The investment adviser must notify the Administrator in writing that the investment adviser intends to use the safeguards provided in paragraph A. Such notification is required to be given on the Form ADV.
- E. An investment adviser having custody solely by virtue of having fees directly deducted from client advisory accounts and who complies with this subsection and with subsections 4-7 of this section is not required to:
  - (1) Meet the financial requirements for custodial advisers set forth in subsection 12(1) of this Chapter;
  - (2) Meet the bonding requirement set forth in section 13 of this Chapter; and
  - (3) File an audited balance sheet on Form ADV, Part II, Schedule G, unless required for some reason other than having custody of client assets.
9. **Mutual fund shares.** With respect to shares of an open-end investment company as defined in Section 5(a)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), an investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with this section.

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10. **Certain privately offered securities**
- A. An investment adviser is not required to comply with this section with respect to securities that are:
- (1) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;
  - (2) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and
  - (3) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
- B. This subsection applies to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited and the audited financial statements are distributed as required by subsection 11 of this section.
11. **Limited partnerships subject to annual audit.** An investment adviser is not required to comply with subsection 6(C) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of the fiscal year, or in the case of a fund of funds within 180 days of the end of the fiscal year.
12. **Registered investment companies.** An investment adviser is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80-a-64].
13. **Client funds or securities not maintained with qualified custodian.** An investment adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian, as defined in this section, must:
- A. First obtain the written approval of the Administrator, and
  - B. Comply with subsections 3 through 7 of this section, to the extent applicable, including performing those functions that would otherwise be performed by the qualified custodian.
14. **Beneficial trusts.** An investment adviser who has custody of client assets solely because the investment adviser, an owner of the investment adviser, or a supervised person of the investment adviser is a trustee for a beneficial trust and the beneficial owner of the trust is a parent, grandparent, spouse, sibling, child or grandchild of the trustee is not required to file an audited balance sheet on Form ADV, Part II, Schedule G if the investment adviser complies with this section. These relationships include “step” relationships.

**SECTION 12. Minimum financial requirements for investment advisers**

1. **Investment Advisers with Custody.** An investment adviser licensed or required to be licensed under the Act that has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000.
2. **Investment Advisers with Discretionary Authority.** An investment adviser licensed or required to be licensed under the Act that has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000.
3. **Investment Advisers That Accept Prepayment of Fees.** An investment adviser licensed or required to be licensed under the Act that accepts prepayment of fees of more than \$500 per client six (6) or more months in advance shall maintain at all times a positive net worth.
4. **Net Worth Less Than Minimum Requirement.** Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Administrator if that investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Administrator of its financial condition, including the following:
  - A. A trial balance of all ledger accounts;
  - B. A statement of all client funds or securities which are not segregated;
  - C. A computation of the aggregate amount of client ledger debit balances; and
  - D. A statement as to the number of client accounts.
5. **Sectional Definition of Net Worth.** For purposes of this section, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles.
  - A. Net worth shall not include the following assets:
    - (1) prepaid expenses, except as to items properly classified assets under generally accepted accounting principles;
    - (2) deferred charges;
    - (3) goodwill;
    - (4) franchise rights;
    - (5) organizational expenses;
    - (6) patents;

- (7) copyrights;
    - (8) marketing rights;
    - (9) unamortized debt discount and expense; and
    - (10) all other assets of intangible nature.
  - B. In addition, for individuals, net worth shall not include home, home furnishings, automobile(s) and any other personal items not readily marketable.
  - C. In addition, for corporations and limited liability companies, net worth shall not include advances or loans to stockholders, officers or members.
  - D. In addition, for partnerships, net worth shall not include advances or loans to partners.
6. **Sectional Definition of Custody.** 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.
7. **Sectional Definition of Discretion.** For purposes of this section, an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if:
- A. The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;
  - B. The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and
  - C. A third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.
8. **Appraisal.** The Administrator may require that a current appraisal be submitted in order to establish the worth of any asset.
9. **Minimum Capital Requirement for Investment Advisers with Principal Place of Business Out of State.** Every licensed investment adviser that has its principal place of business in a state other than Maine shall maintain only such minimum capital as required by such state, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirement.

### SECTION 13. Bonding requirements for licensed investment advisers

1. **Licensed Investment Advisers not Meeting Net Worth Standard.** Every investment adviser licensed under the Act having custody of or discretionary authority over client funds or securities that does not meet the minimum net worth standard in Section 12, Sub-sections (1) and (2) shall be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000.
2. **Requirements of Bond.** Any bond required by this section shall be:
  - A. Issued by a company qualified to do business in this state;
  - B. In the form determined by the Administrator; and
  - C. Subject to the claims of all clients of the investment adviser regardless of the client's state of residence.
3. **Bonding Requirements of Investment Advisers with Principal Place of Business Out of State.** An investment adviser that has its principal place of business in a state other than Maine shall be exempt from the requirements of this section, provided that the investment adviser is licensed as an investment adviser in such state and is in compliance with such state's requirements relating to bonding.

### SECTION 14. Dishonest and unethical practices

Investment advisers and investment adviser representatives are fiduciaries and have a duty to act for the benefit of their clients. While the extent and nature of this duty varies according to the nature of the relationship between investment advisers or investment adviser representatives and their clients and the circumstances of each case, an investment adviser or investment adviser representative shall not engage in dishonest or unethical business practices. The practices listed below are examples of practices that may constitute grounds for discipline as "dishonest or unethical practices" 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 preclude application of the general anti-fraud provisions contained in Subchapter 5 of the Act against any person for practices similar in kind to those listed below.

To the extent that the conduct alleged constitutes fraud or deceit, the provisions of this section also apply to all other persons, in addition to investment advisers and investment adviser representatives, who advise 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 who, for compensation and as part of a regular business, issue or promulgate analyses or reports relating to securities.

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. Recommending to a client, to whom supervisory, management or consulting services are provided, the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.
2. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
3. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
4. Placing an order to purchase or sell a security for the account of a client without authority to do so.
5. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.
7. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.
8. Misrepresenting to any investment advisory client, or prospective investment advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting a material fact necessary to make any such representations not misleading in light of the circumstances under which they are made.
9. Providing a report or recommendation to any investment advisory client prepared by someone other than the investment adviser without disclosing that fact. This prohibition does not apply to a situation where the investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser orders such a report in the normal course of providing service.
10. Charging a client an unreasonable advisory fee.
11. Failing to disclose to clients in writing, before any advice is rendered, any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice, including:
  - A. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

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- B. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees.
12. Guaranteeing to a client that advice rendered will achieve a specific result, such as a gain or no loss.
13. Publishing, circulating or distributing any advertisement that violates Section 6 of this chapter.
14. Having custody of client funds or securities unless the investment adviser or investment adviser representative complies with the provisions of Section 11.
15. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the investment adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.
16. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the investment adviser, or any investment adviser representative or employee, taking into consideration the nature of the investment adviser's business.
17. Entering into, extending, or renewing any investment advisory contract that violates the provisions of this sub-section.
- A. It is unlawful to enter into, extend or renew any investment advisory contract if the investment advisory contract:
- (1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
  - (2) fails to provide in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or
  - (3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.
- B. Subparagraph A(1) shall not:
- (1) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date; and
  - (2) apply to an investment advisory contract with a person who is not a resident of the United States.

- C. The Administrator, by rule, upon the Administrator's own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from Subparagraph A(1), if and to the extent that the exemption relates to an investment advisory contract with any person that the Administrator determines does not need the protections of Subparagraph A(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser or investment adviser representative, and such other factors as the Administrator determines are consistent with this section.
18. Including in an investment advisory contract, any condition, stipulation, or provisions binding a client to waive the investment adviser's compliance with any provision of the Act, this chapter or any other rule of the Office of Securities.
  19. Failing to protect the security and confidentiality of the non-public personal information of any client.
  20. Failing or refusing to furnish a client, upon reasonable request, information to which the client is entitled, or to respond to a formal written demand or complaint.
  21. In connection with the offer, purchase or sale of a security, leading a client to believe that the investment adviser or investment adviser representative is in possession of material, non-public information that would affect the value of the security.
  22. 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.
  23. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in violation of the Act, this chapter or any other rule of the Office of Securities.
  24. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for an investment adviser or investment adviser representative to do directly under the provisions of the Act, this chapter or any other rule of the Office of Securities.
  25. Engaging in conduct prohibited by Chapter 512 of the Rules of the Office of Securities.
  26. Accessing a client's account by using the client's own unique identifying information (such as username and password).

## **SECTION 15. 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.A. §§ 16403, 16404, 16405, 16406, 16408, 16409, 16411, 16412, and 16605.

EFFECTIVE DATE:

February 1, 1987 - under 02-029, Bureau of Banking, Securities Division

AMENDED:

May 1, 1991

February 2, 2000 - Section 10

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 7, 1996

NON-SUBSTANTIVE CORRECTIONS:

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

REPEALED AND REPLACED:

August 11, 2002

AMENDED:

December 31, 2005 – filing 2005-516

July 19, 2008 – Section 11 replaced, filing 2008-312

November 3, 2008 – Section 14 sub-section 25, filing 2008-521