



## IMPORTANT NOTICE

### **INDUSTRY GUIDANCE: UNLICENSED ACTIVITY**

The Maine Office of Securities recently issued Industry Guidance addressing an agent or investment adviser representative's use of unlicensed support staff to effect trades in client accounts. After discussion with several industry partners and further review of the relevant regulatory safeguards, the Office has revised its guidance as outlined below.

To transact business in the State of Maine, broker-dealer agents and investment adviser representatives are required to be licensed (32 M.R.S.A. §§ 16402(1) and 16404(1)) unless exempted from licensing. Broker-dealer agents, by definition, include any individual who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities in Maine (32 M.R.S.A. § 16102(2)). Unlicensed personnel may only effect trades in client accounts when the instructions are provided by an appropriately licensed agent and their actions in effecting the trades are ministerial in nature. Ministerial actions in this context are those which involve entering a trade precisely as directed by a Maine licensed agent. In no instance may an unlicensed individual accept instructions from a client or other unlicensed party or exercise any authority to alter the terms of the order (i.e., they may not exercise discretion). Please note that passing the FINRA Series 11 exam does not satisfy the examination requirements for licensure in the State of Maine. See Maine Office of Securities Rule Ch. 504 Section 6, subsection 1(B)(2).

Investment adviser representatives include anyone who gives investment advice regarding securities and manages accounts or portfolios of clients (32 M.R.S.A. § 16102(16)). Unlike broker-dealer agents, investment adviser representatives are fiduciaries. The Office acknowledges that this responsibility includes the optimization of price and execution; however, unlicensed personnel may only effect trades in client accounts when the instructions are provided by an appropriately licensed investment adviser representative. As noted above, effecting a trade is permissible only if ministerial in nature which, in this context, means entering a trade precisely as directed by a Maine licensed representative and without the exercise of any discretion.

**NOTE:** This Guidance is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and, if additional information is needed, contact the Office of Securities at (877) 624-8551 or (207) 624-8551.