

§16102. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2005, c. 65, Pt. A, §2 (NEW).]

1. Administrator. "Administrator" means the Securities Administrator under section 16601. [PL 2005, c. 65, Pt. A, §2 (NEW).]

2. Agent. "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer or director of a broker-dealer or issuer or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the meaning of the term "agent." "Agent" does not include an individual excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 65, Pt. A, §2 (NEW).]

3. Bank. "Bank" means:

A. A banking institution organized under the laws of the United States; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. A member bank of the Federal Reserve System; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. A banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of United States Public Law 87-722, 12 United States Code, Section 92a, and that is supervised and examined by a state or federal agency having supervision over banks and that is not operated for the purpose of evading this chapter; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. A receiver, conservator or other liquidating agent of any institution or firm described in paragraph A, B or C. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

4. Broker-dealer. "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

A. An agent; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. An issuer; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. A bank, credit union or savings institution if its activities as a broker-dealer are limited to those specified in Section 3(a)(4)(B)(i) to (vi) and (viii) to (x); Section 3(a)(5)(B); and Section 3(a)(5)(C) of the federal Securities Exchange Act of 1934, 15 United States Code, Sections 78c(a)(4) and (5); [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. An international banking institution; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

E. Any other person the administrator excludes, by rule or order, consistent with the public interest and protection of investors. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

5. Depository institution. "Depository institution" means:

A. A bank; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. A savings institution, trust company, credit union or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a successor authorized by federal law. [PL 2005, c. 65, Pt. A, §2 (NEW).]

"Depository institution" does not include an insurance company or other organization primarily engaged in the business of insurance; a Morris Plan bank; or an industrial loan company. [PL 2005, c. 65, Pt. A, §2 (NEW).]

6. Federal covered investment adviser. "Federal covered investment adviser" means a person registered under the federal Investment Advisers Act of 1940. [PL 2005, c. 65, Pt. A, §2 (NEW).]

7. Federal covered security. "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b) or rules or regulations adopted pursuant to that provision. [PL 2005, c. 65, Pt. A, §2 (NEW).]

8. Filing. "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator. [PL 2005, c. 65, Pt. A, §2 (NEW).]

9. Fraud; deceit; defraud. "Fraud," "deceit" and "defraud" are not limited to common law deceit. [PL 2005, c. 65, Pt. A, §2 (NEW).]

10. Guaranteed. "Guaranteed" means guaranteed as to payment of all or substantially all of principal and interest or dividends. [PL 2005, c. 65, Pt. A, §2 (NEW).]

11. Institutional investor. "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

A. A depository institution or international banking institution; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. An insurance company; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. A separate account of an insurance company; [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. An investment company as defined in the federal Investment Company Act of 1940; [PL 2005, c. 65, Pt. A, §2 (NEW).]

E. A broker-dealer registered under the federal Securities Exchange Act of 1934; [PL 2005, c. 65, Pt. A, §2 (NEW).]

F. An employee pension, profit-sharing or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the federal Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution or an insurance company; [PL 2005, c. 65, Pt. A, §2 (NEW).]

G. A plan established and maintained by a state, a political subdivision of a state or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly

designated public official or by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the federal Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution or an insurance company; [PL 2005, c. 65, Pt. A, §2 (NEW).]

H. A trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution and its participants are exclusively plans of the types identified in paragraph F or G, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans; [PL 2005, c. 65, Pt. A, §2 (NEW).]

I. An organization described in Section 501(c)(3) of the Internal Revenue Code, 26 United States Code, Section 501(c)(3), a corporation, a Massachusetts trust or similar business trust, a limited liability company or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000; [PL 2005, c. 65, Pt. A, §2 (NEW).]

J. A small business investment company licensed by the United States Small Business Administration under Section 301(c) of the federal Small Business Investment Act of 1958, 15 United States Code, Section 681(c) with total assets in excess of \$5,000,000; [PL 2005, c. 65, Pt. A, §2 (NEW).]

K. A private business development company as defined in Section 202(a)(22) of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-2(a)(22) with total assets in excess of \$5,000,000; [PL 2005, c. 65, Pt. A, §2 (NEW).]

L. A federal covered investment adviser acting for its own account; [PL 2005, c. 65, Pt. A, §2 (NEW).]

M. A qualified institutional buyer as defined in 17 Code of Federal Regulations, 230.144A(a)(1), except as defined in 17 Code of Federal Regulations 230.144A(a)(1)(i)(H); [PL 2005, c. 65, Pt. A, §2 (NEW).]

N. A major U.S. institutional investor as defined in 17 Code of Federal Regulations, 240.15a-6(b)(4)(i); [PL 2005, c. 65, Pt. A, §2 (NEW).]

O. Any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this chapter; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

P. Any other person specified by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

12. Insurance company. "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that is subject to supervision by the Superintendent of Insurance or a similar official or agency of a state.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

13. Insured. "Insured" means insured as to payment of all or substantially all principal and interest or dividends.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

14. International banking institution. "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the federal Securities Act of 1933.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

15. Investment adviser. "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. "Investment adviser" does not include:

- A. An investment adviser representative; [PL 2005, c. 65, Pt. A, §2 (NEW).]
 - B. A lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession; [PL 2005, c. 65, Pt. A, §2 (NEW).]
 - C. A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice; [PL 2005, c. 65, Pt. A, §2 (NEW).]
 - D. A publisher of a bona fide newspaper, news magazine or business or financial publication of general and regular circulation; [PL 2005, c. 65, Pt. A, §2 (NEW).]
 - E. A federal covered investment adviser; [PL 2005, c. 65, Pt. A, §2 (NEW).]
 - F. A bank or savings institution; [PL 2005, c. 65, Pt. A, §2 (NEW).]
 - G. Any other person that is excluded by the federal Investment Advisers Act of 1940 from the definition of investment adviser; or [PL 2005, c. 65, Pt. A, §2 (NEW).]
 - H. Any other person excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 65, Pt. A, §2 (NEW).]
- [PL 2005, c. 65, Pt. A, §2 (NEW).]

16. Investment adviser representatives. "Investment adviser representatives" means individuals employed by or associated with an investment adviser or federal covered investment adviser and who make any recommendations or otherwise give investment advice regarding securities, manage accounts or portfolios of clients, determine which recommendation or advice regarding securities should be given, provide investment advice or hold themselves out as providing investment advice, receive compensation to solicit, offer or negotiate for the sale of or for selling investment advice or supervise employees who perform any of the foregoing. "Investment adviser representatives" does not include individuals who:

- A. Perform only clerical or ministerial acts; [PL 2005, c. 65, Pt. A, §2 (NEW).]
- B. Are agents whose performance of investment advice is solely incidental to the individuals acting as agents and who do not receive special compensation for investment advisory services; [PL 2005, c. 65, Pt. A, §2 (NEW).]
- C. Are employed by or associated with a federal covered investment adviser, unless the individuals have a "place of business" in this State as that term is defined by rule adopted under Section 203A of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-3a, and are:
 - (1) "Investment adviser representatives" as that term is defined by rule adopted under Section 203A of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-3a; or
 - (2) Not "supervised persons" as that term is defined in Section 202(a)(25) of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-2(a)(25); or [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. Are excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

17. Issuer. "Issuer" means a person that issues or proposes to issue a security, subject to the following:

A. The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for ensuring payment of the certificate; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. The issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production under a lease, right or royalty is the owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. The issuer of a fractional or pooled interest in a viatical or life settlement contract is the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical or life settlement contract that is not fractionalized or pooled is the person effecting the transaction with the investor in such a contract but does not include a broker-dealer or sales representative. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

18. Nonissuer transaction; nonissuer distribution. "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer. [PL 2005, c. 65, Pt. A, §2 (NEW).]

19. Offer to purchase. "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. "Offer to purchase" does not include a tender offer that is subject to Section 14(d) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78n(d).

[PL 2005, c. 65, Pt. A, §2 (NEW).]

20. Person. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

21. Place of business. "Place of business" of a broker-dealer, an investment adviser or a federal covered investment adviser means:

A. An office at which the broker-dealer, investment adviser or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser or federal covered investment adviser provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

22. Predecessor act. "Predecessor act" means the former Revised Maine Securities Act.
[PL 2005, c. 65, Pt. A, §2 (NEW).]

23. Price amendment. "Price amendment" means the amendment to a registration statement filed under the federal Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the federal Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price.
[PL 2005, c. 65, Pt. A, §2 (NEW).]

24. Principal place of business. "Principal place of business" of a broker-dealer, an investment adviser or an issuer means the executive office of the broker-dealer, investment adviser or issuer from which the officers, partners or managers of the broker-dealer, investment adviser or issuer direct, control and coordinate the activities of the broker-dealer, investment adviser or issuer.
[PL 2005, c. 65, Pt. A, §2 (NEW).]

25. Record. "Record," except in the phrases "of record," "official record" and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
[PL 2005, c. 65, Pt. A, §2 (NEW).]

26. Sale; offer to sell. "Sale" includes every contract of sale of, contract to sell or disposition of a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. "Sale" and "offer to sell" include:

A. A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. A gift of assessable stock involving an offer and sale; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

27. Securities and Exchange Commission. "Securities and Exchange Commission" means the United States Securities and Exchange Commission.
[PL 2005, c. 65, Pt. A, §2 (NEW).]

28. Security. "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment in a viatical or life settlement contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; documents of title to or certificates of interest or participation in an oil, gas or other mineral title or lease or in payments out of production under any title, lease, right or royalty; put, call, straddle, option or privilege on a security, certificate of deposit or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. "Security":

A. Includes both a certificated and an uncertificated security; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the federal Employee Retirement Income Security Act of 1974; [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. Includes as an investment contract an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. For purposes of this paragraph, "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a 3rd party or other investors; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

E. Includes as an investment contract, among other contracts, an interest in a limited partnership and a limited liability company. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

29. Self-regulatory organization. "Self-regulatory organization" means a national securities exchange registered under the federal Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the federal Securities Exchange Act of 1934, a clearing agency registered under the federal Securities Exchange Act of 1934 or the Municipal Securities Rulemaking Board established under the federal Securities Exchange Act of 1934.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

30. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. To attach or logically associate with the record an electronic symbol, sound or process. [PL 2005, c. 65, Pt. A, §2 (NEW).]

[PL 2005, c. 65, Pt. A, §2 (NEW).]

31. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

32. Viatical or life settlement contract. "Viatical or life settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of an insurance policy or certificate of insurance. "Viatical or life settlement contract":

A. Includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy other than a loan by a life insurance company pursuant to the terms of the life insurance contract or a loan secured by the cash value of a policy; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. Includes an agreement to transfer ownership or change the beneficiary designation of an insurance policy at a later date regardless of the date that compensation for the transfer or change is paid; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. Does not include:

- (1) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider pursuant to the Viatical and Life Settlements Act;
- (2) The assignment, transfer, sale, devise or bequest of a life insurance policy, for any value less than the expected death benefit, by the viator to a friend or family member who enters into no more than one such agreement in a calendar year;
- (3) An assignment of a life insurance policy to a supervised lender, as defined in Title 9-A, section 1-301, subsection 39, as collateral for a loan; or
- (4) The exercise of accelerated benefits pursuant to the terms of the Maine Insurance Code and of a life insurance policy. [PL 2005, c. 65, Pt. A, §2 (NEW).]

For purposes of this chapter, the individual insured who is the subject of the insurance policy or certificate of insurance does not have to be diagnosed as terminally ill or chronically ill at the time a settlement contract is executed.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 65, §A2 (NEW).

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