

32 §16202. EXEMPT TRANSACTIONS

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The following transactions are exempt from the requirements of sections 16301 to 16306 and 16504: [2005, c. 65, Pt. A, §2 (NEW).]

1. Isolated nonissuer transaction. An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

[2005, c. 65, Pt. A, §2 (NEW) .]

2. Manual exemption. A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter and a resale transaction by a sponsor of a unit investment trust registered under the federal Investment Company Act of 1940 in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, on the date of the transaction:

A. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership and the issuer is not a blank check, blind pool or shell company that has no specific business plan or purpose or that has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person; [2005, c. 65, Pt. A, §2 (NEW).]

B. The security is sold at a price reasonably related to its current market price; [2005, c. 65, Pt. A, §2 (NEW).]

C. The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution; [2005, c. 65, Pt. A, §2 (NEW).]

D. A nationally recognized securities manual or its electronic equivalent designated by routine technical rule as defined in Title 5, chapter 375, subchapter 2-A adopted under this chapter or order issued under this chapter or a publicly available record filed with the Securities and Exchange Commission contains:

- (1) A description of the business and operations of the issuer;
- (2) The names of the issuer's executive officers and the names of the issuer's directors, if any;
- (3) An audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
- (4) An audited income statement for each of the issuer's 2 immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and [2005, c. 65, Pt. A, §2 (NEW).]

E. Any one of the following requirements is met:

- (1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the federal Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;
- (2) The issuer of the security is a unit investment trust registered under the federal Investment Company Act of 1940;
- (3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least 3 years; or

(4) The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. Nonissuer transactions in specified foreign transactions. A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

[2005, c. 65, Pt. A, §2 (NEW) .]

4. Nonissuer transactions in securities where guarantor is subject to Securities Exchange Act reporting. A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78m or 78o(d);

[2005, c. 65, Pt. A, §2 (NEW) .]

5. Nonissuer transactions in specified fixed income securities. A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in a security that:

A. Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its 4 highest rating categories; or [2005, c. 65, Pt. A, §2 (NEW).]

B. Has a fixed maturity or a fixed interest or dividend if:

(1) A default has not occurred during the current fiscal year or within the 3 previous fiscal years or during the existence of the issuer and any predecessor if less than 3 fiscal years in the payment of principal, interest or dividends on the security; and

(2) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership and is not and has not been within the previous 12 months a blank check, blind pool or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person; [2005, c. 65, Pt. A, §2 (NEW).]

6. Unsolicited brokerage transactions. A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter effecting an unsolicited order or offer to purchase;

[2005, c. 65, Pt. A, §2 (NEW) .]

7. Nonissuer transactions by pledgees. A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

[2005, c. 65, Pt. A, §2 (NEW) .]

8. Nonissuer transactions with federal covered investment advisers. A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

[2005, c. 65, Pt. A, §2 (NEW) .]

9. Specified exchange transactions. A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims or property interests or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing. The administrator may impose actual costs and a reasonable fee for conducting a hearing under this subsection;

[2005, c. 65, Pt. A, §2 (NEW) .]

10. Underwriter transactions. A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

[2005, c. 65, Pt. A, §2 (NEW) .]

11. Mortgage secured unit transactions. A transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if:

A. The note, bond, debenture or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit; [2005, c. 65, Pt. A, §2 (NEW) .]

B. A general solicitation or general advertisement of the transaction is not made; [2005, c. 65, Pt. A, §2 (NEW) .]

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person not licensed under this chapter as a broker-dealer or as an agent; and [2005, c. 65, Pt. A, §2 (NEW) .]

D. The outstanding principal amount of all notes or other evidence of indebtedness that is secured by the mortgage or other security agreement does not exceed the fair market value of the property at the time of the transaction, or the issuer otherwise proves that it relied on reasonable evidence that the fair market value was not so exceeded at the time of the transaction; [2005, c. 65, Pt. A, §2 (NEW) .]

[2005, c. 65, Pt. A, §2 (NEW) .]

12. Personal representative, guardian transactions. A transaction by a personal representative, as defined in Title 18-A, section 1-201, subsection 30, executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator acting in their official capacities;

[2005, c. 65, Pt. A, §2 (NEW) .]

13. Transactions with specified investors. A sale or offer to sell to:

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

B. A federal covered investment adviser; or [2005, c. 65, Pt. A, §2 (NEW) .]

C. Any other person exempted by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted or order issued under this chapter; [2005, c. 65, Pt. A, §2 (NEW) .]

[2005, c. 65, Pt. A, §2 (NEW) .]

14. Limited private offering transactions, any issuer. A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

A. Not more than 10 purchasers are present in this State during any 12 consecutive months, other than those designated in subsection 13; [2005, c. 65, Pt. A, §2 (NEW) .]

B. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities; [2005, c. 65, Pt. A, §2 (NEW) .]

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer licensed under this chapter or an agent licensed under this chapter for soliciting a prospective purchaser in this State; and [2005, c. 65, Pt. A, §2 (NEW).]

D. The issuer reasonably believes that all the purchasers in this State, other than those designated in subsection 13, are purchasing for investment; [2005, c. 65, Pt. A, §2 (NEW).]

[2007, c. 14, §2 (AMD) .]

15. Limited private offering transactions, Maine issuer. A sale or an offer to sell securities of a corporation, limited partnership or limited liability company organized under the laws of this State or any issuer determined by the administrator by order to have its principal place of business in this State, if the sale or offer is by or on behalf of the issuer and if the transaction is part of a single issue in which:

A. Not more than 25 purchasers are present in this State during any 12 consecutive months, other than those designated in subsection 13; [2005, c. 65, Pt. A, §2 (NEW).]

B. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities; [2005, c. 65, Pt. A, §2 (NEW).]

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer licensed under this chapter or an agent licensed under this chapter for soliciting a prospective purchaser in this State; [2005, c. 65, Pt. A, §2 (NEW).]

D. The issuer reasonably believes that all the purchasers in this State, other than those designated in subsection 13, are purchasing for investment; [2005, c. 65, Pt. A, §2 (NEW).]

E. The issuer files with the administrator a notification for exemption that must be in such form as may be prescribed by the administrator by order or by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A; and [2005, c. 65, Pt. A, §2 (NEW).]

F. The issuer provides a copy of the notification of exemption to each offeree of securities sold in reliance on this exemption, which must contain such legends as the administrator prescribes, notifying the offeree that the securities have not been registered with the administrator, that they may be considered restricted securities and that the issuer is under an obligation to make a reasonable finding that the securities are a suitable investment for the offeree; [2005, c. 65, Pt. A, §2 (NEW).]

[2007, c. 14, §3 (AMD) .]

16. Transactions with existing securities holders. A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;

[2005, c. 65, Pt. A, §2 (NEW) .]

17. Offerings filed but not effective, nonexempt securities. An offer to sell, but not a sale, of a security not exempt from registration under the federal Securities Act of 1933 if:

A. A registration or offering statement or similar record as required under the federal Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with 17 Code of Federal Regulations, 230.165; and [2005, c. 65, Pt. A, §2 (NEW).]

B. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission and an audit, inspection or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

18. Offerings filed but not effective, exempt securities. An offer to sell, but not a sale, of a security exempt from registration under the federal Securities Act of 1933 if:

A. A registration statement has been filed under this chapter, but is not effective; [2005, c. 65, Pt. A, §2 (NEW) .]

B. A solicitation of interest is provided in a record to offerees in compliance with a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted by the administrator under this chapter; and [2005, c. 65, Pt. A, §2 (NEW) .]

C. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission and an audit, inspection or proceeding that may culminate in a stop order is not known by the offeror to be pending; [2005, c. 65, Pt. A, §2 (NEW) .]

[2005, c. 65, Pt. A, §2 (NEW) .]

19. Control transactions. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties;

[2005, c. 65, Pt. A, §2 (NEW) .]

20. Rescission offers. A rescission offer, sale or purchase under section 16510;

[2005, c. 65, Pt. A, §2 (NEW) .]

21. Not violative of laws of foreign state or jurisdiction. An offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

22. Employee benefit plans. An employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan, including any securities, plan interests and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

A. Directors; general partners; trustees, if the issuer is a business trust; officers; and consultants and advisors, as permitted by 17 Code of Federal Regulations, 230.701(c)(1) (2003); [2005, c. 65, Pt. A, §2 (NEW) .]

B. Family members who acquire such securities from those persons through gifts or domestic relations orders; [2005, c. 65, Pt. A, §2 (NEW) .]

C. Former employees, directors, general partners, trustees, officers and consultants and advisors, as permitted by 17 Code of Federal Regulations, 230.701(c)(1) (2003), if those individuals were employed by or providing services to the issuer when the securities were offered; and [2005, c. 65, Pt. A, §2 (NEW) .]

D. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50% of their annual income from those organizations; [2005, c. 65, Pt. A, §2 (NEW) .]

[2005, c. 65, Pt. A, §2 (NEW) .]

23. Specified dividends, tender offers, judicially recognized reorganizations. A transaction involving:

A. A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property or stock; [2005, c. 65, Pt. A, §2 (NEW).]

B. An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash; or [2005, c. 65, Pt. A, §2 (NEW).]

C. The solicitation of tenders of securities by an offeror in a tender offer in compliance with 17 Code of Federal Regulations, 230.162; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

24. Nonissuer transactions in specified foreign issuers securities. A nonissuer transaction in an outstanding security by or through a broker-dealer licensed under or exempt from licensing under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; the issuer has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto Stock Exchange, Inc. is a designated securities exchange. After an administrative hearing in compliance with the Maine Administrative Procedure Act, the administrator, by order issued under this chapter, may revoke the designation of a securities exchange under this paragraph if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

[2005, c. 65, Pt. A, §2 (NEW) .]

25. Investments in viatical or life settlement contracts. Any offer or sale of an investment in a viatical or life settlement contract, if:

A. The underlying viatical or life settlement transaction with the viator was not in violation of the Viatical and Life Settlements Act; [2005, c. 65, Pt. A, §2 (NEW).]

B. Such disclosure documents as the administrator, by rule or order, requires are delivered to each offeree or purchaser; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Prior to any offer in this State, a notice specifying the terms of the offer is filed with the administrator together with a consent to service of process complying with section 16611, signed by the issuer, and a nonrefundable filing fee of \$300 for each type or class of security being offered in this State and the administrator does not by order disallow the exemption within the next 5 full business days; or [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

26. Nonpublic offerings under 4(2). A security offered in a nonpublic offering under Section 4(2) of the federal Securities Act of 1933, 15 United States Code, Section 77d(2) if, no later than 15 days after the first sale in this State, a notice on "Form D," including the Appendix, as promulgated by the Securities and Exchange Commission, is filed with the administrator together with a consent to service of process complying

with section 16611, signed by the issuer, and a nonrefundable filing fee of \$300 for each type or class of security sold. An additional nonrefundable late filing fee of \$500 must be paid for a filing made between 16 and 30 days after the first sale in this State.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY

2005, c. 65, §A2 (NEW). 2007, c. 14, §§2, 3 (AMD).

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