

## CHAPTER 122

### MERCHANT BANKS

#### §1221. General purpose and authority

A merchant bank is a financial institution organized under the provisions of this Title whose activities are generally limited to lending and investing as well as trust or fiduciary matters. Deposit activity is prohibited. Unless otherwise indicated in this chapter, a merchant bank has all the powers, duties and obligations of a financial institution under this Title. As one of the purposes of merchant banks is to provide needed capital or investments to businesses that may be impermissible or imprudent for depository financial institutions, its lending and investment activities are less restricted. [PL 1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §J2 (NEW).

#### §1222. Organization of merchant banks

**1. Organization.** A merchant bank must be organized pursuant to chapter 31 and must be managed and governed pursuant to this Title and the applicable provisions of Title 13-C and Title 31, chapters 15, 19 and 21, depending upon the organizational form selected. [PL 2009, c. 629, Pt. A, §3 (AFF); PL 2009, c. 629, Pt. B, §5 (AMD).]

**1-A. Principal office in State.** Except for a merchant bank organized prior to the effective date of this subsection, a merchant bank shall locate its principal office in this State, have at least one resident of this State on its governing board and hold at least one of its governing board meetings in this State each year. [PL 2021, c. 5, §5 (NEW).]

**2. Organizational documents.** The organizational documents of a merchant bank that are filed with the Secretary of State must contain the following statement: "This corporation, limited liability company, limited partnership or limited liability partnership is subject to the Maine Revised Statutes, Title 9-B, chapter 122 and does not have the power to solicit, receive or accept money or its equivalent on deposit." This statement in the organizational documents of a merchant bank may not be amended. [PL 1997, c. 398, Pt. J, §2 (NEW).]

**3. Conversion.** A merchant bank may convert to any other type of investor-owned financial institution pursuant to chapter 34. [PL 1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §J2 (NEW). RR 2001, c. 2, §B20 (COR). RR 2001, c. 2, §B58 (AFF). PL 2005, c. 543, §D5 (AMD). PL 2005, c. 543, §D18 (AFF). PL 2009, c. 629, Pt. A, §3 (AFF). PL 2009, c. 629, Pt. B, §5 (AMD). PL 2021, c. 5, §5 (AMD).

#### §1223. Capital

##### 1. Initial capital.

[PL 1999, c. 539, §2 (RP).]

**2. Capital.** A merchant bank must have initial paid-in capital in accordance with chapter 31 and shall maintain minimum capital in accordance with section 412-A or any rules adopted under section 412-A. The superintendent may establish different capital maintenance standards for merchant banks than for other financial institutions organized under this Title. The minimum capital maintenance

standards for a merchant bank may not be less than a level equal to 150% of the tier 1 risk-based capital and 150% of total risk-based capital established from time to time by the Board of Governors of the Federal Reserve System for a well-capitalized bank.

[PL 1999, c. 539, §3 (AMD).]

#### SECTION HISTORY

PL 1997, c. 398, §J2 (NEW). PL 1999, c. 539, §§2,3 (AMD).

#### §1223-A. Asset pledge

**1. Pledge requirement.** The superintendent may require a merchant bank to pledge readily marketable assets to the superintendent if the superintendent believes that the action is necessary for the protection of the public. The pledged assets must be United States dollar denominated, investment grade and subject to the prior written approval of the superintendent. The pledged assets must be held on deposit or in safekeeping by an FDIC-insured depository institution approved by the superintendent. The pledged assets may be released to the superintendent only upon certification that a receiver or conservator of the merchant bank has been appointed. The asset pledge requirement may be lifted by the superintendent if the superintendent determines that the condition of the merchant bank so warrants that action.

[PL 2005, c. 83, §13 (NEW).]

**2. Amount of pledge.** The aggregate amount of pledged assets is determined by the superintendent but may not exceed the greater of \$1,000,000 or 50% of the minimum required capital of the merchant bank at the time the asset pledge is imposed.

[PL 2005, c. 83, §13 (NEW).]

**3. Pledge agreement.** The asset pledge must be maintained pursuant to an asset pledge agreement in the form and containing any limitations and conditions the superintendent requires. As long as the merchant bank continues business in the ordinary course, the merchant bank may be permitted to collect income on the pledged assets and examine and exchange those assets. The aggregate amount of assets pledged may not be less than required under subsection 2 without the superintendent's approval.

[PL 2005, c. 83, §13 (NEW).]

**4. Noncompliance.** If a merchant bank fails to maintain the minimum required asset pledge, the superintendent may determine that the merchant bank does not meet the capital requirements under section 412-A and any rules adopted pursuant to section 412-A.

[PL 2005, c. 83, §13 (NEW).]

**5. Rulemaking.** The superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2005, c. 83, §13 (NEW).]

#### SECTION HISTORY

PL 2005, c. 83, §13 (NEW).

#### §1224. Business of merchant banks; power; limitations

**1. Business of merchant banks.** Except as provided in this chapter, a merchant bank has all the powers of and is entitled to engage in the business of a financial institution, including, without limitation, powers with respect to investments, loans, fiduciary and trust functions and transactions.

[PL 1997, c. 398, Pt. J, §2 (NEW).]

**2. Deposit activities.** A merchant bank may not solicit, receive or accept money or its equivalent on deposit as a regular business within the meaning of section 131, subsection 5 or engage in deposit-like activities as determined by the superintendent. A merchant bank may deposit cash, whether constituting principal or income, in any financial institution, whether within or without this State, if the account is held either in the name of the trust to which the cash belongs or in the name of the merchant

bank and is composed entirely of cash belonging to trust accounts, the respective contributions of which are reflected in the books and records of the merchant bank.

[PL 1997, c. 398, Pt. J, §2 (NEW).]

**3. Treasurer's checks.** A merchant bank may issue drafts drawn on itself in the form of treasurer's or cashier's checks.

[PL 1997, c. 398, Pt. J, §2 (NEW).]

**4. Name.** Notwithstanding section 241, subsection 9, a merchant bank may use as a part of its name the word or words "bank," "banker" or "banking" or the plural of or any abbreviations of those words.

[PL 1997, c. 398, Pt. J, §2 (NEW).]

**5. Offices.** At least 30 days prior to the establishment of any office or branch office for the transaction of its business, a merchant bank shall notify the superintendent.

[PL 1997, c. 398, Pt. J, §2 (NEW).]

**6. Provisions inapplicable.** The following provisions of this Title are inapplicable to merchant banks: sections 223, 316-A, 439-A, 445, 446-A and 465-A and chapters 33, 37 and 42. The limitations on the holding of equity securities and the purchase of speculative securities, equities and venture capital investments contained in section 419, subsection 1 are also inapplicable to merchant banks.

[PL 1997, c. 660, Pt. A, §8 (AMD).]

#### SECTION HISTORY

PL 1997, c. 398, §J2 (NEW). PL 1997, c. 660, §A8 (AMD).

#### §1225. Insider loans and investments

The terms of any loans by a merchant bank to or investments by a merchant bank in any of the following must be disclosed to the governing body of the merchant bank: [PL 1997, c. 398, Pt. J, §2 (NEW).]

**1. Percentage of common stock.** A person who owns 25% or more of the merchant bank's common stock or similar equity capital;

[PL 1997, c. 683, Pt. A, §3 (AMD).]

**2. Member of governing body.** A member of the governing body of the merchant bank;

[PL 1997, c. 398, Pt. J, §2 (NEW).]

**3. Policy-making officer or manager.** A policy-making officer or manager of the merchant bank;

or

[PL 1997, c. 398, Pt. J, §2 (NEW).]

**4. Percentage of voting shares owned by certain person or entity.** A company 25% of the voting shares or other similar voting equity of which is owned by a person or entity listed in subsections 1 to 3.

[PL 1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §J2 (NEW). PL 1997, c. 683, §A3 (AMD).

#### §1226. Holding companies of merchant banks

If the holding company is not deemed to be a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than a merchant bank or a nondepository trust company, a holding company of a merchant bank is not subject to the provisions of chapter 101, except for section 1013, subsection 1 and the application requirements of section 1015 relevant to section 1013, subsection 1. [PL 1997, c. 398, Pt. J, §2 (NEW).]

If the holding company is not deemed to be a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than a merchant bank, the superintendent may examine the holding company, including its subsidiaries and affiliates, to the extent necessary to determine the soundness and viability of the merchant bank. [PL 2005, c. 82, §16 (AMD).]

#### SECTION HISTORY

PL 1997, c. 398, §J2 (NEW). PL 2005, c. 82, §16 (AMD).

#### §1227. Rules

The superintendent may prescribe rules governing the activities of merchant banks and implementing this chapter. These rules must take into account the objective of merchant banks to provide needed capital to businesses and the nondepository nature of merchant banks. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [PL 1997, c. 398, Pt. J, §2 (NEW).]

#### SECTION HISTORY

PL 1997, c. 398, §J2 (NEW).

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