

Criminal Records Review Committee Presentation
November 8, 2021

Good afternoon Senator Bailey, Representative Talbot Ross, and members of the Criminal Records Review Committee. My name is Judith Shaw and I am the Administrator of the Maine Office of Securities. Thank you for the opportunity to speak with you today on this important issue of investor protection.

By way of background, the Office of Securities operates under the authority of the Maine Uniform Securities Act (“Act”). The Act is a Uniform Law approved in 2002 by the National Conference of Commissioners on Uniform State Laws and enacted in Maine in 2005. This uniform law has been adopted by many states across the country.

When licensing securities professionals, a key tool in fulfilling our mission to protect Maine investors, the Act authorizes the Administrator to deny, condition, or limit licensure based on an applicant’s criminal history record.

Under the Act, the Administrator may take action against an applicant if the person has been convicted of murder or a Class A, B, or C crime or, if within the previous 10 years, the person has been convicted of a Class D or E crime involving a security, or other investment-related misdemeanors. Further, the Act authorizes the Administrator to consider “any crime indicating a lack of fitness to engage in the securities business,” which would encompass crimes like embezzlement or forgery, for example.

There is a standardized electronic licensing and registration system (“CRD”) currently used by the industry and by state and federal regulators, including Maine.

The CRD system allows applicants to submit their applications and to seek licensure in the jurisdictions they choose which sometimes includes all states. The application requires applicants to disclose information about felony and certain misdemeanor charges and convictions.

In 2020, the Office of Securities received 23,695 applications for licensure as a broker-dealer agent and automatically licensed 21,496 of those individuals. Another 2,079 of those applicants whose licensing history required additional review were licensed within 24-48 hours of submission. Of the 23,695 applications, only 120 applications required additional scrutiny.

It is important to emphasize that an applicant who has a criminal charge or conviction is not automatically sanctioned or barred from licensure. When reviewing applicants who have disclosed a criminal history, we are focused on the most serious felonies and crimes that have a direct correlation to the financial services work we regulate. In those few instances when licensing action (such as denying or conditioning a license) is deemed appropriate based on an applicant’s criminal record, the applicant is always entitled to due process in the form of a hearing on the proposed action and a subsequent right of appeal to Superior Court if the applicant disagrees with the Administrator’s determination.

To illustrate the importance of consideration of these crimes in the licensing context, take as an example former legislator and licensee Ken Lindell. Mr. Lindell was an agent of a broker-dealer who ingratiated himself with two elderly women and stole over \$3 million of their money. Mr. Lindell was convicted of 15 counts including theft, securities fraud and tax charges. He is currently serving a long prison sentence, but if he were to apply to become licensed again after his release it would be important for the Administrator to be able to consider his convictions when determining his fitness to engage in the securities business.

Regarding further disclosure of criminal history information, applications for licensure, including any criminal history disclosed by the applicant, are considered public under 32 M.R.S. § 16607(1). If we receive a request for an individual's license application, that application would be disclosed. Pursuant to subsection 16607(2)(E), we would, however, redact any Social Security number, residential address (unless it is used as the business address), and residential telephone number (unless used as a business telephone number).

Application information is also generally available on the publicly accessible BrokerCheck and Investment Adviser Public Disclosure (IAPD) websites maintained by the federal regulators. The information contained in an application about charges and convictions is reviewed by the federal authorities who decide what public disclosure will be made on the websites based on the type of charge or conviction and when it occurred.

I would be happy to answer any questions you may have.