TITLE XXXVIII
SECURITIES

CHAPTER 421-B [2]
UNIFORM SECURITIES ACT

Article 1
General Provisions

Section 421-B:1-101

[RSA 421-B:1-101 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:1-101 Short Title. –

This chapter may be cited as the New Hampshire Uniform Securities Act.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:1-102

[RSA 421-B:1-102 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:1-102 Definitions. –

In this chapter, unless the context otherwise requires:

(1) "Advertisement" means any notice, circular, letter, or other written communication that is given to more than one person or any other announcement in any publication, by radio, television, or other electronic media, that offers:

(A) Any analysis, report, or publication concerning securities or which is to be used in making any determination as when to buy or sell securities; or

(B) Any graph, chart, formula, or other device to be used in making any determination concerning when to buy or sell any security, or which security to buy or sell.

(2) "Affiliate" means any person directly or indirectly controlling, controlled by, or under common control with another person.

(3) "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. But 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 term. The term does not include an individual excluded by order issued under this chapter.

(4) "Bank" means any of the following:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) a bank organized under the laws of the state of New Hampshire;

(D) a trust company;

(E) any other 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 Public Law 87-722 12 U.S.C. section 92a, and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(F) a receiver, conservator, or other liquidating agent of any institution or firm included in subsection (1)(A), (1)(B), (1)(C), (1)(D), or (1)(E).

(5)(A) "Branch office" means:

(i) With regard to an investment adviser, any location other than the main office, identified by any means to broker-dealers, other investment advisers, the public, customers, or clients as a location at which an investment adviser conducts an investment advisory business.

(ii) With regard to a broker-dealer, any location where one or more agents regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

(a) Any location that is established solely for one or both of customer service and back-office-type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(b) Any location that is the agent's primary residence; provided that:

(1) Only one agent, or multiple agents who reside at that location and are members of the same immediate family, conduct business at the location;

(2) The location is not held out to the public as an office and the agent does not meet with customers at the location;

(3) Neither customer funds nor securities are handled at that location;

(4) The agent is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such agent;

(5) The agent's correspondence and communications with the public are subject to the broker-dealer's supervision;

(6) Electronic communications, such as e-mail are made through the electronic system of the broker dealer;

(7) All orders for securities are entered through the designated branch office or an electronic system established by the broker-dealer that is reviewable at the branch office;

(8) Written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer; and

(9) A list of the residence locations are maintained by the broker-dealer;

(c) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the broker-dealer complies with the provisions of subsections (5)(A)(ii)(b)(2) through (8);

(d) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(e) Any location that is used primarily to engage in non-securities activities and from which the agent effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the agent conducting business at the non-branch locations is directly supervised;

(f) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers;

(g) A temporary location established in response to the implementation of a business continuity plan; or

(h) Any other location not within the intent of subsection (5) as the secretary of state may determine.

(B) Notwithstanding the exclusions provided in subsection (5)(A)(ii), any location that is responsible for supervising the activities of agents of the broker dealer at one or more non-branch locations of the broker-dealer shall be a branch office.

(C) "Business day" as used in subsection (5) shall not include any partial day provided that the agent or investment adviser representative spends at least 4 hours of such day at his or her designated branch office during the hours that such office is normally open for business.

(6) "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. The term does not include:

(A) an agent;

(B) an issuer;

(C) a bank;

(D) an international banking institution; or

(E) a person excluded by order issued under this chapter.

(7) "Common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or one or more investors. This definition is met if (a) the investor joins with the promoter or some third party to accomplish a common goal, such as earning a profit for the investor, whether the promoter or third party shares in the profits or is merely paid a commission or fee for his or her services, or (b) 2 or more investors join together in a common goal of making a profit.

(8) "Complaint" means a written statement submitted after an incident complained of by the secretary of state or any other person that sets forth specific allegations of wrongdoing and requests administrative action by the secretary of state.

(9) "CRD" means the Central Registration Depository maintained by FINRA.

(10) "Department" means the department of state.

(11) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union or similar 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 share accounts insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, National Credit Union Share Insurance Fund or a successor authorized by federal law and which is supervised and examined by a state or federal agency having supervision over such institutions, and which is not operated for the purpose of evading this chapter. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an "insured depository institution" as defined in the Federal Deposit Insurance Act, 12 U.S.C. section 1813(c)(2), or any successor federal statute.

(C) The inclusion of an institution in this definition shall not be construed as a grant of power or authority for such institution to engage in activities under this chapter that are not permitted under the laws governing such institution.

(12) "Ex parte communication" means the transmittal of information or argument concerning the merits of the subject matter of any adjudicatory proceeding to or from a decision maker in that proceeding without proper notice to and opportunity to participate in by all parties.

(13) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(14) "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 Securities Act of 1933 15 U.S.C. section 77r(b).

(15) "Filing" means the receipt under this chapter of a record by the secretary of state.

(16) "FINRA" means the Financial Industry Regulatory Authority.

(17) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

(18) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(19) "Hearing" means the receipt and consideration by the department of evidence or argument, or both, in accordance with this chapter and other applicable law, and includes:

(A) Conducting trial-type evidentiary hearings;

(B) Directing the filing of exhibits, affidavits, memoranda or briefs;

(C) Directing the delivery of oral argument; or

(D) Any combination of these or similar methods.

(20) "IARD" means the Investment Adviser Registration Depository maintained by FINRA.

(21) "Industrial bond," "industrial revenue bond," or "industrial development bond" means any obligation issued by a governmental unit (including the United States, any state, any political subdivision of a state, or any agency, or corporate or other instrumentality, of one or more of them) other than a general obligation of a governmental unit having power to tax property or of an agency of the state of New Hampshire:

(A) Which is issued as part of an issue, all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business, and

(B) The payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part:

(i) Secured by any interest in property used or to be used in a trade or business or in payment in respect of such property, or

(ii) To be derived from payments in respect of property or borrowed money, used or to be used in a trade or business.

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

(A) a depository institution, trust company, or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(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 Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, a trust company, or an insurance company;

(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 Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, a trust company, or an insurance company;

(H) a trust, if it has total assets in excess of $10,000,000, its trustee is a depository institution or trust company, and its participants are exclusively plans of the types identified in subsection (22)(F) or (22)(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;

(I) an organization described in 26 U.S.C. section 501(c)(3), corporation, Massachusetts trust or similar

business trust, 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;

(J) a small business investment company licensed by the Small Business Administration under the Small Business Investment Act of 1958, 15 U.S.C. section 681(c) with total assets in excess of $10,000,000;

(K) a private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. section 80b-2(a)(22), with total assets in excess of $10,000,000;

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933, 17 C.F.R. 230.144A;

(N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934, 17 C.F.R. 240.15a-6;

(O) any other person, other than an individual, of institutional character with total assets in excess of $25,000,000 not organized for the specific purpose of evading this chapter; or

(P) any other person specified by order issued under this chapter.

(23) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(24) "Insured" means insured as to payment of all principal and all interest.

(25) "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 Securities Act of 1933.

(26) "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. The term 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. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(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;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) a federal covered investment adviser;

(F) a bank;

(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser;

(H) a person whose advice, analyses or reports relate only to securities exempted under RSA 421-B:2-201(1);

(I) a person who has no place of business in this state if the person's only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, insurance companies, investment companies as defined under the Investment Company Act of 1940, pension or profit-sharing trusts, small business investment companies as defined under the Small Business Investment Act of 1958, or other financial institution or institutional buyer, whether acting for itself or in a fiduciary capacity;

(J) a person who transacts business in the field of insurance, provided such business is solely and exclusively in the field of insurance;

(K) a real estate broker, with regards to his or her real estate investment advice, who does not promote or sell any interest in any limited partnership;

(L) a person who has no place of business in this state and who, during the preceding 12-month period, has not had more than 5 clients, other than those listed in subsection (26)(I), who are residents of this state; and

(M) any other person excluded by order issued under this chapter.

(27) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. section 80b-3a, and is

(i) an "investment adviser representative" as defined by rule adopted under the Investment Advisers Act of 1940, 15 U.S.C. section 80b-3a; or

(ii) not a "supervised person" as defined in the Investment Advisers Act of 1940, 15 U.S.C. section 80b-2(a)(25); or

(D) is excluded by order issued under this chapter.

(28) "Investment advisory contract" means any contract or agreement whereby a person agrees to act as an investment adviser or to manage any investment or trading account for a person other than an investment adviser as defined in subsection (26).

(29)(A) "Investment contract" means either:

(i) an investment in a common enterprise with the expectation of profits to be primarily from the efforts of the promoter or some third party; or

(ii) an investment by which an offeree furnishes initial value to an offeror, and a portion of this value is subject to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a material valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the management of the enterprise.

(B) Notwithstanding subsection (29)(A), a business that pre-sells its products or services to consumers for future use or consumption is not offering an investment contract. However, a business that pre-sells its products or services to purchasers who are primarily motivated by an investment purpose, rather than future use or consumption, would be offering an investment contract.

(C) For the purposes of subsection (29)(A), the following shall apply:

(i) The investment may take the form of money actually paid to; securities or other real or personal property actually delivered to; the right to use such securities and other property granted to; or services actually performed for, the common enterprise or some other entity designated by the promoter or common enterprise to receive the investment.

(ii) "Profits" shall include the promise to pay money, deliver securities, or deliver kind goods;

(iii) The third party providing the efforts may or may not be an affiliate or associated with the promoter or the common enterprise. Such efforts are those day-to-day management efforts which affect the success or

failure of the enterprise, and do not include physical or mechanical efforts or extraordinary efforts such as the removal of the management of the common enterprise.

(iv) "Benefits" shall mean any bargained-for benefit to the investor or to a person designated by the investor; or any bargained-for legal detriment to the common enterprise, the promoter, or some entity identified by the investor.

(D) The following interests are securities if they meet either of the 2 tests for investment contracts, whether or not they are also covered by any other part of the definition of a security:

(i) General partnership interest whether in a general partnership, a joint venture, a limited partnership, a limited liability partnership, or a limited liability limited partnership.

(ii) An investment in a viatical or life settlement or similar agreement.

(30) "Investment metal" means any object that contains:

(A) Gold, silver, or platinum, or

(B) Any other metal that the secretary of state may specify by an order showing that the other metal is being purchased and sold by the public as an investment.

(31) "Investment gem" means any gem that the secretary of state may specify by an order showing that the gem is being purchased and sold by the public as an investment.

(32) "Investment metal contract" or "investment gem contract":

(A) means:

(i) A sale of an investment metal or investment gem in which the seller or an affiliate of the seller retains physical possession of the investment metal or investment gem;

(ii) A contract of purchase or sale which provides for the future delivery of an investment metal or investment gem, or any option to purchase or option to sell such a contract; or

(iii) A sale of an investment metal or investment gem pursuant to a contract known to the trade as a margin account, margin contract, leverage account, or leverage contract provided, however, that, for the purposes of this subsection (32), the term "leverage contract" includes any contract for the purchase or sale of any investment metal or investment gem, whereby the seller, or an agent, affiliate or representative of the seller, directly or indirectly arranges, or offers to arrange, for the financing of any portion of the total amount of the purchase or sale of the investment metal or investment gem.

(B) But shall not include:

(i) The sale of an investment metal or investment gem where the seller has reasonable grounds to believe that the investment metal or investment gem is being acquired for manufacturing, commercial or industrial purposes;

(ii) The sale, or contract for the future purchase or sale, of jewelry, art objects or other manufactured or crafted goods other than bullion or bulk sales of coins; or

(iii) The sale of an investment metal or investment gem where full payment is made to the seller and physical delivery is made to the purchaser personally, and not to an agent, within 20 days of the date of purchase provided that a purchaser may designate a bank or licensed broker-dealer, within this state only, and not within any other state, to accept physical delivery on his or her behalf if such bank or licensed broker-dealer maintains such investment metal or investment gem in safekeeping and as the specifically identifiable property of the purchaser;

(iv) Any futures contracts traded on a commodities exchange registered under the Federal Commodity Futures Trading Commission Act of 1974.

(33) "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.

(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 assuring payment of the certificate.

(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.

(34) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(35) "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. The term does not include a tender offer that is subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78n(d).

(36) "Open end mutual fund" means an open end management company as defined in the Investment Company Act of 1940.

(37) "Order" means an order issued pursuant to this chapter.

(38) "Other investment company" means a closed end management company, face amount certificate company, or unit investment trust as such terms are defined in the Investment Company Act of 1940.

(39) "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.

(40) "Petition" means a written request for action by the secretary of state including a staff petition for relief and any petition for rehearing pursuant to RSA 541.

(41) "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

(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.

(42) "Predecessor act" means this chapter as in effect prior to January 1, 2016.

(43) "Presiding officer" means a person to whom the secretary of state has delegated the authority to preside over some or all of an administrative hearing.

(44) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the 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.

(45) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(46) "Purchasing for investment" means a purchase made for investment and not for the purpose of resale. In determining whether securities have been purchased for investment, the length of the period for which the securities are held shall be one of the factors considered. Securities held for one year after their purchase shall be conclusively deemed to have been purchased for investment.

(47) "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.

(48) "Revocation" means the recall and cancellation of a license, registration or privilege for either a definite or indefinite period of time.

(49) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "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. Both terms 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;

(B) a gift of assessable stock involving an offer and sale; and

(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.

(50) "Sanction" means any penalty imposed or authorized for imposition by the secretary of state, pursuant to this chapter, including license suspension or revocation, order to cease and desist or monetary penalties.

(51) "Secretary of state" means the New Hampshire secretary of state or his or her designee.

(52) "Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission.

(53)(A) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; membership interest in a limited liability company; partnership interest in a limited partnership; partnership interest in a registered limited liability partnership; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; 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. The term:

(i) includes both a certificated and an uncertificated security;

(ii) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified time; and

(iii) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

(B) Notwithstanding subsection (53)(A), a membership interest in a limited liability company or a partnership interest in a registered limited liability partnership is not a security if:

(i) the secretary of state, by order, determines that it is not a security;

(ii) the limited liability company is a professional limited liability company or foreign professional limited liability company under RSA 304-D; or

(iii) the registered limited liability partnership or foreign registered limited liability partnership:

(a) is licensed, registered, certified, or otherwise authorized under the provisions of RSA 309-B, RSA 310-A, RSA 311, RSA 315, RSA 316-A, RSA 317-A, RSA 318, RSA 326-B, RSA 327, RSA 329, RSA 330-A, or RSA 332-B to render professional services, as defined in RSA 304-D:1, VI, including necessary related services, or

(b) is related to a registered limited liability partnership or foreign registered limited liability partnership licensed, registered, certified, or otherwise authorized under the provisions of RSA 309- B, RSA 310-A, RSA 311, RSA 315, RSA 316-A, RSA 317-A, RSA 318, RSA 326-B, RSA 327, RSA 329, RSA 330-A, or RSA 332-B to render professional services, as defined in RSA 304-D:1, VI.

(C) For purposes of subsection (53)(B)(iii), a registered limited liability partnership or foreign registered limited liability partnership is related to a registered limited liability partnership or foreign registered limited liability partnership engaged in the rendering of professional services if:

(i) such registered limited liability partnership or foreign registered limited liability partnership provides services related or complementary to the professional services rendered by, or provides services or facilities to, the registered limited liability partnership or foreign registered limited liability partnership engaged in the rendering of professional services; and

(ii) either:

(a) At least a majority of the partners in one partnership are partners in the other partnership;

(b) At least a majority of partners in each partnership also hold interests or are members in another person, and each partnership renders services pursuant to an agreement with such other person, or

(c) The partnerships are affiliates.

(D) In connection with the issuance of a cease and desist order issued by the secretary of state, and any hearings conducted, under RSA 421-B:6-604, the secretary of state may presume that a membership interest in a limited liability company or a partnership interest in a registered limited liability partnership is a security, and the person relying on subsection (53)(B) has the burden of proving that the interest is not a security under subsection (53)(B).

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

(55) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(56) "Solicitor" means an investment adviser, or investment adviser representative that:

(A) Is licensed under this chapter;

(B) Conducts an investment advisory business solely for the purpose of soliciting, directly or indirectly, any client for, or referring any client to, an investment adviser licensed under this chapter;

(C) Receives a cash fee for such solicitation or referral; and

(D) Operates pursuant to a written agreement with the investment adviser that:

(i) Describes the solicitation activities to be engaged in on behalf of the investment adviser and the compensation to be received therefor;

(ii) Contains an undertaking to perform the duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of this chapter; and

(iii) Requires that at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, that the client be provided with a current copy of the investment adviser's written disclosure statement that describes the solicitation arrangement.

(57) "Staff" means the employees of the department including classified employees, contract employees, and includes students involved in paid or unpaid programs.

(58) "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.

(59) "Suspension" means the temporary recall or denial of any license, registration or privilege granted for a specified period of time. Such license, registration or privilege shall be reinstated and returned to the person when he or she otherwise qualifies without the necessity of a new application or fee, provided any suspended license, registration, or privilege has not expired in the interim.

(60) "Trust company" means a trust company or family trust company that is organized under the laws of this state or any other jurisdiction and is authorized to engage in trust business in this state.

(61) "UETA" means New Hampshire's Uniform Electronic Transactions Act RSA 294-E and the rules and regulations adopted under that chapter, as in effect on the date of this chapter, or as later amended.

(62) The words "include" and "including" shall be construed as introducing a non-exhaustive list. Those words shall not be construed as restrictive.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:1-103

[RSA 421-B:1-103 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:1-103 References to Federal Statutes. –

"Securities Act of 1933" (15 U.S.C. section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. section 1001 et seq.), "National Housing Act" (12 U.S.C. section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. section 1 et seq.), "Internal Revenue Code" (26 U.S.C. section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:1-104

[RSA 421-B:1-104 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:1-104 References to Federal Agencies. –

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:1-105

[RSA 421-B:1-105 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:1-105 Electronic Records and Signatures. –

This chapter is subject to UETA. This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by an order issued under this chapter, in a manner consistent with UETA.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Article 2
Exemptions From Registration of Securities

Section 421-B:2-201

[RSA 421-B:2-201 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:2-201 Exempt Securities. –

The following securities are exempt from the requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504:

(1) a security, including a revenue obligation or a separate security as defined in Rule 131 adopted under the Securities Act of 1933, 17 C.F.R. 230.131, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing; provided that this exemption shall not include any industrial development bond or industrial revenue bond;

(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution; or

(B) a bank or depository institution;

(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state and not in formation; provided that this exemption shall not include any viatical contract;

(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) regulated in respect to its rates and charges by the United States or a state;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) a federal covered security specified in section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(1), or a security listed or approved for listing on another securities market specified by order of the secretary of state under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. section 78i(b);

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940; provided that such issuer shall have filed with the secretary of state a notice, on a form prescribed by the secretary of state, together with a copy of all offering material used in such offering of such security, at least 30 days before the first issuance under such offering. With respect to the offer or sale of a security offered under this exemption, upon the receipt of such notice of such an offering, the secretary of state may require

that the availability of this exemption be limited by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying the scope of the exemption and the grounds for denial or suspension, and requiring the issuer to file a notice specifying the material terms of the proposed offer and sale and copies of any proposed sales and advertising literature to be used. The exemption shall become effective if the secretary of state does not disallow the exemption within 30 days of the filing of such notice and other required information.

(8) an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(1);

(9) Any interest in a common trust fund or similar fund maintained by a state bank organized and operating under the laws of New Hampshire, or a national bank wherever located, for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by the bank, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed to such collective investment fund or similar fund by the bank, or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profit sharing, or similar benefit, or a self-employed person's retirement plan.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:2-202

[RSA 421-B:2-202 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:2-202 Exempt Transactions. –

The following transactions are exempt from the requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504:

(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer or not, provided that no person shall make sales to more than 5 purchasers (as determined in accordance with RSA 421-B:2-202-A(1)), in total, of securities of the same issuer, in all jurisdictions combined, during any period of 12 consecutive months;

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the 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, at 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 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;

(B) the security is sold at a price reasonably related to its current market price;

(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;

(D) a nationally recognized securities manual or its electronic equivalent designated by order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) 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

(iv) 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

(E) any one of the following requirements is met:

(i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the Nasdaq Stock Market;

(ii) the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(iii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least 3 years; or

(iv) 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;

(3) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter in a security of a foreign issuer that is a margin security as defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration, 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 Securities Exchange Act of 1934, 15 U.S.C. section 78m or 78o(d);

(5) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration, 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

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) 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

(ii) 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;

(6) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter effecting an unsolicited order or offer to purchase;

(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) a nonissuer transaction involving an offer or sale to 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;

(9) 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 secretary of state after a hearing conducted pursuant to RSA 421-B:6-605;

(10) a transaction between the issuer or other person on whose behalf the offering is made and an

underwriter, or a transaction among underwriters;

(11) a nonissuer sale of notes or bonds secured by a mortgage to no more than 5 persons, in total, in all jurisdictions combined;

(12) a judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction, including without limitation a bankruptcy court, or a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) a sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by order issued by the secretary of state under this chapter;

(14) a sale or an offer to sell securities of an issuer, if the transaction is part of a single offering (as determined in accordance with RSA 421-B:2-202-A(2)) in which:

(A) sales are not made to more than 25 purchasers (as determined in accordance with RSA 421-B:2-202-A(1)), in all jurisdictions combined, during any 12 consecutive months, other than sales designated in subsection (13) and subsection (21);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subsection (13), are purchasing for investment;

(15) a transaction under an offer to bona fide 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;

(16) an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933, 17 C.F.R. 230.165; and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the secretary of state 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;

(17) an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this chapter, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with an order adopted by the secretary of state under this chapter; and

(C) a stop order of which the offeror is aware has not been issued by the secretary of state under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) 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;

(19) a rescission offer, sale, or purchase under RSA 421-B:5-510, provided that the terms of such offer, sale or purchase and material disclosures are approved in advance by the secretary of state pursuant to RSA

421-B:5-510(5);

(20) 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;

(21) an employees' stock purchase, savings, stock option, restricted stock, 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; consultants; and advisors;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were initially offered to such person; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;

(22) 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;

(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

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933, 17 C.F.R. 230.162;

(23) a nonissuer transaction in a outstanding security by or through a broker dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by subsection (23) or by order issued under this chapter by the secretary of state; 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 subsection (23) or by order issued under this chapter by the secretary of state, 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 subsection (23), 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 RSA 421-B:6-605, the secretary of state, by order issued under this chapter, may revoke the designation of a securities exchange under subsection (23), if the secretary of state finds that revocation is necessary or appropriate in the public interest and for the protection of investors; or

(24) an offer or sale by a cooperative association organized and operated as a nonprofit entity under the laws of any state of its securities only if (A) such securities are either (i) offered and sold in connection with establishing bona fide membership in such association or (ii) issued as a patronage dividend to its bona fide members, (B) in the case of a purchase, the purchase of such securities is necessary or incidental to establishing membership in such association, and (iii) the primary purpose of membership in such association is to obtain or derive one or both of goods and services.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:2-202-A

[RSA 421-B:2-202-A effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:2-202-A Implementing Provisions. –

(1) Counting of purchasers. The following principles shall be used to calculate the number of purchasers to whom sales of the issuer's securities are made pursuant to RSA 421-B:2-202(1) and RSA 421-B:2-202(14):

(A) Exclusions. The following purchasers shall be excluded:

(i) Any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as such purchaser;

(ii) Any individual retirement account for the benefit of a purchaser;

(iii) Any trust or estate in which a purchaser or any of the persons related to such purchaser specified in subsection (1)(C) collectively have more than 50 percent of the beneficial interest (excluding contingent interests); and

(iv) Any corporation, partnership, limited partnership, limited liability company, limited liability partnership, business trust or other business entity in which a purchaser or any of the persons related to the purchaser specified in subsection (1)(C) collectively are the beneficial owners of more than 50 percent of the equity securities or equity interests.

(B) Inclusions. A purchaser shall be included in the calculation of the number of purchasers if such purchaser purchases a security which the issuer claims qualifies as a federal covered security under section 18(b)(4)(E) of the Securities Act of 1933 but in actuality does not so qualify.

(C) Entity as purchaser. A corporation, partnership, limited partnership, limited liability company, limited liability partnership, business trust, or other business entity shall be counted as one purchaser. However, if such entity is organized for the specific purpose of acquiring the securities offered and is not an investor specified in RSA 421-B:2-202(13), then each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser.

(D) Employee benefit plan as purchaser. A non-contributory employee benefit plan, within the meaning of title I of the Employee Retirement Income Security Act of 1974, shall be counted as one purchaser if the trustee makes all investment decisions for the plan.

(E) Sales to certain clients or customers. Sales to clients of an investment adviser, broker-dealer, or trust administered solely by a bank having fiduciary power, or persons with similar relationships, shall be considered as separate sales, regardless of the amount of discretion given to the investment adviser, broker-dealer, bank, or other person to act on behalf of the client, customer or trust.

(F) Joint or common ownership. Sales to persons who acquire the securities as joint tenants, tenants in common, or tenants by the entirety shall be counted as a single purchaser.

(2) Integration of Offerings. Offers and sales of securities that are made more than 6 months before the start of an offering or are made more than 6 months after completion of an offering will not be considered part of that offering, so long as during those 6-month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered and sold in such offering, other than offers or sales of securities under an employee benefit plan. The determination of whether separate sales of securities are part of the same offering and are considered integrated depends on the particular facts and circumstances. The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemption under RSA 421-B:2-202(14):

(A) Whether the sales are part of a single plan of financing;

(B) Whether the sales involve issuance of the same class of securities;

(C) Whether the sales have been made at or about the same time;

(D) Whether the same type of consideration is being received; and

(E) Whether the sales are made for the same general purpose.

(3) In connection with an offer and sale of exempt securities or in an exempt transaction, other than in connection with an offer and sale of federal covered securities, additional disclosures shall be made in offering documents, or an application for registration or a filing for exemption from registration shall be denied, or further conditions for an exemption may be imposed by the secretary of state, if any partner, officer, director, or a person having a similar status or performing a similar function:

(A) has filed a registration statement which is the subject of a currently-effective stop order entered pursuant to any state's securities laws within the previous 5 years;

(B) has been convicted within the previous 5 years of any felony or misdemeanor in connection with the offer, purchase or sale of any security;

(C) has been convicted within the previous 5 years of any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(D) is the subject of a material administrative enforcement order or judgment entered by a state's securities administrator within the previous 5 years or has been the subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within the previous 5 years;

(E) is subject to a material administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities; or

(F) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily, or permanently restraining, or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within the previous 5 years.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:2-203

[RSA 421-B:2-203 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:2-203 Additional Exemptions and Waivers. –

An order issued by the secretary of state under this chapter may exempt a security, transaction, or offer; an order by the secretary of state under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504; and an order by the secretary of state under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under RSA 421-B:2-201 and RSA 421-B:2-202.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:2-204

[RSA 421-B:2-204 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:2-204 Denial, Suspension, Revocation, Conditions, or Limitation of Exemptions. –

(a) Enforcement related powers. Except with respect to securities or a transaction preempted by section

18(b) of the Securities Act of 1933, an order by the secretary of state under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under RSA 421-B:2-201(3)(C) or RSA 421-B:2-202 or an exemption or waiver created under RSA 421-B:2-203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in RSA 421-B:3-306(d) or RSA 421-B:6-604 and only prospectively.

(b) Knowledge of order required. A person does not violate RSA 421-B:3-301, RSA 421-B:3-303 through RSA 421-B:3-306, RSA 421-B:5-504, or RSA 421-B:5-510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order. For purposes of subsection (b), a person will be conclusively presumed to have knowledge of an order which is mailed to the last address specified by such person to the secretary of state, if any, or which is published in a newspaper of statewide circulation.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Article 3
Registration of Securities and Notice Filing of Federal Covered Securities

Section 421-B:3-301

[RSA 421-B:3-301 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:3-301 Securities Registration Requirement. –

(a) It is unlawful for a person to offer or sell a security in this state unless:

(1) the security is a federal covered security;

(2) the security, transaction, or offer is exempted from registration under RSA 421-B:2-201 through RSA 421-B:2-203; or

(3) the security is registered under this chapter.

(b) Articles of incorporation for a new corporation or an application for a certificate of authority for a foreign corporation under RSA 293-A, articles of incorporation for a professional corporation or an application for a certificate of authority for a foreign professional corporation under RSA 294-A, an application for registration of a registered limited liability partnership or a notice of registration of a foreign registered limited liability partnership under RSA 304-A, a certificate of limited partnership for a new limited partnership or an application for registration of a foreign limited partnership under RSA 304-B, a certificate of formation for a new limited liability company or an application for registration as a foreign limited liability company under RSA 304-C, and a certificate of formation for a new professional limited liability company or an application for registration as a foreign professional limited liability company under RSA 304-D shall contain a statement that the capital stock of the corporation, memberships, or the interests of the limited partnership, limited liability partnership, or limited liability company have been registered, or when offered will be registered, under this chapter or are exempted, or when offered will be exempted, under this chapter, or are or will be offered in a transaction exempted from registration under this chapter, or are not securities under this chapter, or are federal covered securities under this chapter. In the case of a New Hampshire corporation, professional corporation, limited partnership, registered limited liability partnership, limited liability company, or professional limited liability company, the articles of incorporation, certificate of limited partnership, or certificate of formation shall state that the capital stock, memberships, or interests in the limited partnership, limited liability partnership, or limited liability company will be sold or offered for sale

in compliance with this chapter. The statement included pursuant to this paragraph shall not by itself constitute a registration, or a notice of exemption from registration, of securities within the meaning of sections 448 and 461(i)(3) of the United States Internal Revenue Code and the regulations promulgated thereunder.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:3-302

[RSA 421-B:3-302 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:3-302 Notice Filing. –

(a) Required filing of records. Any person offering a federal covered security, that is not a security described in section 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(4)(D), and is not exempt under RSA 421-B:2-201 through RSA 421-B:2-203, shall file all of the following records:

(1) before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, a consent to service of process complying with RSA 421-B:6-611 signed by the issuer, and the payment of a fee for each class of shares, regardless of whether offered through separate or combined prospectuses;

(2) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee for each class of shares, regardless of whether offered through separate or combined prospectuses.

(b) Notice filing effectiveness and renewal. A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission and by paying a renewal fee. A previously filed consent to service of process complying with RSA 421-B:6-611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) Notice filings for federal covered securities described in section 18(b)(4)(D) of the Securities Act of 1933. Any person selling a security that is a federal covered security described in section 18(b)(4)(D) the Securities Act of 1933, 15 U.S.C. section 77r(b)(4)(D), shall file a notice filing to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, a consent to service of process complying with RSA 421-B:6-611 signed by the issuer not later than 15 days after the first sale of the federal covered security in this state, and the payment of a fee including any late filing fee, under RSA 421-B:6-614.

(d) Stop orders. Except with respect to a federal security described in section 181(b)(1) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(1), if the secretary of state finds that there is a failure to comply with a notice or fee requirement of this section, including any late filing fee requirements, the secretary of state may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the secretary of state. Nothing in this chapter shall prevent the secretary of state from investigating and issuing a stop order suspending the offer and sale of a federal covered security for violation of RSA 421-B:5-501.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:3-303

[RSA 421-B:3-303 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:3-303 Securities Registration by Coordination. –

(a) Registration permitted. A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) Required records. A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in RSA 421-B:3-305 and a consent to service of process complying with RSA 421-B:6-611:

(1) a copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by order issued under this chapter;

(3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the secretary of state;

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission;

(5) a Form U-4 for each agent of the issuer; and

(6) copies of disclosures, which shall be included in the offering documents, consistent with policies, guidelines, and standards, including suitability standards, promulgated by the North American Securities Administrators Association, in order to provide full and fair disclosure for the benefit of investors.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) a stop order under subsection (d) or RSA 421-B:3-306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under RSA 421-B:4-412; and

(2) the registration statement has been on file for at least 20 days or a shorter period provided by order issued under this chapter.

(d) Notice of federal registration statement effectiveness. The registrant shall promptly notify the secretary of state in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the secretary of state may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The secretary of state shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) Effectiveness of registration statement. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the secretary of state, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the secretary of state of the date when the federal registration statement is expected to become effective, the secretary of state shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are

satisfied or waived and whether the secretary of state intends the institution of a proceeding under RSA 421-B:3-306. The notice by the secretary of state does not preclude the institution of such a proceeding.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:3-304

[RSA 421-B:3-304 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:3-304 Securities Registration by Qualification. –

(a) Registration permitted. A security may be registered by qualification under this section.

(b) Required records. A registration statement under this section must contain the information or records specified in RSA 421-B:3-305, a consent to service of process complying with RSA 421-B:6-611, and the following information or records, which may be satisfied if included in the materials provided pursuant to subsection (b)(13):

(1) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous 5 years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous 3 years or proposed to be effected;

(3) with respect to persons covered by subsection (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subsection (b)(2) other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous 3 years, the information or records specified in subsection (b)(2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 3 years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous 2 years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the

offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in subsection (b)(2), (b)(4), (b)(5), (b)(6), or (b)(8) and by any person that holds or will hold 10 percent or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous 2 years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with RSA 421-B:2-202(17)(B);

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within 4 months before the filing of the registration statement; a statement of income and changes in financial position for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by order issued under this chapter.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective 30 days, or any shorter period provided by order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under RSA 421-B:3-306;

(2) the secretary of state has not issued an order under RSA 421-B:3-306 delaying effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) Delay of effectiveness of registration statement. The secretary of state may delay effectiveness once for not more than 90 days if the secretary of state determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The secretary of state may also delay effectiveness for a further period of not more than 30 days if the secretary of state determines that the delay is necessary or appropriate.

(e) Prospectus distribution may be required. An order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:3-305

[RSA 421-B:3-305 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:3-305 Securities Registration Filings. –

(a) Who may file. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) Filing fee. A person filing a registration statement shall pay a filing fee. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under RSA 421-B:3-306, the secretary of state shall retain such portion of the fee that the secretary of state deems equitable under the circumstances.

(c) Status of offering. A registration statement filed under RSA 421-B:3-303 or RSA 421-B:3-304 must specify:

(1) the amount of securities to be offered in this state;

(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) Incorporation by reference. A record filed under this chapter or the predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) Nonissuer distribution. In the case of a nonissuer distribution, information or a record may not be

required under subsection (i) or RSA 421-B:3-304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) Escrow and impoundment. An order issued under this chapter may require as a condition of registration that a security issued within the previous 5 years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under subsection (f) may be established by order issued under this chapter, but the secretary of state may not reject a depository institution or trust company solely because of its location in another state.

(g) Form of subscription. An order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than 5 years.

(h) Effective period. Except while a stop order is in effect under RSA 421-B:3-306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the secretary of state.

(i) Periodic reports. While a registration statement is effective, an order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) Posteffective amendments. A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the secretary of state so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:3-306

[RSA 421-B:3-306 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:3-306 Denial, Suspension, and Revocation of Securities Registration. –

(a) Stop orders. The secretary of state may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the secretary of state finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under RSA 421-B:3-305(j) as of its effective date, or a report under

RSA 421-B:3-305(i) is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this chapter or an order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the secretary of state may not issue an order under subsection (a)(3) on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under RSA 421-B:3-303, there has been a failure to comply with the undertaking required by RSA 421-B:3-303(b)(4);

(6) the applicant or registrant has not paid the filing fee, but the secretary of state shall void the order if the deficiency is corrected;

(7) the offering:

(A) will work or tend to work a fraud upon purchasers or would so operate; or

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(8) the issuer or a partner, officer, or director of the issuer or a person having a similar status or performing a similar function has been convicted of a felony or misdemeanor in connection with the offer, purchase, or sale of a security or of a felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(b) Enforcement of subsection (a)(7). To the extent practicable, the secretary of state by order issued under this chapter shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) Institution of stop order. The secretary of state may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the secretary of state when the registration statement became effective unless the proceeding is instituted within 60 days after the registration statement became effective.

(d) Summary process. The secretary of state may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the secretary of state shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the secretary of state, within 30 days after the date of service of the order, then the order becomes final. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) Procedural requirements for stop order. A stop order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law in a record in accordance with RSA 421-B:6-604(c).

(f) Modification or vacation of stop order. The secretary of state may modify or vacate a stop order issued under this section if the secretary of state finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:3-307

[RSA 421-B:3-307 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:3-307 Waiver and Modification. –

The secretary of state may waive or modify, in whole or in part, any or all of the requirements of RSA 421-B:3-302, RSA 421-B:3-303, and RSA 421-B:3-304(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to RSA 421-B:3-305(i).

Source. 2015, 273:1, eff. Jan. 1, 2016.

Article 4
Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers

Section 421-B:4-401

[RSA 421-B:4-401 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-401 Broker-Dealer Registration Requirements and Exemptions. –

(a) Registration requirement. It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) Exemptions from registration. The following persons are exempt from the registration requirement of subsection (a):

(1) a broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) the issuer of the securities involved in the transactions;

(B) a person registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;

(C) an institutional investor; or

(D) a bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(c) Limits on employment or association. It is unlawful for a broker-dealer, or for an issuer engaged in

offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the secretary of state under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate subsection (c) if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of subsection (c) to the broker-dealer.

(d) Limited registration. The secretary of state may register a broker-dealer in a limited capacity determined by the secretary of state if that broker-dealer's activities are limited by FINRA.

(e) Canadian broker-dealers.

(1) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this subsection (e), effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

(A) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(B) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(2) An agent representing a Canadian broker-dealer licensed under this section may, provided the agent is licensed in accordance with this section, effect transactions in securities in this state as permitted for the broker-dealer in subsection (e)(1).

(3) A Canadian broker-dealer may become licensed under subsection (e), provided that the broker-dealer:

(A) Files an application in the form required by the jurisdiction in which it has its head office;

(B) Files a consent to service of process;

(C) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions into this state and files evidence thereof; and

(D) Is a member of a self-regulatory organization or stock exchange in Canada.

(4) An agent representing a Canadian broker-dealer licensed under this subsection (e) in effecting transactions in securities in this state may become licensed under this section, provided that the agent:

(A) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office;

(B) Files a consent to service of process; and

(C) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.

(5) If no denial order is in effect and no proceeding is pending under this chapter, the license becomes effective on the thirtieth day after an application is filed unless earlier made effective.

(6) A Canadian broker-dealer licensed under subsection (e) shall:

(A) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

(B) Provide the secretary of state upon request with its books and records relating to its business in this state as a broker-dealer;

(C) Inform the secretary of state forthwith of any criminal action taken against the broker-dealer or its agent or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct; and

(D) Disclose to its clients in the state that the broker-dealer and its agents are not subject to the full regulatory requirements in this chapter.

(7) An agent of a Canadian broker-dealer licensed under subsection (e) shall:

(A) Maintain his or her provincial or territorial registration in good standing;

(B) Inform the secretary of state forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the agent as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct.

(8) Renewal applications for Canadian broker-dealers and agents under subsection (e) shall be filed before December 1 each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subsection (e)(3)(A) or subsection (e)(4)(A), as the case may be.

(9) Every applicant for a license or renewal of a license under subsection (a) shall pay the fee for broker-dealers and agents as required under RSA 421-B:6-614.

(10) A Canadian broker-dealer or agent licensed under subsection (e) shall only effect transactions in this state:

(A) As permitted in subsection (e)(1) or (e)(2);

(B) With or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, and (iii) banks, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; and

(C) As otherwise permitted by this chapter.

(11) A Canadian broker-dealer or agent licensed under subsection (e) and acting in accordance with the limitations set out in subsection (e)(10) is exempt from all of the requirements of this chapter, except the anti-fraud provisions and the requirements set out in subsection (e). Such Canadian broker-dealer or agent may only have its license under this section denied, suspended or revoked for a breach of the anti-fraud provisions of this chapter or the requirements in subsection (e).

(f) Branch offices.

(1) Prior to opening or closing a branch office in this state, a broker-dealer shall notify the secretary of state of the location of the branch office, telephone number, name of the individual supervising the office, the date of the opening or closing, and any other pertinent information required by the secretary of state.

(2)(A) It is prohibited for any branch office or agent of a broker-dealer to conduct a securities business in this state under any name other than that of the broker-dealer with which the branch office is associated or agent is registered.

(B) If more than one business enterprise is conducted from a branch office location, disclosures shall clearly set forth the name of each business enterprise, what business activity is conducted by each organization, and each registered agent's relationship to each organization; provided, however, that this requirement shall not apply to television, radio, or billboard advertising that pertains exclusively to a non-securities product.

(3)(A) Each broker-dealer branch office within this state shall be supervised by a manager who is a licensed agent in New Hampshire and who shall have qualified as a principal by passing a FINRA principal's examination applicable to the registrant's business conducted at that location.

(B) Each broker-dealer and investment adviser shall establish and maintain supervisory procedures that are reasonably designed to achieve compliance with all applicable securities laws and statutes. The responsibility for such supervisory procedure shall be determined by various factors, including:

(i) The firm's size, organizational structure, and scope of business activities, and the number and location of offices.

(ii) The nature and complexity of procedures and services offered.

(iii) The volume of business conducted.

(iv) The number of agents and investment advisors assigned to a location.

(v) Whether a location has an on-site principal.

(vi) Whether the office is a non-branch location.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-402

[RSA 421-B:4-402 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-402 Agent Registration Requirements and Exemptions. –

(a) Registration requirement. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b).

(b) Exemptions from registration. The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who represents a broker-dealer that is exempt under RSA 421-B:4-401(b) or (c);

(2) a bona fide officer, director, partner, manager, member or employee of the issuer, with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; provided that any person who is not a bona fide officer, director, partner, manager, member or employee of the issuer shall not be exempt in connection with any public offering of securities by such issuer, whether or not such person is compensated by the payment of a commission or other transaction-related compensation;

(3) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by RSA 421-B:2-202, other than RSA 421-B:2-202(14), and who is not compensated by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security described in section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(3) or 77r(b)(4)(D), is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(5) an individual who represents a broker-dealer registered in this state under RSA 421-B:4-401(a) or exempt from registration under RSA 421-B:4-401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(6) an individual who represents an issuer with the purchase by the issuer of the issuer's own securities;

(7) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(8) any other individual exempted by order issued under this chapter.

(c) Registration effective only while employed or associated. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

(d) Limit on employment or association. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) Limit on affiliations. An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct common control or are authorized by order under this chapter.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-403

[RSA 421-B:4-403 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-403 Investment Adviser Registration Requirements and Exemptions. –

(a) Registration requirement. It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) Exemptions from registration. The following persons are exempt from the registration requirement of subsection (a):

(1) a person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) institutional investors; or

(C) any other client exempted by order issued under this chapter;

(2) a person without a place of business in this state if the person has had, during the preceding 12 months, not more than 5 clients that are resident in this state in addition to those specified under subsection (b)(1); or

(3) any other person exempted by order issued under this chapter.

(c) Limits on employment or association. It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the secretary of state, by order, may waive, in whole or in part, the application of the prohibitions of subsection (c) to the investment adviser.

(d) Investment adviser representative registration required. It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under RSA 421-B:4-404(a) or is exempt from registration under RSA 421-B:4-404(b).

(e) Branch offices. Prior to opening or closing a branch office in this state, an investment adviser shall notify the secretary of state of the location of the branch office, telephone number, name of the individual supervising the office, the date of the opening or closing, and any other pertinent information required by the secretary of state.

(f) Name of branch office.

(1) It is prohibited for any branch office or investment adviser representative to conduct an investment advisory business in this state under any name other than that of the investment adviser with which the branch office is associated or investment adviser representative is registered.

(2) If more than one business enterprise is conducted from a branch office location, disclosures shall clearly set forth the name of each business enterprise, what business activity is conducted by each organization, and each registered agent's relationship to each organization; provided, however, that this requirement shall not apply to television, radio, or billboard advertising that pertains exclusively to a

non-securities product.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-404

[RSA 421-B:4-404 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-404 Investment Adviser Representative Registration Requirement and Exemptions. –

(a) Registration requirement. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser under subsection (b).

(b) Exemptions from registration. The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who is employed by or associated with an investment adviser that is exempt from registration under RSA 421-B:4-403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of RSA 421-B:4-405; and

(2) any other individual exempted by order issued under this chapter.

(c) Registration effective only while employed or associated. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under RSA 421-B:4-405.

(d) Limit on affiliations. An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless an order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(e) Limits on employment or association. It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the secretary of state, by order issued, may waive, in whole or in part, the application of the requirements of subsection (e) to the federal covered investment adviser.

(f) Client solicitors. A person who solicits referrals of investment advisory clients to an investment adviser may apply for a license as a solicitor by filing with the secretary of state an application, including a request for waiver of examination requirements, a copy of the solicitation agreement with such investment adviser and a copy of the disclosure document of the investment adviser disclosing the arrangements between such investment adviser and such solicitor and an undertaking that, prior to entering into any investment advisory contract with a client, the investment adviser will obtain from such client a signed and dated acknowledgement that the investment advisory contract is being entered into pursuant to a solicitation arrangement with the solicitor as described in the disclosure document.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-405

[RSA 421-B:4-405 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-405 Federal Covered Investment Adviser Notice Filing Requirement. –

(a) Notice filing requirement. Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) Notice filing requirement not required. The following federal covered investment advisers are not required to comply with subsection (c):

(1) a federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state; or

(D) other clients specified by order issued under this chapter;

(2) any other person excluded by order issued under this chapter.

(c) Notice filing procedure. A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with RSA 421-B:6-611, and such records as have been filed with the SEC under the Investment Advisers Act of 1940 required by order issued under this chapter and pay the fees specified in RSA 421-B:4-410(c). Initial fees shall be paid before business is transacted in this state, and annual fees shall be paid on or before December 31 of the current year for the ensuing year. Federal covered advisers shall submit copies to the secretary of state of all documents filed with the SEC pursuant to the federal securities laws within 10 business days of their submission to the SEC. Documents and fees that are accepted by IARD may be submitted through IARD. Other documents filed or deemed filed with the SEC shall be submitted directly to the secretary of state.

(d) Effectiveness of filing. The notice under subsection (c) becomes effective upon its filing.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-406

[RSA 421-B:4-406 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-406 Registration by Broker-Dealer, Agent, Investment Adviser, and Investment Adviser Representative. –

(a) Application for initial registration. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application on a form prescribed by the secretary of state and a consent to service of process complying with RSA 421-B:6-611, paying the fee specified in RSA 421-B:4-410 and paying any reasonable fees charged by the designee of the secretary of state for processing the filing. The application must contain:

(1) whatever information the secretary of state requires concerning such matters as, but not limited to, the applicant's form and place of organization; the applicant's proposed method of doing business; the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and the applicant's financial condition and history; and

(2) upon request by the secretary of state, any other financial or other information or record that the secretary of state determines is appropriate.

(b) Amendment. If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Effectiveness of registration.

(1) If an order is not in effect and a proceeding is not pending under RSA 421-B:4-412, registration becomes effective at noon on the 30th day after a completed application is filed. An order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 30th day after the filing of any amendment completing the application. Registration may be suspended by an order of the secretary of state, subject to article 6.

(2) The secretary of state may issue a limited registration as determined by the secretary of state to a broker-dealer whose registration is similarly restricted by FINRA or any successor self-regulatory organization.

(3) As an alternative means of registration under subsection (h) or in conjunction with this section, the secretary of state may register agents, broker-dealers, or investment advisers by means of or through the facilities of a national organization which facilitates registration on a nationwide basis.

(d) Registration renewal. A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under RSA 421-B:4-412, a registration may be automatically renewed each year by filing such records within 60 days after the close of its fiscal year (subject to any extension by order promulgated by the secretary of state) as are required by order issued under this chapter, by paying the fee specified in RSA 421-B:4-410, and by paying costs charged by the secretary of state for processing the filings. In addition, the secretary of state may require at any reasonable time and in any reasonable manner from any person subject to this chapter or any person controlling any such person any statements, reports, financial statements, answers to questionnaires and other information in whatever reasonable form he or she designates, including information from any electronic data processing or storage system.

(e) Certain requirements for broker-dealers.

(1) No person shall be registered as a broker-dealer unless one person occupying a supervisory position has successfully passed a principal examination appropriate for the business conducted by the broker-dealer and has actively engaged in the securities business as a licensed principal in a similar supervisory capacity for a minimum of 3 of the preceding 5 years.

(2) No person shall be issued a broker-dealer license if any control person of such person was an officer, supervisor, or owner of 10 percent or more of the securities of any firm liquidated under the Securities Investor Protection Act of 1970.

(f) Certain requirements for investment advisers.

(1) Registration of investment advisers and investment adviser representatives shall be made through filings through the IARD.

(2) In addition to the filing required in subsection (f)(1), an applicant for registration as an investment adviser shall provide:

(A) specimens of investment advisory contracts.

(B) the qualifications and business history of any employee, which may be submitted on a Form U-4 on the CRD.

(3) Solely for purposes of a filing made through the IARD, a document is considered filed with the secretary of state when all fees are received and the filing is accepted by the IARD on behalf of the state.

(4)(A) Any documents or fees required to be filed with the secretary of state that are not permitted to be filed with or cannot be accepted by the IARD shall be filed directly with the secretary of state. The application shall not be complete until all documents and fees required by this chapter have been submitted

through the IARD, where possible, or submitted to and received directly by the secretary of state.

(B) The following documents shall be required to be filed directly with the secretary of state:

(i) A financial statement which shall be audited, or, in the instance where no audited financial statement is in existence, certified by the appropriate person as presenting fairly in all material respects the financial condition of the firm.

(ii) A copy of the applicant's articles of incorporation, if a corporation, or other business formation documents, if the applicant is any other form of business entity.

(5)(A) An investment adviser shall file with the IARD, in accordance with the instructions to Form ADV, any amendments to the investment adviser's Form ADV. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(B) An investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. An investment adviser representative and the investment adviser shall file promptly with the IARD any amendments to the representative's Form U-4.

(C) Within 90 days of the end of the investment adviser's fiscal year, an investment adviser shall file an updated Form ADV with the IARD.

(g) Training standards. The secretary of state may by order prescribe standards of qualification with respect to training, experience, and knowledge of the securities business and provide for examinations to be taken by any class of or all applicants for broker-dealers, agents, investment advisers, and investment adviser representatives.

(h) Additional conditions or waivers. An order issued under this chapter may impose such other conditions, consistent with the National Securities Markets Improvement Act of 1996, on any registration under this section. An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

(i) Privilege from defamation. In the absence of malice, no communication required by the secretary of state under this section shall subject the person making it to an action for defamation.

(j) False filings. Any director, officer, partner, manager, agent, or employee of any broker-dealer, investment adviser, or agent who makes or files in any statement or other document with the secretary of state, having actual knowledge that the same includes any material statement which is false, shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

(k) Incorporation of federal, SRO and exchange rules. Persons registered under this article to conduct securities business shall comply with the applicable rules of the Securities and Exchange Commission, FINRA, any national exchange on which they have securities registered and other applicable self-regulatory organization having jurisdiction over the person so registered.

(l) Satisfaction through Adviser Act filings. The secretary of state may require an investment adviser to furnish or disseminate to investors and advisory clients information specified by order of the secretary of state in the public interest and for the protection of investors. If so determined by the secretary of state, information furnished to clients or prospective clients that would be in compliance with the Investment Advisers Act of 1940 may be used in whole or partial satisfaction of such requirement.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-407

[RSA 421-B:4-407 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-407 Succession and Change in Registration of Broker-Dealer or Investment Adviser. –

(a) Succession. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal

covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to RSA 421-B:4-401 or RSA 421-B:4-403 or a notice pursuant to RSA 421-B:4-405 for the unexpired portion of the current registration or notice filing.

(b) Organizational change. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(c) Name change. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration and paying the fees set forth in RSA 421-B:6-614. The amendment becomes effective when filed or on a date designated by the registrant.

(d) Change of control. A change of control of a broker-dealer or investment adviser may be made in accordance with an order issued under this chapter.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-408

[RSA 421-B:4-408 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-408 Termination of Employment or Association of Agent and Investment Adviser Representative and Transfer of Employment or Association. –

(a) Notice of termination. If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) Transfer of employment or association. If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under RSA 421-B:4-405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under RSA 421-B:4-405; then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of RSA 421-B:4-406(a) and payment of the filing fee required under RSA 421-B:4-410, the registration of the agent or investment adviser representative is:

(1) immediately effective as of the date of the completed filing, if the agent's CRD record or successor record or the investment adviser representative's IARD record or successor record does not contain a new or amended disciplinary disclosure; or

(2) temporarily effective as of the date of the completed filing, if the agent's CRD record or successor

record or the investment adviser representative's IARD record or successor record contains a new or amended disciplinary disclosure since the agent's most recent previous registration or licensure application in the state.

(c) Withdrawal of temporary registration. The secretary of state may withdraw a temporary registration if there are or were grounds for discipline as specified in RSA 421-B:4-412 and the secretary of state does so within 30 days after the filing of the application. If the secretary of state does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the 31st day after filing.

(d) Power to prevent registration. The secretary of state may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) Termination of registration or application for registration. If the secretary of state determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The secretary of state may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-409

[RSA 421-B:4-409 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-409 Withdrawal of Registration of Broker-Dealer, Agent, Investment Adviser, and Investment Adviser Representative. –

(a) The secretary of state may determine by order the requirements and procedures for withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by order issued under this chapter. The secretary of state may institute a revocation or suspension proceeding under RSA 421-B:4-412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

(b) The application for withdrawal of licensure as an investment adviser under the Investment Advisers Act of 1940 shall be completed by following the instructions to Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. section 279.2) and filed upon Form ADV-W with the IARD.

(c) The application for withdrawal of licensure as an investment adviser representative under the Investment Advisers Act of 1940 shall be completed by following the instructions to Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with the IARD.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-410

[RSA 421-B:4-410 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-410 Filing Fees. –

(a) Broker-dealers. A person shall pay a fee of $300 when initially filing an application for registration as a broker-dealer and a fee of $250 when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the secretary of state shall retain $50 of the fee.

(b) Agents. The fee for an individual is $130 when filing an application for registration as an agent, a fee of $100 when filing a renewal of registration as an agent, and a fee of $25 when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the secretary of state shall retain $30 of the fee.

(c) Investment advisers. A person shall pay a fee of $250 when filing an application for registration as an investment adviser and a fee of $200 when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the secretary of state shall retain $50 of the fee.

(d) Investment adviser representatives. The fee for an individual is $125 when filing an application for registration as an investment adviser representative, a fee of $100 ($50 per agent; $50 per license) when filing a renewal of registration as an investment adviser representative, and a fee of $100 when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the secretary of state shall retain $25 of the fee.

(e) Federal covered investment advisers. A federal covered investment adviser required to file a notice under RSA 421-B:4-405 shall pay an initial fee of $250 and an annual notice fee of $200.

(f) Payment. A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

(g) Dual agent/investment adviser representative. An investment adviser representative who is registered as an agent under RSA 421-B:4-402 and who represents a person that is both registered as a broker-dealer under RSA 421-B:4-401 and registered as an investment adviser under RSA 421-B:4-403 or required as a federal covered investment adviser to make a notice filing under RSA 421-B:4-405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-411

[RSA 421-B:4-411 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-411 Postregistration Requirements. –

(a) Financial requirements. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, an order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter, including without limitation the following:

(1) Each broker-dealer registered or required to be registered under this chapter shall comply with the net capital requirements set forth in Rule 15c3-1 under the Securities and Exchange Act of 1934, 17 C.F.R. 240.15c3-1 and the custody requirements set forth in Rule 15c3-3 under the Securities and Exchange Act of 1934, 17 C.F.R. 240.15c3-3, as may be amended, and shall report to the secretary of state those items requiring reporting under Rules 17a-5, 17a-10 and 17a-11, under the Securities and Exchange Act of 1934, 17 C.F.R. 240. 17a-5, 17 C.F.R. 240.17a-10, and 17 C.F.R. 240.17a-11 as may be amended.

(2) Each investment adviser registered or required to be registered under this chapter which has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000 and every investment adviser registered or required to be registered under this chapter which has discretionary authority over client funds or securities, but does not have custody of client funds or securities, shall maintain at all times a

minimum net worth of $10,000. The secretary of state shall specify by order the requirements for determining and reporting such net worth to the secretary of state. Any such investment adviser which has its principal place of business in another state shall maintain such minimum net worth as required by the state in which it maintains its principal place of business, provided that the investment adviser is registered or licensed in such state and is in compliance with such state's minimum net worth requirements.

(3) Each investment adviser registered or required to be registered under this chapter which has custody of client funds or securities shall comply with Rule 206(4)-2 under the Investment Advisers Act of 1940, 17 C.F.R. 275.206(4)-2.

(b) Financial reports.

(1) Every broker-dealer or agent doing business in this state unless otherwise directed shall, within 60 days after the close of its fiscal year, make and transmit to the secretary of state a filing under oath of its chief managing officer showing or providing the financial statement, changes in management, changes in ownership, and any significant changes in the method of doing business for the preceding fiscal year, except as provided by section 15(h) of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. The filing shall include statements or periodic reports filed with any regulatory, state, or federal authority or exchange if so directed by order or rule of the secretary of state. Every broker-dealer shall include audited financial statements certified by an independent certified public accountant consisting of a balance sheet, income statement, statement of cash flows, a reconciliation of surplus and appropriate notes prepared in accordance with generally accepted accounting principles.

(2) The secretary of state may extend the time for filing such statement for cause shown for a period of not more than 60 days. A broker dealer failing to file its annual statement as required by subsection (b)(1) shall forfeit to the state $25 for each day of delinquency; provided, however, that for good cause shown, the secretary of state may abate all or a portion of the delinquency penalty. The secretary of state may refuse to continue, or may suspend or revoke, the license of any broker dealer failing to file its annual statement when due. When the sixtieth day falls on a weekend, or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

(c) Recordkeeping. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78o(h) or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a:

(1) A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by order issued under this chapter except as provided by Section 15 of the Securities Exchange Act of 1934 in the case of broker-dealers and Section 222 of the Investment Advisers Act of 1940 in the case of investment advisers;

(2) broker-dealer records required to be maintained under subsection (c)(1) may be maintained in any form of data storage acceptable under the Securities Exchange Act of 1934, 15 U.S.C. section 78q(a), if they are readily accessible to the secretary of state; and

(3) investment adviser records required to be maintained under subsection (1) may be maintained in any form of data storage required by order issued under this chapter.

(4) Every investment adviser registered or required to be registered under this chapter shall make and keep true, accurate and current the following books, ledgers, and records:

(A) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(B) General and auxiliary ledgers or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts.

(C) A memorandum of each order given by the investment adviser for the purchase or sale of any security or any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security, and of any modification or cancellation of any such order or

instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(D) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser.

(E) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(F) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(G) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (A) any recommendation made, or proposed to be made and any advice given or proposed to be given, (B) any receipt, disbursement or delivery of funds or securities, or (C) the placing or execution of any order to purchase or sell any security; provided, however, that (i) the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (ii) if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement, a memorandum describing the list and the source thereof.

(H) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.

(I) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(J) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(K) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser) and, if such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(L)(i) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction, acquires any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any investment adviser representative has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) An investment adviser shall not be deemed to have violated subsection (c)(4) because of failure to record securities transactions of any investment adviser representative if the investment adviser establishes

that adequate procedures were instituted and reasonable diligence used to obtain promptly reports of all transactions required to be recorded.

(M)(i) Notwithstanding the provisions of subsection (c)(4)(L) where the investment adviser is primarily engaged in a business or businesses other than advising advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 calendar days after the end of the calendar quarter in which the transaction was effected.

(ii) An investment adviser is "primarily engaged in a business or businesses other than advising advisory clients" when, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50 percent of (a) its total sales and revenues, and (b) its income or loss before income taxes and extraordinary items, from such other business or businesses.

(iii) An investment adviser shall not be deemed to have violated subsection (c)(4)(M) because of failure to record securities transactions of any investment adviser representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence used to obtain promptly reports of all transactions required to be recorded.

(N)(i)(a) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser;

(b) Any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and

(c) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or to any prospective client who subsequently becomes a client.

(ii) A memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of Form ADV and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the written statements described in subsection (c)(13)(A). The memorandum shall explain the investment adviser's determination that the presumption of materiality is overcome, and shall discuss the factors described in those items.

(O) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with, affiliated with or employed by such investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debts, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subsection.

(P) Copies, with original signatures of the investment adviser's appropriate signatory and the

investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative), and shall be made available for inspection upon request by the secretary of state.

(Q) A separate file on all written complaints of customers and action taken by the investment adviser, if any, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaints as maintained in such office. For purposes of subsection (c)(4)(Q), a "complaint" means any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the investment adviser in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

(R) A litigation file open to inspection by the secretary of state documenting any criminal or civil actions filed in any state or federal court against the investment adviser's branch office or against any of its personnel with respect to a securities transaction and the disposition of any such litigation.

(5) If an investment adviser subject to RSA 421-B:4-411(c)(3) has custody or possession of securities or funds of any client, the records required to be made and kept under subsection (b), shall also include:

(A) A journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for such accounts, and all other debits and credits to such accounts.

(B) A separate ledger account for each such client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

(C) Copies of confirmations of all transactions effected by or for the account of any such client.

(D) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

(6) With respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, every investment adviser subject to subsection (c) who renders any investment supervisory or management service to any client shall make and keep true, accurate, and current:

(A) Records showing separately for each such client the securities purchased and sold, and the date, amount, and price of each such purchase and sale.

(B) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(7) Any books or records required by this subsection (c) may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

(8)(A) All books and records required to be made under subsections (a), (b), (c), (d), (e)(1), (h), and (i), except for the books and records required to be made under subsections (c)(11) and (c)(15), shall be maintained and preserved in (i) an easily accessible place for a period of not less than 5 years from the end of the fiscal year during which the last entry was made on those books and records and (ii) during the first 2 years, an appropriate office of the investment adviser.

(B) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.

(C) Books and records required to be made under subsections (c)(11) and (c)(15) shall be maintained and preserved in an easily accessible place for a period of not less than 5 years, the first 2 years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(9) Before ceasing to conduct or discontinuing business as an investment adviser, an investment adviser subject to subsection (c), shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under subsection (c) for the remainder of the period specified in this subsection, and shall notify the secretary of state in writing of the exact address where such books and records will be maintained during such period.

(10)(A) The records required to be maintained and preserved pursuant to subsection (c) shall be immediately produced or reproduced by photograph, on film, or, as provided in subsection (i), on magnetic disk, tape or other computer storage medium, and shall be maintained and preserved for the required time in that form. If records are produced or reproduced by the photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record.

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the secretary of state by its examiners or other representatives may request.

(iii) Store separately from the original one other copy of the film or computer storage medium for the time required.

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction.

(v) With respect to records stored on film, at all times have available for the secretary of state's examination its records pursuant to provisions of this chapter, and facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(B) Pursuant to subsection (i) an investment adviser may maintain and preserve, on computer tape or disk or other computer storage medium, records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(11) For purposes of subsection (c), "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(12) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

(13)(A)(i) Unless otherwise provided in this section, an investment adviser registered or required to be registered under this chapter shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part 2 of its Form ADV or written documents containing at least the information then so required by Part 2 of Form ADV, and such other information as the secretary of state may require. Each investment adviser shall furnish each advisory client and prospective advisory client with a firm brochure and one or more supplements as required by this section. The brochure and supplements shall contain all information required by Part 2 of Form ADV (17 C.F.R. 279.1), and such other information as the secretary of state may require.

(ii) An investment adviser shall deliver: (a) The current brochure required by this section to a client or prospective client, and (b) The current brochure supplements for each investment adviser representative who will provide advisory services to the client.

(iii) An investment adviser shall deliver the disclosure statement required by this section to an advisory client or prospective advisory client not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or at the time of entering into any such contract, if the advisory client has the right to terminate the contract without penalty within 5 business days after entering into the contract.

(B) Any disclosure statement requested in writing by an advisory client pursuant to an offer required by subsection (c)(13)(C) shall be mailed or delivered within 7 days of the receipt of the request.

(C) If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of subsection (c)(13)(C), a limited liability partnership or limited liability limited partnership is a "limited partnership."

(D) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, the investment adviser may provide them with different disclosure documents or brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(E) The investment adviser shall amend its brochure and any brochure supplements and deliver the amendments to clients promptly when information contained in the brochure or brochure supplements becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser shall follow. An amendment will be considered to be delivered promptly if the amendment is delivered within 30 days of the event that requires the filing of the amendment.

(F) Nothing in this section shall relieve any investment adviser from any obligation pursuant to any provision of this chapter or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this section.

(G)(i) If the investment adviser is a sponsor of a wrap fee program, then the brochure, required to be delivered by subsection (c)(13)(A) to a client or prospective client of the wrap fee program, must be a wrap fee brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(ii) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information the investment adviser's wrap fee program brochure must contain.

(iii) A wrap fee brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under subsection (c)(13)(G).

(H) All investment advisers registered or required to be registered under this chapter must deliver to each of their clients their current brochure and all required brochure supplements within 30 days from the date of effectiveness of Part 2 of Form ADV.

(I) For the purpose of subsection (c)(13)(G), the following definitions shall apply:

(i) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments (i.e., stickers).

(ii) "Entering into" in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(iii) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.

(iv) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

(14)(A) Every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees 6 months or more in advance and in excess of $500 per client shall file with the secretary of state an audited balance sheet as of the end of the investment adviser's fiscal year. Each balance sheet filed pursuant to subsection (c)(14)(A) shall be:

(i) Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

(ii) Audited by an independent public accountant or an independent certified public accountant; and

(iii) Accompanied by an opinion of the accountant as to the report of financial position and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(B) The financial statements required by this subsection (c)(14) shall be filed with the secretary of state within 90 days following the end of the investment adviser's fiscal year.

(C) Every investment adviser that has its principal place of business in a state other than this state shall maintain such books or records as required by the state in which the investment adviser maintains its principal place of business, provided that the investment adviser:

(i) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(ii) Is in compliance with the applicable books and records requirements of the state in which it maintains its principal place of business.

(15) Every licensed broker-dealer shall comply with minimum financial requirements and financial reporting requirements as follows:

(A) Each broker-dealer licensed or required to be licensed under this chapter shall comply with Rules 15c3-1, 15c3-2, and 15c-3 under the Securities and Exchange Act of 1934, 17 C.F.R. 240.15c3-1, 17 C.F.R. 240.15c3-2, and 17 C.F.R. 240.15c3-3.

(B) Each broker-dealer licensed or required to be licensed under this chapter shall comply with Rules 17a-11 under the Securities and Exchange Act of 1934, (17 C.F.R. 240.17a-11) and shall file with the secretary of state upon request, or as required by this chapter or orders or rules promulgated thereunder, copies of notices and reports required under Rules 17a-5, 17a-10, and 17a-11 under the Securities and Exchange Act of 1934, 17 C.F.R. 240.17a-5, 17 C.F.R. 240.17a-10, and 17 C.F.R. 240.17a-11.

(C) To the extent that the Securities and Exchange Commission promulgates changes to the rules, described in subsections (c)(15)(A) and (c)(15)(B) broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the secretary of state for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rules.

(16) Every licensed investment adviser shall comply with minimum financial requirements and financial reporting requirements as follows:

(A) An investment adviser registered or required to be registered under this chapter who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser licensed or required to be licensed under this chapter who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of $10,000.

(B) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under this chapter shall by the close of business on the next business day notify the secretary of state if such investment adviser's total worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day, a report with the secretary of state of its financial condition, including the following:

(i) A trial balance of all ledger accounts;

(ii) A statement of all client funds or securities which are not segregated;

(iii) A computation of the aggregate amount of client ledger debit balances; and

(iv) A statement as to the number of client accounts.

(C) For purposes of subsection (c)(16), the term "net worth," means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockbrokers and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(D) The secretary of state may require that a current appraisal be submitted in order to establish the worth of any asset.

(E) For purposes of these rules an investment adviser shall not be deemed to be exercising discretion when it places a trade order with a broker-dealer, pursuant to a third party trading agreement if:

(i) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser, and the investment adviser in fact does not exercise discretion with respect to the account; and

(iii) A third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(F) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimal capital as required by the state in which the investment adviser maintains its principal place of business, provided that the investment adviser is licensed in such state and is in compliance with such state's minimal capital requirements.

(d) Audits or inspections.

(1) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter and of an issuer of securities whose principal office is located in this state are subject to such reasonable periodic, special, or other audits or inspections by a representative of the secretary of state, within or without this state, as the secretary of state considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The secretary of state may copy, and remove for audit or inspection copies of, all records the secretary of state reasonably considers necessary or appropriate to conduct the audit or inspection. The secretary of state may assess a reasonable charge for conducting an audit or inspection under this subsection (d)(1).

(2) For the purpose of ascertaining compliance with law or relationships and transactions between any person and any broker-dealer, investment adviser, or agent or proposed broker-dealer, investment adviser, or agent and in circumstances where the secretary of state has reasonable grounds to believe there is noncompliance with or violation of any law, rule, or order, the secretary of state may, as often and to the extent he or she deems advisable, examine the accounts, records, documents, and transactions pertaining to or affecting the securities affairs or proposed securities affairs and transactions of:

(A) Any person having a contract under which the person enjoys by terms or in fact the exclusive or dominant right to manage or control the broker-dealer, investment adviser, or agent;

(B) Any person in this state engaged in, proposing to be engaged in, holding himself, herself, or itself out as so engaging, or proposing or assisting in the promotion, formation, or financing of a broker-dealer, investment adviser, or agent, or corporation or other group to finance a broker-dealer, investment adviser, or

agent or the production of its business;

(C) Any rating bureau or organization;

(D) Any registrant or other person subject to this chapter; or

(E) If adequate information cannot be obtained, any broker-dealer, agent, investment adviser, holding company or person holding the shares of voting stock or proxies of a broker-dealer, investment adviser, or agent as voting trustee or otherwise, for the purpose of controlling the management thereof.

(3) Whenever the secretary of state decides to examine the affairs of any person, he or she shall designate one or more examiners and instruct them as to the scope of the examination. Upon demand, the examiner shall exhibit his or her official credentials to the person under examination.

(A) The secretary of state shall conduct each examination in an expeditious, fair, and impartial manner.

(B) Upon any such examination the secretary of state, or the examiner if specifically so authorized in writing by the secretary of state, shall have power to administer oaths, and the power to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.

(C) Every person being examined, and all of the officers, attorneys, employees, agents, and representatives of such person shall make freely available to the secretary of state or his or her examiners the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination.

(D) If the secretary of state or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with commonly accepted securities accounting principles, then the secretary of state may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the secretary of state or examiner has given him or her written notice and a reasonable opportunity to do so.

(E) Neither the secretary of state nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. Subsection (c)(2)(E) shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document, or file.

(F) Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to subsection (d) shall be guilty of a misdemeanor.

(4)(A) Upon completion of an examination, the examiner in charge shall make a true report thereof which shall comprise only facts appearing upon the books, records or other documents of the person examined, or as ascertained from the sworn testimony of its officers or agents or other individuals examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts. The report of examination shall be verified by the oath of the examiner in charge thereof.

(B) Such a report of examination of a broker-dealer or agent so verified shall be prima facie evidence in any delinquency proceeding against the broker-dealer or agent, its officers, employees, or agents upon the facts stated therein, whether or not the report has been filed as provided in subsection (d)(5)(C).

(5)(A) The secretary of state shall deliver a copy of the examination report to the person examined, together with a notice affording such person 20 days or such additional reasonable period as the secretary of state for good cause may allow, within which to review the report and recommend changes therein.

(B) If so requested by the person examined, then, within the period allowed under subsection (d)(5)(A), or if deemed advisable by the secretary of state without such request, the secretary of state shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and his or her order thereon; except, that the secretary of state may furnish a copy of the report to the governor, secretary of state or state treasurer pending final decision thereon.

(C) If no such closed hearing has been requested or held, then the examination report, with any

modifications, that the secretary of state deems proper, shall be accepted by the secretary of state and filed upon expiration of the review period provided for in subsection (d)(5)(A). The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

(D) The secretary of state shall forward to the person examined a copy of the examination report as filed, together with any recommendations or statements relating thereto which he or she deems proper.

(E) The report when so filed in the department shall be admissible in evidence in accordance with rules of the superior court, in any action or proceeding brought by the secretary of state against the person examined, or against its officers, employees, or agents. In any such action or proceeding, the secretary of state or his or her examiners may, however, at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the department.

(6) All reports pursuant to subsection (d) shall be absolutely privileged and although filed in the department as provided in subsection (d)(5) shall nevertheless not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection, except as the secretary of state in his or her discretion may deem advisable.

(7) The broker-dealer or other person examined pursuant to subsection (d) shall bear the expense of the examination. Such expenses shall be limited to a reasonable per diem allowance for compensation and expenses as determined by the secretary of state. The per diem allowance shall not exceed $100. Notwithstanding any other provision of law, domestic agents shall be exempt from bearing the expense of examinations conducted pursuant to subsection (d), except for the mileage expenses to and from the examination incurred by the department.

(8) Notwithstanding any other provision of law, the broker-dealer or other person liable for the travel expense of an examination pursuant to subsection (d)(7) shall make such payment either directly to the individual conducting the examination, whether or not such individual is a classified state employee, or to the state of New Hampshire, as may be directed by the secretary of state. The secretary of state may direct that the travel expense allowance be paid directly to the individual conducting the examination. The compensation allowance shall be paid directly to the state. The amounts paid directly to individuals conducting the examination pursuant to subsection (d) may be in excess of any amounts that may be appropriated for such purposes.

(e) Custody and discretionary authority bond or insurance. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed $100,000. The secretary of state may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in RSA 421-B:5-509(j)(2).

(f) Requirements for custody. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. An order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) Investment adviser brochure rule. Each investment adviser registered or required to be registered under

this chapter shall furnish to its customers the information set forth in Part 2 of Form ADV.

(h) Continuing education. An order issued under this chapter may require an individual registered under RSA 421-B:4-402 or RSA 421-B:4-404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under RSA 421-B:4-404.

(i) Privacy provisions. A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall comply with the privacy provisions of Regulation S-P adopted by the Securities and Exchange Commission.

(j) Requests for Information. The secretary of state may require at any reasonable time and in any reasonable manner from any person or company subject to this chapter:

(1) Statements, reports, including reports audited by independent public accountants, answers to questionnaires and other information, and evidence thereof, in whatever reasonable form he or she designates, and at such reasonable intervals as the secretary of state may choose, or from time to time;

(2) A full explanation of the programming of any data storage or communications systems in use; and

(3) Information from any books, records, electronic data processing systems, computers, or any other information storage system.

(k) Forms for reports. The secretary of state may prescribe forms for the reports under RSA 421-B:4-411(j). The forms shall be consistent, as far as practicable, with those prescribed by other states.

(l) Response to inquiries. Any officer, manager, or agent of any broker-dealer or investment adviser authorized to do or doing securities business in this state, and any person controlling or having a contract under which he or she has a right to control such a broker-dealer or investment adviser, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a broker-dealer's or investment adviser's business, shall reply promptly in writing or in other designated form, to any written inquiry from the secretary of state requesting a reply.

(m) Verification of communications. The secretary of state may require that any communication made to him or her under this section be verified.

(n) Privilege against defamation. In the absence of actual malice, no communication required by the secretary of state under this section shall subject the person making it to an action for damages for defamation.

(o) Privilege. The information obtained pursuant to RSA 421-B:4-411(j) shall be privileged.

(p) False filings. Any director, officer, agent, or employee of any broker-dealer, investment adviser, or agent who subscribes to, makes, or concurs in making or publishing, any annual or other statement required by law, having actual knowledge that the same contains any material statement which is false, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

(q) Updating of information. If the information contained in any document filed with the secretary of state is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under article 4.

(r) Incorporation of other securities laws and rules. Persons registered under this chapter to conduct securities business shall abide by the rules of the Securities and Exchange Commission, FINRA or successor organization, national and regional stock exchanges, and other self-regulatory organizations which have jurisdiction over the registrant, which set forth standards of conduct in the securities industry.

(s) Other Information for advisory clients. With respect to investment advisers, the secretary of state may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the secretary of state, in the secretary of state's discretion, information furnished to clients or prospective clients of an investment

adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:4-412

[RSA 421-B:4-412 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:4-412 Denial, Revocation, Suspension, Withdrawal, Restriction, Condition, or Limitation of Registration. –

(a) Disciplinary conditions, applicants. If the secretary of state finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration: (1) of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and (2) if the applicant is a broker-dealer or investment adviser, of any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser.

(b) Disciplinary conditions, registrants. If the secretary of state finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant, and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the secretary of state, under subsection (d)(5)(A) or (d)(5)(B), may not issue an order on the basis of an order under the state securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) Disciplinary penalties, registrants. If the secretary of state finds that the order is in the public interest and subsection (d) other than subsection (d)(7), (d)(11) or (d)(14) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of $2,500 for each violation on a registrant and if the registrant is (i) a broker-dealer or investment adviser, (ii) any partner, officer, or director, any person having similar functions, or (iii) any person directly or indirectly controlling the broker-dealer or investment adviser.

(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration in this state under this chapter or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with this chapter or the predecessor act or an order issued under this chapter or the predecessor act within the previous 10 years;

(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving (i) a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance, or (ii) theft, fraud, or any other offense involving dishonesty;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the secretary of state under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(A) the securities, depository institution, insurance, or other financial services regulator of a state or by

the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a state or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent; or

(F) a depository institution regulator suspending or barring a person from the depository institution business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the secretary of state may not enter an order against an applicant or registrant under subsection (d)(7) without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the secretary of state from conducting an audit or inspection under RSA 421-B:4-411(d) or refuses access to a registrant's office to conduct an audit or inspection under RSA 421-B:4-411(d);

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act;

(10) has not paid the proper filing fee within 30 days after having been notified by the secretary of state of a deficiency, but the secretary of state shall vacate an order under subsection (d)(10) when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous 10 years:

(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities

business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on subsection (d)(14) if the individual has successfully completed all examinations required by subsection (e). The secretary of state may require an applicant for registration under RSA 421-B:4-402 or RSA 421-B:4-404 who has not been registered in a state within the 2 years preceding the filing of an application in this state to successfully complete an examination.

(e) Examinations.

(1) Each applicant for individual broker-dealer registration or registration as an agent of a broker-dealer shall provide the secretary of state with proof of obtaining a passing score on the Uniform Securities Agent State Law Examination (Series 63 examination) or the Uniform Combined State Law Examination (Series 66 examination).

(2) Each applicant for individual investment adviser licensure or investment adviser representative registration shall provide the secretary of state with proof of obtaining a passing score on one of the following examination requirements:

(A) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(B) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(3)(A) Any individual who was registered or licensed as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2016 shall not be required to satisfy the examination requirements for investment adviser registration in this state, except that the secretary of state may require additional examinations for any individual found to have violated any state or federal securities law.

(B) Any individual who has not been registered or licensed in any jurisdiction for a period of 2 years shall be required to comply with the examination requirements.

(4)(A) The examination requirement shall not apply to an individual who upon application holds one of the following professional designations:

(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(iv) Chartered Financial Analyst (CFA) awarded by the CFA Institute;

(v) Chartered Investment Counselor (CIC) awarded by the Investment Advisor Association; or

(vi) Such other professional designation as the secretary of state may by rule or order recognize.

(B) The examination requirements shall not apply to a solicitor that submits an application to the secretary of state containing:

(i) A request for a waiver of the examination requirements;

(ii) A copy of the solicitation agreement;

(iii) A copy of the disclosure document of the investment adviser on whose behalf the solicitor solicits or refers clients disclosing the arrangements between the solicitor and the investment adviser; and

(iv) An undertaking that, prior to, or at the time of, entering into any investment advisory contract with a client, the investment adviser will obtain from such client a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and acknowledgment that the investment advisory contract is being entered into pursuant to a solicitation arrangement with the solicitor as described in the investment adviser's written disclosure statement.

(f) Summary process. The secretary of state may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before

final determination of an administrative proceeding. Upon the issuance of an order, the secretary of state shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the secretary of state within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) Procedural requirements. An order issued may not be issued under this section, except under subsection (f), without:

(1) appropriate notice to the applicant or registrant;

(2) opportunity for hearing; and

(3) findings of fact and conclusions of law in a record in accordance with RSA 541-A.

(h) Control person liability. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the secretary of state under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Article 5
Fraud and Liabilities

Section 421-B:5-501

[RSA 421-B:5-501 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-501 Fraud and Liabilities. –

(a) General fraud. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to:

(1) employ a device, scheme, or artifice to defraud;

(2) make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; or

(3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) Supplemental provisions.

(1) Suitability of recommendation; reasonable grounds required.

(A) In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to the customer's other security holdings and as to the customer's financial situation and needs.

(B) Before the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a broker-dealer, salesperson, investment adviser, or investment adviser representative shall make reasonable efforts to obtain information concerning:

(i) The customer's financial status;

(ii) The customer's tax status;

(iii) The customer's investment objectives; and

(iv) Such other information used or considered to be reasonable by the broker-dealer, salesperson, investment adviser, or investment adviser representative in making recommendations to the customer.

(2) Guarantees and excessive trading practices. It shall constitute a device, scheme or artifice to defraud within the meaning of this section for any person to:

(A) Represent in the offer or sale of securities, either directly or by implication, in writing or orally, that there is a guarantee against risk or loss;

(B) Induce excessive trading in a customer's account, or induce trading beyond that customer's known financial resources; or

(C) Effect transactions in the account of a customer without his knowledge or maintain discretionary accounts without written authorization.

(3) Recordkeeping and customer statements. Any act of any broker-dealer designed to effect with or for any customer's account, in respect to which such broker-dealer or his or her agent or employee is vested with any discretionary power, any transaction for the purchase or sale of a security shall constitute a "device, scheme or artifice to defraud" within the meaning of this section unless:

(A) immediately after effecting such transaction such broker-dealer make a record of such transaction, which record includes:

(i) the name of such customer;

(ii) the name, amount and price of the security; and

(iii) the date and time when such transaction took place; and

(B) the broker-dealer sends each month to each customer in whose account such broker-dealer exercises any discretionary authority, an itemized statement showing the funds and securities in the custody or possession of the broker-dealer at the end of such period, and all debits, credits, and transactions in such client's account during such period.

(4) Deceptive representations and actions. Without implied limitation, the following shall be deemed schemes or artifices to defraud:

(A) creating an atmosphere of false supply or demand or engaging in market manipulations.

(B) creating unreasonable delays in delivering securities.

(C) representing that securities will be listed on a national exchange or that application for listing will be made, without any basis in fact for such representation.

(D) selling or soliciting the purchase of one security conditioned upon the customer's agreement to purchase another security.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-502

[RSA 421-B:5-502 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-502 Prohibited Conduct in Providing Investment Advice. –

(a) Fraud in providing investment advice. It is unlawful for any person that advises others for compensation, either directly or indirectly 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 part of a regular business, issues or promulgates analyses or reports relating to securities:

(1) to employ a device, scheme, or artifice to defraud another person; or

(2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) Supplemental provisions.

(1) It shall constitute a fraudulent or deceptive act, practice, or course of business within the meaning of subsection (a) for any investment adviser registered or required to be registered to fail to disclose to any client or prospective client all material facts with respect to:

(A) a financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than $500 from such client, 6 months or more in advance; or

(B) a legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(2) A person who is an investment adviser or investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of the person's clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and the clients and the circumstances of each case, an investment adviser or investment adviser representative shall not engage in unethical business practices which constitute violations of subsection (a), including the following:

(A) Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(B) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(C) Introducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account in light of the fact that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. Subsection (b)(2)(B) appropriately forbids an excessive number of transaction orders to be induced by an investment adviser or investment adviser representative for a client's account.

(D) Placing an order to purchase or sell a security for the account of a client without the authority to do so.

(E) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client.

(F) Borrowing money or securities from a client unless a client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(G) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(H) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(I) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analysis to render advice or where a representative orders such a report in the normal course of providing service.

(J) Charging a client an unreasonable advisory fee.

(K) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice. including:

(i) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients or such services; and

(ii) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(L) Guaranteeing a client that a specific result will be achieved, such as gain or no loss, with advice which will be rendered.

(M) Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940, 17 C.F.R. 275.206(4)-1.

(N) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to in writing by the client.

(O) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser or investment adviser representative has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940, 17 C.F.R. 275.206(4)-2.

(P) Entering into, extending, or renewing any investment adviser contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the investment adviser or investment adviser representative, and that no assignment of such contract shall be made by the investment adviser without the written consent of the other party to the contract.

(Q) Entering into, extending, or renewing any investment adviser contract that provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

(i) Subsection (b)(2)(Q) shall not:

(a) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date; or

(b) apply to an investment advisory contract with a person (except a trust, governmental plan, collective trust fund, or separate account), provided that the contract relates to the investment of assets in excess of $1,000,000, if the contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the secretary of state by rule may specify.

(ii) Subsection (b)(2)(Q) shall not be deemed to prohibit an investment adviser from entering into, performing, renewing, or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, provided that the client entering into the contract subject to subsection (b)(2)(Q) is a qualified client defined as any one of the following persons:

(a) A natural person who or a company that immediately after entering into the contract has as least $750,000 under the management of the investment adviser.

(b) A natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(1) has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $1,500,000 at the time the contract is entered into; or

(2) is a qualified purchaser as defined in the Investment Company Act of 1940, 14 U.S.C. 802-a(a)(51)(A), at the time the contract is entered into.

(c) A natural person who immediately prior to entering into the contract is:

(1) an executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(2) an employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(d) The secretary of state, upon his or her own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from subsection (b)(2)(Q), if and to the extent that the exemption relates to an investment advisory contract with any person that the secretary of state determines does not need the protections of subsection (b)(2)(Q), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the secretary of state determines are consistent with subsection (b)(2).

(R) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of section 204A of the Investment Advisers Act of 1940.

(S) Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all investment advisers and investment adviser representatives registered or required to be registered under this chapter.

(T) Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this chapter or of the Investment Advisers Act of 1940 or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

(U) Engaging in any act, practice, or course of business which is fraudulent or deceptive in contravention of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(V) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this chapter or any rule adopted under it.

(3) The conduct set forth in subsection (b)(2) is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices, shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced in subsection (b)(2) shall apply to investment advisers and investment adviser representatives, regardless of whether the federal provision limits its application to investment advisers subject to federal registration.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-502-A

[RSA 421-B:5-502-A effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-502-A Custody of Client Funds or Securities by Investment Advisers. –

(a) Safekeeping required. It is unlawful and deemed to be a fraudulent or deceitful act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds

or securities unless:

(1) Notice to secretary of state. The investment adviser notifies the secretary of state promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV;

(2) Qualified custodian. A qualified custodian maintains those funds and securities:

(A) in a separate account for each client under that client's name; or

(B) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

(3) Notice to clients. If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(4) Account statements. The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and the amount of each security in the account at the end of the period and setting forth all transactions in the account during that period.

(5) Special rule for limited partnerships and limited liability companies. If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under subsection (a)(4) must be sent to each limited partner (or member or other beneficial owner).

(6) Independent verification. The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within 6 months of becoming subject to subsection (a)(6), except that, if the investment adviser maintains client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than 6 months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

(A) file a certificate on Form ADV-E with the secretary of state within 120 days of the time chosen by the independent certified public accountant in subsection (a)(6), stating that it has examined the funds and securities and describing the nature and extent of the examination.

(B) notify the secretary of state within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the secretary of state; and

(C) file within 4 business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) An explanation of any problems relating to examination scope or procedure that contributed to

such resignation, dismissal, removal, or other termination.

(7) Investment advisers acting as qualified custodians. If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this section as a qualified custodian in connection with advisory services the investment adviser provides to clients, the following shall apply:

(A) The independent certified public accountant the investment adviser retains to perform the independent verification required by subsection (a)(6) must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(B) The investment adviser must obtain, or receive from its related person, within 6 months of becoming subject to subsection (a)(7) and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser's clients, during the year;

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(8) Independent representatives. A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under subsections (a)(3) and (a)(4).

(b) Exceptions.

(1) Shares of open end mutual funds. With respect to shares of an open end mutual fund, the investment adviser may use the open end mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subsection (a);

(2) Certain privately offered securities.

(A) The investment adviser is not required to comply with subsection (a)(2) with respect to securities that are:

(i) acquired from the issuer in a transaction or chain of transactions not involving any public offering; and

(ii) uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(iii) Notwithstanding subsection (b)(2)(A), subsection (b)(2) shall apply with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in subsection (b)(4) and the investment adviser notifies the secretary of state in writing that the investment adviser intends to provide audited financial statements, as described in subsection (a). Such notification is required to be provided on Form ADV.

(3) Fee deduction. Notwithstanding subsection (a)(6), an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following conditions are met:

(A) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(B) The investment adviser has written authorization from the client to deduct advisory fees from the

account held with the qualified custodian;

(C) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(i) sends the qualified custodian an invoice or statement of the amount of the fee to be deducted from the client's account; and

(ii) sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee; and

(D) The investment adviser notifies the secretary of state in writing that the investment adviser intends to use the safeguards provided in subsection (b)(3). Such notification is required to be given on Form ADV.

(4) Limited partnerships subject to annual audit. An investment adviser is not required to comply with subsections (a)(3) and (a)(4) and shall be deemed to have complied with subsection (a)(6) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

(A) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:

(i) the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(ii) a listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50; and

(iii) the total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter;

(B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the secretary of state within 120 days of the end of its fiscal year;

(C) The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the secretary of state promptly after the completion of such audit;

(E) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the secretary of state within 4 business days accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

(F) The investment adviser must also notify the secretary of state in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

(5) Registered investment companies. The investment adviser is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940.

(c) Delivery to related persons. Sending an account statement under subsection (a)(5) or distributing audited financial statements under subsection (b)(4) shall not satisfy the requirements of this section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) Definitions. For purposes of this section the following definitions shall apply:

(1) "Control" means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

(A) (or persons having similar status or functions) is presumed to control the investment adviser;

(B) A person is presumed to control a corporation if the person:

(i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(C) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

(D) A person is presumed to control a limited liability company if the person:

(i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;

(ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or

(iii) is an elected manager of the limited liability company; and

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) "Custody" means holding directly or indirectly, client funds or securities, having any authority to obtain possession of them or having the ability to appropriate them. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(A) Custody includes:

(i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within 3 business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(B) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within 3 business days of receipt and the investment adviser maintains a ledger or other listing of all securities or funds held or obtained, including the following information:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate, and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(3) "Independent certified public accountant" means a certified public accountant that meets the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X 17 C.F.R. 210.2-01(b) and

(c).

(4) "Independent party" means a person that:

(A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(B) does not control and is not controlled by and is not under common control with the investment adviser;

(C) does not have, and has not had within the past 2 years, a material business relationship with the investment adviser; and

(D) shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of 2 years after serving as the person engaged in an independent party agreement.

(5) "Independent representative" means a person who:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with investment adviser; and

(C) does not have, and has not had within the past 2 years, a material business relationship with the investment adviser.

(6) "Qualified custodian" means the following:

(A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) A trust company;

(C) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;

(D) A registered futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(E) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(7) "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, or any person that is under common control with the investment adviser.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-503

[RSA 421-B:5-503 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-503 Evidentiary Burden. –

(a) Civil. In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) Criminal. In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-504

[RSA 421-B:5-504 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-504 Filing of Sales and Advertising Literature. –

(a) Filing requirement. Except as otherwise provided in subsection (b), an order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) Secretary of state's discretionary information requests. The secretary of state may require at any reasonable time and in any reasonable manner from any person or issuer subject to this title, statements; reports, including reports audited by independent public accountants and sales reports; answers to questionnaires; and other information and evidence thereof, in whatever reasonable form the secretary of state designates, and at such reasonable intervals as the secretary of state may choose, or from time to time.

(c) Excluded communications. This section does not apply to sales and advertising literature specified in subsection (a), or statements, reports or any other information referenced in subsection (b), which relate to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by RSA 421-B:2-201, RSA 421-B:2-202, or RSA 421-B:2-203 except as required pursuant to RSA 421-B:2-201(7).

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-505

[RSA 421-B:5-505 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-505 Misleading Filings. –

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-506

[RSA 421-B:5-506 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-506 Misrepresentations Concerning Registration or Exemption. –

The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the secretary of state that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the secretary of state has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to

make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-507

[RSA 421-B:5-507 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-507 Qualified Immunity. –

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the secretary of state, or designee of the secretary of state, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-508

[RSA 421-B:5-508 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-508 Criminal Penalties. –

(a) Any person who willfully violates any provisions of RSA 421-B:5-501(a) or RSA 421-B:5-502(a) or a cease and desist order or injunction issued pursuant to RSA 421-B:6-603 or RSA 421-B:6-604, or who violates RSA 421-B:5-505 knowing that the statement was false or misleading in any material respect, shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

(b) Any person who willfully violates RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-403(a), RSA 421-B:3-301(a), or RSA 421-B:5-506 shall be guilty of a misdemeanor. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. For any subsequent offense, any person shall be guilty of a class B felony.

(c) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-509

[RSA 421-B:5-509 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-509 Civil Liability. –

(a) Securities Litigation Uniform Standards Act. Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) Liability of seller to purchaser. A person is liable to the purchaser if the person sells a security in

violation of RSA 421-B:3-301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in subsection (b)(3).

(2) The tender referred to in subsection (b)(1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subsection (3).

(3) Actual damages in an action arising under subsection (b) are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) Liability of purchaser to seller. A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under subsection (c) is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in subsection (c)(3).

(2) The tender referred to in subsection (c)(1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subsection (c)(3).

(3) Actual damages in an action arising under subsection (c) are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or agent that sells or buys a security in violation of RSA 421-B:4-401(a), RSA 421-B:4-402(a), or RSA 421-B:5-506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (c)(3), or, if a seller, for a remedy as specified in subsections (c)(1) through (c)(3).

(e) Liability of unregistered investment adviser and investment adviser representative. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of RSA 421-B:4-403(a), RSA 421-B:4-404(a), or RSA 421-B:5-506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) Liability for investment advice. A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under subsection (f) is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) Joint and several liability. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

(1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) No civil cause of action. No civil cause of action may be based solely upon the failure of a broker-dealer or agent to comply with the registration requirements of RSA 421-B:4-401(a) or RSA 421-B:4-402(a), except a cause of action arising under subsection (d), RSA 421-B:6-603, or RSA 421-B:6-604.

(i) Right of contribution. A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(j) Survival of cause of action. A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(k) Statute of limitations. A person may not obtain relief:

(1) under subsection (b) for violation of RSA 421-B:3-301, or under subsection (d) or (e), unless the action is instituted within 2 years after the violation occurred; or

(2) under subsection (b), other than for violation of RSA 421-B:3-301, or under subsection (c) or (f), unless the action is instituted within the earlier of 2 years after discovery of the facts constituting the violation and 6 years after the violation.

(l) No enforcement of violative contract. A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(m) No contractual waiver. A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(n) Survival of other rights or remedies. The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in

this section or RSA 421-B:4-411(e).

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:5-510

[RSA 421-B:5-510 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:5-510 Rescission Offers. –

A purchaser or seller of a security, or a recipient of investment advice may not maintain an action under RSA 421-B:5-509 if:

(1) The purchaser or seller of a security, or recipient of investment advice receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under RSA 421-B:5-509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase in cash equal to the damages computed in the manner provided in subsection (1);

(C) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(D) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(d); and if the customer is a purchaser, an offer to pay as specified in subsection (1)(B); or, if the customer is a seller, an offer to tender or to pay as specified in subsection (1)(C);

(E) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(F) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest from the date of the violation causing the loss;

(2) the offer under subsection (1) states that it must be accepted by the purchaser or seller of a security, or the recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than 3 days, that the secretary of state, by order, specifies;

(3) the offeror has the present ability to pay the amount offered (a firm financing commitment from a reputable investor or other reputable financial source may be included in present ability to pay the amount

offered) or, if the purchaser of a security, has the present ability to tender the security under subsection (1);

(4) the offer under subsection (1) is delivered to the purchaser or seller of a security, or the recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice;

(5) the purchaser or seller of a security, or the recipient of investment advice that accepts the offer under subsection (1) in a record within the period specified under subsection (2) is paid in accordance with the terms of the offer; and

(6) The offer under subsection (1) is required to be filed with the secretary of state 20 days before the offering and conform in form and content as prescribed by order of the secretary of state.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Article 6
Administration and Judicial Review

Section 421-B:6-601

[RSA 421-B:6-601 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-601 Administration of Chapter. –

(a) Administration. The secretary of state shall administer this chapter. The secretary of state may appoint deputy secretaries of state or designees who shall serve as director and who may be classified or unclassified employees whose salary shall be that of or comparable to that of a deputy secretary of state, to administer the provisions of this chapter. The secretary of state may also appoint deputy directors who shall perform such duties as may be assigned by the secretary of state, deputy secretary of state, or designee, or director, to administer the provisions of this chapter. The secretary of state shall, to the greatest extent practical, physically and substantively consolidate the activities and functions related to corporations, limited partnerships, and other business organizations and entities administered by the department of state with the activities and functions related to the registration of securities.

(b) Notwithstanding any other provision of law, the secretary of state shall have exclusive authority and jurisdiction:

(1) To register securities.

(2) To license the following:

(A) Broker-dealers.

(B) Investment advisers.

(C) Agents.

(D) Investment adviser representatives.

(3) Together with the attorney general, to issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

(4) To bring administrative actions to enforce the securities law.

(5) To investigate and impose penalties for violations of the securities laws, including:

(A) Revoking, suspending, or denying licenses and registrations.

(B) Fines.

(C) Rescission, restitution, or disgorgement.

(6) Together with the attorney general, to bring actions pursuant to RSA 421-B:6-603.

(7) To investigate conduct that would be an unfair or deceptive act or practice under RSA 358-A and that is subject to the jurisdiction of the director of securities regulation pursuant to RSA 358-A:3, I.

(8) To issue letters of censure, caution, warning, or admonition pursuant to audits or inspections under RSA 421-B:4-409(d), investigations under RSA 421-B:6-602, or hearings under RSA 421-B:6-613.

(c) The exclusive authority and jurisdiction to issue licenses pursuant to RSA 421-B:6-601(b)(2) shall not be read to limit the authority of the department of insurance to license sellers of products where licensure is required both by RSA 421-B and Title XXXVII.

(d) The secretary of state shall have all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed by this chapter.

(e) Unlawful use of records or information. It is unlawful for the secretary of state or officer, employee, or designee of the secretary of state to use for personal benefit or the benefit of others records or other information obtained by or filed with the secretary of state that are not public under RSA 421-B:6-607(b). The secretary of state may disclose records or information in accordance with RSA 91-A.

(f) No common law privilege or exemption created or diminished. Except for the privilege from defamation in RSA 421-B:4-406(i), this chapter does not create or diminish any privilege or exemption that exists at common law, by statute, rule, or otherwise.

(g) Investor education. The secretary of state may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the secretary of state may collaborate with public and nonprofit organizations with an interest in investor education. The secretary of state may accept grants or donations from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether or not the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the secretary of state to require participation or monetary contributions of a registrant in an investor education program.

(h) Investor education fund. All moneys collected as an administrative penalty under this chapter and all moneys collected pursuant to RSA 421-B:6-614(a)(4), and (5), shall be credited to an investor education fund to be maintained by the state treasurer. Funds in excess of $725,000 at the end of each fiscal year shall be credited to the general fund. The secretary of state, after deducting administrative costs, shall use moneys credited to that fund to provide information to residents of this state about investments in securities, to help investors and potential investors evaluate their investment decisions, protect themselves from unfair, inequitable, or fraudulent offerings, choose their broker-dealers, agents, or investment advisers more carefully, be alert for false or misleading advertising or other harmful practices, and know their rights as investors. The state treasurer shall pay the expenses of investor education out of the investor education fund consisting of the funds. The investor education fund shall be nonlapsing and continually appropriated for the purpose of paying the expenses of investor education, except that the fund shall at no time exceed $725,000.

(i) The secretary of state shall collect all fees and charges required under this chapter and shall pay them to the state treasurer to be deposited in the general fund as unrestricted revenue, except as provided in RSA 421-B:6-601(h).

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-602

[RSA 421-B:6-602 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-602 Investigations and Subpoenas. –

(a) Authority to investigate. The secretary of state may:

(1) conduct public or private investigations within or outside of this state that the secretary of state considers necessary or appropriate to determine whether any person has violated, is violating, or is about to violate this chapter or an order issued under this chapter, or to aid in the enforcement of this chapter or in the

adoption of forms under this chapter;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the secretary of state determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be commenced; and

(3) publish information concerning an action, proceeding, or an investigation under, or a violation of, this chapter or an order issued under this chapter if the secretary of state determines it is necessary or appropriate in the public interest and for the protection of investors.

(4) hold hearings, upon reasonable notice, in respect to any matter arising out of the administration of this chapter;

(5) conduct investigations and hold hearings for the purpose of compiling information with a view to recommending changes in this chapter to the legislature; and

(6) require a broker-dealer, agent, or issuer, subject to the limitations set forth in section 18 of the Securities Act of 1933, to report to the secretary of state all transactions as they pertain to any security. Such reports shall be made within 10 days after demand therefor by the secretary of state and shall be open for public inspection only upon a court order. The secretary of state shall not make known, in any manner not provided by law, any information contained in such reports.

(b) Secretary of state's powers to investigate. For the purpose of an investigation under this chapter, the secretary of state or a designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of a statement, and require the production of any records that the secretary of state considers relevant or material to the investigation.

(c) Procedure and remedies for noncompliance. If a person fails to appear or refuses to testify, file a statement, produce records, or otherwise fails to obey a subpoena as required by the secretary of state under this chapter, the attorney general or the secretary of state may apply to the superior court or a court of another state to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the attorney general or secretary of state;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) order a civil penalty of not less than $2,500 for each violation; and

(7) grant any other necessary or appropriate relief.

(d) Assistance to securities regulator of another state. At the request of the securities regulator of another state or a foreign jurisdiction, the secretary of state may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters which the requesting regulator administers or enforces. The secretary of state may provide the assistance by using the authority to investigate and the powers conferred by this section as the secretary of state determines is necessary or appropriate. The assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the secretary of state may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the secretary of state on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the secretary of state to carry out the request for assistance.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-603

[RSA 421-B:6-603 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-603 Civil Enforcement. –

(a) Civil action instituted by attorney general or secretary of state. If it appears to the attorney general or secretary of state that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or an order issued under this chapter, the attorney general or the secretary of state may maintain an action in the superior court to enjoin the act, practice, or course of business and to enforce compliance with this chapter or an order issued under this chapter. The action may be brought in the superior court of the county in which the defendant resides or has his or her principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

(b) Relief available In an action under this section and upon a proper showing, the court may:

(1) grant or require a permanent or temporary injunction, restraining order, writ of mandamus, or a declaratory judgment;

(2) issue an order for other appropriate or ancillary relief, to include:

(A)(i) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the secretary of state, for the defendant or the defendant's assets.

(ii) Notwithstanding any law to the contrary, the court may grant, upon a proper showing by the secretary of state, a writ of attachment for the state of New Hampshire for the benefit of all aggrieved investors identified by the secretary of state which will have priority over any other attachment or lien granted in connection with a civil action brought by an aggrieved investor asserting a claim based on the same act or omission.

(B) an order to the secretary of state to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) the imposition of a civil penalty up to a maximum of $5,000 for a single violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or an order issued under this chapter or the predecessor act; and

(D) an order for the payment of prejudgment and postjudgment interest; or

(3) granting other relief that the court considers appropriate.

(c) No bond requirement. The attorney general or the secretary of state may not be required to post a bond.

(d) In a proceeding in superior court under this section where the state prevails, the secretary of state and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-604

[RSA 421-B:6-604 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-604 Administrative Enforcement. –

(a) Issuance of an order or notice. If the secretary of state determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, the secretary of state may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter; or

(2) issue an order under RSA 421-B:2-204.

(b) Summary process. An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the secretary of state shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order shall include a statement of the reasons for the order and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the secretary of state within 30 days after the date of service of the order, the order becomes final as to that person. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

(c) Procedure for final order. If a hearing is requested or ordered pursuant to subsection (b), a hearing shall be held pursuant to RSA 421-B:6-612. In accordance with RSA 421-B:6-612, the secretary of state shall issue a written decision stating the action to be taken by the department and may set forth findings of fact, conclusions of law, and disposition. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) Civil penalty. In a final order, the secretary of state may impose a civil penalty up to a maximum of $2,500 for a single violation. In addition, every such person who is subject to such civil penalty, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, or be barred from registration or licensure, including the forfeiture of any application fee.

(e) After notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated this chapter, or a rule or order under this chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under this chapter.

(f) The secretary of state may order any person who violates RSA 421-B:5-501, RSA 421-B:5-502, RSA 421-B:3-301, RSA 421-B:3-302, RSA 421-B:5-505 or a cease and desist order issued under this chapter, upon hearing, and in addition to any other penalty provided for by law, to make a written offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid for the security together with interest at the legal rate, less the amount of any income received by the purchaser on the security, or if the purchaser no longer owns the security, an offer to pay an amount in cash equal to consideration paid for the security together with interest at the legal rate, less the amount the purchaser received on disposition of the security and less the amount of any income received by the purchaser on the security.

(g) Costs. In a final order, the secretary of state may charge the actual cost of an investigation or proceeding for a violation of this chapter or an order issued under this chapter.

(h) Enforcement by court; further civil penalty. If a person fails to comply with an order under this section, the attorney general or secretary of state may petition a court of competent jurisdiction to enforce the order. The court may not require the attorney general or secretary of state to post a bond. If the court finds, after service and opportunity for hearing, that the person is not in compliance with the order, the court may

adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than $5,000 for each violation, and may grant any other relief the court determines is just and proper in the circumstances.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-605

[RSA 421-B:6-605 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-605 Orders, Interpretative Opinions, and Hearings. –

(a) Issuance and adoption of forms, orders, and rules. The secretary of state may: by order, define terms, whether or not used in this chapter, when those definitions are not inconsistent with this chapter.

(b) Findings and cooperation. All actions undertaken by the secretary of state pursuant to this section shall be taken only when the secretary of state finds such action necessary or appropriate to the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this title. In preparing forms, setting standards, and reviewing offerings, the secretary of state may cooperate with the securities regulators of other states, self regulatory organizations, and the Securities and Exchange Commission in order to implement the policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the form and content of registration statements, applications, reports, and requirements for issuers, broker-dealers, and investment advisors, where practicable.

(c) Financial statements. Subject to section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the secretary of state may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule or order under this chapter. Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisors Act of 1940, a rule or order under this chapter may establish the form and content of financial statements required under this chapter.

(d) Interpretative opinions. The secretary of state may provide interpretative opinions or may issue determinations that the secretary of state will not institute an enforcement proceeding or commence an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with the purposes intended by this chapter. The secretary of state may assess a reasonable charge for interpretative opinions or determinations that the secretary of state will not commence an action or institute an enforcement proceeding under this chapter.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-606

[RSA 421-B:6-606 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-606 Administrative Files and Opinions. –

(a) Public register of filings. The secretary of state shall maintain a register of all applications for registration of securities; registration statements; notice filings, applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no-action determinations issued under this chapter.

(b) Public availability. The secretary of state shall make all forms, interpretative opinions, and orders available to the public.

(c) Copies of public records. Upon request, the secretary of state shall furnish to a person a copy of a record that is a public record pursuant to RSA 91-A or a certification that the public record does not exist. The secretary of state may prescribe a reasonable charge for furnishing the record. A copy of the record certified or a certificate of its nonexistence by the secretary of state is prima facie evidence.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-607

[RSA 421-B:6-607 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-607 Public Records; Confidentiality. –

(a) Presumption of public records. Except as otherwise provided in subsection (b), records obtained by the secretary of state or filed under this chapter, including a record contained in or filed with any registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) The information contained in or filed with any registration statement, application, or report may be made available to the public in accordance with RSA 91-A. A person who files a record in connection with a registration statement under RSA 421-B:3-301 and RSA 421-B:3-303 through RSA 421-B:3-305 or a record under RSA 421-B:4-411(d) that contains trade secrets or confidential information may request that the secretary of state treat such record as confidential or privileged and subject to the exemptions from public disclosure under RSA 91-A.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-608

[RSA 421-B:6-608 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-608 Uniformity and Cooperation with Other Agencies. –

(a) Interstate cooperation. The secretary of state and the secretary of state's staff shall maintain close relations with the securities and corporate administrators of other states and shall actively participate in the activities and affairs of the North American Security Administrators Association and other organizations so far as it will, in the secretary of state's judgment, enhance the purposes of the securities and corporate laws. The actual and necessary travel and related expenses incurred in attending meetings of said association, their committees, subcommittees, hearings, and other official activities, as well as the general expenses of participation in such associations, shall be a charge on available funds and the appropriation of the office of the secretary of state.

(b) Statutory policy. This chapter shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it and to coordinate the interpretation of this chapter with the related federal regulation.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-609

[RSA 421-B:6-609 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-609 Judicial Review. –

Final orders issued by the secretary of state under this chapter are subject to judicial review in accordance with RSA 541.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-610

[RSA 421-B:6-610 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-610 Jurisdiction. –

(a) Sales and offers to sell. RSA 421-B:3-301, RSA 421-B:3-302, RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-403(a), RSA 421-B:4-404(a), RSA 421-B:5-501, RSA 421-B:5-506, RSA 421-B:5-509, and RSA 421-B:5-510 apply to a person that sells or offers to sell a security if the offer to sell or the sale is made in this state, or the offer to purchase or the purchase is made and accepted in this state.

(b) Purchases and offers to purchase. RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-403(a), RSA 421-B:4-404(a), RSA 421-B:5-501, RSA 421-B:5-506, RSA 421-B:5-509, and RSA 421-B:5-510 apply to a person that purchases or offers to purchase a security if the offer to purchase or the purchase is made in this state, or the offer to sell or the sale is made and accepted in this state.

(c) Offers in this state. For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

(1) originates from this state; or

(2) is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) Acceptances in this state. For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

(1) is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) Publications, radio, television, or electronic communication. An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous 12 months, or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio, television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(1) the program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(3) the program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) Investment advice and misrepresentations. RSA 421-B:4-403(a), RSA 421-B:4-404(a), RSA 421-B:4-405(a), RSA 421-B:5-502, RSA 421-B:5-505, and RSA 421-B:5-506 apply to a person if an act,

practice, or course of business instrumental in effecting prohibited or actionable conduct is engaged in this state, whether or not either party is then present in this state.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-611

[RSA 421-B:6-611 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-611 Service of Process. –

(a) Signed consent to service of process. A consent to service of process required by this chapter must be signed and filed in the form required by the secretary of state. A consent appointing the secretary of state the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor, or personal representative under this chapter or an order issued by the secretary of state under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) Conduct constituting appointment of agent for service. If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or an order issued by the secretary of state under this chapter and the person has not filed a consent to service of process under subsection (a), that act, practice, or course of business constitutes the appointment of the secretary of state as the person's agent for service of process in a noncriminal action or proceeding against the person, the person's successor, or personal representative.

(c) Procedure for service of process. Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the secretary of state, but it is not effective unless:

(1) the plaintiff, which may be the secretary of state, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the secretary of state, in a proceeding before the secretary of state, allows.

(d) Use in administrative proceedings. Service as provided in subsection (c) may be used in a proceeding before the secretary of state or by the secretary of state in a civil action in which the secretary of state is the moving party.

(e) Provision of opportunity to defend. If the process is served under subsection (c), the court, or the secretary of state in a proceeding before the secretary of state, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-612

[RSA 421-B:6-612 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-612 Severability Clause. –

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the

invalid provision or application, and to this end the provisions of this chapter are severable.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-613

[RSA 421-B:6-613 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-613 Hearing Procedures. –

(a) Notwithstanding any other law to the contrary, all adjudicatory proceedings pursuant to this chapter shall be conducted by the secretary of state or by a presiding officer appointed by the secretary of state. All hearings conducted pursuant to this chapter shall be governed by the provisions of this section and the provisions of RSA 541-A shall not apply to this chapter.

(b) A document shall be considered filed when it is actually received at the department's office in Concord, New Hampshire, and conforms to the requirements of this chapter.

(c) For the purposes of this section:

(1) All complaints, petitions, motions, responses, and replies shall be signed by the proponent of the document or, if the party appears by a representative, by the representative.

(2) License, registration, and exemption applications shall be signed only by the applicant or properly authorized designee.

(3) The signature on a document filed with the department shall constitute a certification that:

(A) The signer has read the document and is authorized to file it;

(B) There are good grounds to support the representations made therein; and

(C) The document has not been filed for purposes of delay or harassment.

(4) A willful violation of subsection (c), shall, to the extent consistent with the policy of the statutes administered by the secretary of state, be a basis for entering an order adverse to the party committing the violation.

(d) Within a reasonable time after receipt of a complaint:

(1) The department staff or a presiding officer shall review the complaint to determine whether any basis exists for administrative action.

(2) If the complaint is insufficient or no basis exists which warrants administrative action, the complaint shall be dismissed and no hearing shall be scheduled on such complaint.

(3) If the staff determines that sufficient basis exists which warrants administrative action, the staff shall petition the secretary of state for relief.

(4) On any complaint, the staff shall temporarily defer any action and refer the subject matter of the complaint to the appropriate agency if a more complete investigation is necessary. The results of the investigation shall be used to determine the necessity of conducting a hearing by the department.

(e) Within a reasonable time after receipt of a petition:

(1) The secretary of state may issue an order either denying or granting the petition or granting in part and denying in part. If any part of the petition is granted, the respondent shall be informed, as part of the hearing notice, of the respondent's right to a hearing.

(2) A petition may include a request for summary action prior to a hearing.

(3) The staff may, sua sponte, petition for relief whenever it has reasonable grounds to believe that a violation of law has occurred, is occurring, or is about to occur.

(f) Notices of hearings shall:

(1) Be prepared and forwarded in a manner which affords interested persons sufficient opportunity to prepare for and deal with the issues to be considered and decided upon at the hearing.

(2) Given in writing and addressed to the address of record of the person being called in for the hearing.

The notice shall be prepared on an official form of the department and shall be sent in a sealed envelope through the United States mail, personal services, or by Federal Express or other similar delivery service.

(g) A notice of hearing shall include:

(1) The time, date, and location of the hearing.

(2) The statute which has allegedly been violated and a statement of the legal authority under which the hearing is to be held.

(3) An explicit description of the alleged violation or a copy of the complaint or petition for relief or both the copy of complaint and petition for relief.

(h) Each hearing shall be set for a date as soon as practicable after the complaint has been received and reviewed. The hearing shall be scheduled to allow sufficient and reasonable time for the preparation of the case by both the department and interested parties.

(i) A request for continuance of a hearing shall be made in writing and received by the department, absent exigent circumstances, at least 5 working days prior to the hearing. Exigent circumstances include:

(1) Absence from the jurisdiction;

(2) Serious illness;

(3) Hospitalization;

(4) Death of a family member.

(j) The written request or motion for continuance shall contain the following:

(1) The specific reason or reasons for the request; and

(2) Optional dates and times when all interested parties shall be available.

(k) Each presiding officer may, at any stage of the hearing process, withdraw from a case if the presiding officer has or has had a personal or business relationship with any party, witness, or representative that may hinder such presiding officer from being able to arrive at an impartial decision on the issue or issues, or for any other reason that may interfere with the presiding officer's ability to remain impartial.

(l) Parties shall have the right to:

(1) Appear pro se or be represented by an attorney.

(2) Cross-examine witnesses; and

(3) Present evidence and witnesses on their own behalf.

(m) Except as provided as follows, administrative hearings shall be open to the public:

(1) The presiding officer may, on the presiding officer's own motion or at the request of a party, rule that the public be excluded from a hearing if necessary, pursuant to RSA 91-A:3, II, to protect the interests and rights of the parties to the hearing.

(2) In matters involving sensitive issues, a presiding officer may consult with the office of the attorney general for a ruling on the privacy issue.

(3) Members of the press shall be admitted to the hearing whenever the public is permitted. If the press is present at a hearing, the presiding officer shall brief them, off the record, in the presence of all parties, as to the nature and purpose of the hearing.

(4) In the event a party objects to the attendance of persons not involved in the hearing, the presiding officer shall ascertain the reason for such objection and determine whether the reason given justifies closing the hearing to such persons.

(n) Subject to the laws governing the department of state, and within the general scope of his powers, each presiding officer shall have the authority to:

(1) Schedule and hold hearings.

(2) Administer oaths and affirmations.

(3) Issue subpoenas on behalf of the state.

(4) Determine the order of proof in any proceeding.

(5) Receive relevant evidence and rule on offers of proof in hearings.

(6) Take judicial notice of any facts which are of common knowledge and general notoriety.

(7) Take, or cause to be taken, depositions.

(8) Regulate and control the course of an administrative hearing.

(9) Hold conferences for the settlement or simplification of issues, or for obtaining stipulations as to issues of fact or proof by consent of the parties.

(10) Dispose of procedural requests, including adjournments or continuances at the request of the parties or on the presiding officer's own motion.

(11) Interview and examine witnesses and parties as the case may require.

(12) Direct parties to appear at hearings.

(13) Consider and evaluate the facts and evidence on the record in making findings of fact and conclusions of law and dispositions.

(14) Determine credibility or weight of evidence in making findings of fact and conclusions of law.

(15) Render oral and written decisions, reports, or recommendations as authorized by statute.

(16) Take any action in a proceeding necessary to conduct and complete the case, consistent with applicable statutes, and precedents.

(o) During any proceeding, the secretary of state shall, upon motion or upon his own motion, direct all parties to attend an informal conference to aid in the disposition of the proceeding. Such conferences:

(1) May be recorded unless all parties wish to discuss possible settlements off the record. Such recordings shall be part of the record.

(2) Shall be held, in addition to settlement possibilities, to consider:

(A) Possible simplification of the issues.

(B) Possible amendments to the pleadings.

(C) Possible admissions of fact, admissions of documents, or other stipulations which might avoid unnecessary proof.

(D) The identification and possible limitations on the number of witnesses.

(E) Possible changes to the method of proceeding or hearing schedule which would otherwise be applicable.

(F) The distribution of written testimony, if any, and exhibits to the parties.

(G) Possible consolidation of the examination of witnesses by the parties.

(H) Any other matters which might contribute to the prompt, orderly, and fair conduct of the proceeding.

(p) A prehearing conference or other informal conference shall be conducted in person or, with the consent of the parties, shall be conducted by means of electronic communications.

(q) The presiding officer shall cause the administrative hearing to be electronically recorded. Such recording shall be made available, upon written request by a party and upon a fee sufficient to reimburse the full cost of providing the tape, or a true and accurate copy of such tape or tapes. A party may request, in writing, a transcript of the hearing but shall first pay the full costs for such transcription as determined by the secretary of state.

(r) In the event there is a clear dispute of facts between the parties in which credibility of testimony will determine the outcome of the hearing, the presiding officer on his own motion or that of a party, may sequester witnesses until they are called to testify.

(s) In any administrative hearing in which administrative action affecting the rights or privileges of any party may be taken, an oath or affirmation shall be administered by the presiding officer to each witness prior to receiving testimony, provided, however, that if a witness asserts an objection to the taking of an oath for religious or other related reasons, an affirmation shall be administered. Once a witness has been sworn at any hearing, it shall not be necessary to swear the witness again for subsequent testimony on the same day and in the same case. The record of the proceeding shall indicate that a person was recalled to testify and reminded that such person was still under oath or affirmation.

(t) Motions shall be in written form unless presented at the hearing. Written motions shall be included in

the record of the proceeding and filed together with the case file. Oral motions shall be recorded in full in any transcript of the proceeding or, at the discretion of the presiding officer, noted in the minutes of the proceeding and submitted in written form within a reasonable time. A presiding officer may rule upon a motion when made or may defer decision until a later time in the hearing, or until after the conclusion of the hearing.

(u) Administrative hearings shall not be bound by common law or statutory rules of evidence, nor by technical or formal rules of procedure. All relevant, material, and reliable evidence shall be admissible. Such evidence may include, but shall not be limited to, depositions, affidavits, official documents, and testimony of witnesses. Provided, however, the presiding officer may, in the presiding officer's discretion, exclude any irrelevant, immaterial, unreliable, or unduly cumulative or repetitious evidence. Applicable statutory and constitutional provisions and immunities requiring exclusion of evidence in civil proceedings shall be recognized, provided, however, that nothing contained herein shall prohibit a party from waiving such party's privilege or immunity.

(v) Within a reasonable time after the hearing, the presiding officer shall issue a written decision stating the action to be taken by the department and may set forth findings of fact, conclusions of law, and disposition. All decisions shall be reached upon the basis of a preponderance of the evidence. The decision of the presiding officer shall be construed as the decision of the secretary of state.

(w) Any party to whom notice has been forwarded pursuant to and in accordance with this section who fails to appear shall have a default judgment rendered against him.

(x) The presiding officer may take judicial notice.

(y) Where the interests of justice will be better served without prejudice to the substantial rights of any party, a presiding officer may sever one case from another or may consolidate 2 or more cases, preserving to all parties the right of appeal from the single or several decisions rendered.

(z) Once a hearing notice has been issued commencing an adjudicatory proceeding, no party shall communicate with the presiding officer or the secretary of state concerning the merits of the case except upon notice to all parties nor shall any party cause another person to make such communications.

(aa) Within 30 days after a final decision, any party may file a motion for reconsideration which shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the terms "reconsideration" and "rehearing." A motion for reconsideration shall:

(1) Identify each error of law, error of reasoning, or erroneous conclusion contained in the final order which the moving party wishes the secretary of state to reconsider.

(2) Concisely state the correct factual finding, correct reasoning, and correct conclusion being advocated.

(3) Include any memorandum of law the petitioner wishes to submit.

(bb) Within 30 days after a final decision, the presiding officer may reconsider, revise or reverse any final action on the presiding officer's own motion. If reconsideration is based upon the existing record, prior notice shall not be given to the parties. If the presiding officer believes further information or argument should be considered, the parties shall be provided with an appropriate notice and opportunity to be heard before any revision is made in the previous action.

(cc) The filing of a motion for reconsideration shall not operate as a stay of any order or decision, but a motion for stay may be combined with a motion for reconsideration.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Section 421-B:6-614

[RSA 421-B:6-614 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:6-614 Fees. –

(a) Initial fees and fees for amendments shall be as follows:

(1) Non-refundable registration fee for offers and sales of each class of open end mutual funds required to register under RSA 421-B:301 $ 1,000

(2) Registration fee prior to offers or sales of securities in this state

2/10 of one percent of the offering value of the securities offered in the registration statement, provided said fee shall not be more than $ 1,050, plus a $ 200 non-refundable examination fee

(3) Fee prior to offers and sales of securities in initial public offerings in this state under the Securities Act of 1933, 15 U.S.C. section 77r(b)(1)(A) $ 1,000

(4) Non-refundable fee prior to offers or sales of:

(A) Covered securities of other investment companies under section 18(b)(2) of the Securities Act of 1933 $ 500

(B) Non-issuer transactions under section 18(b)(4)(A) of the Securities Act of 1933--a one-time filing fee $ 500

(5) Fee for a notice filing under RSA 421-B:3-302(c) $ 500

(6) A copying and printing charge may be assessed per page for each document

(7) Non-refundable initial notice filing fee prior to offers or sales of each class of an open end mutual fund under section 18(b)(2) of the Securities Act of 1933 $ 1,000

(8) Initial notice filing fee prior to offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933

2/10 of one percent of the offering value of the securities offered in the registration statement, provided said fee shall not be more than $ 1,050, plus a $ 200 non-refundable initial notice fee

(b) Renewal fees shall be as follows:

(1) Annual notice filing fee for offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933

2/10 of one percent of the offering value of the securities offered in the registration statement, provided that the fee shall not be more than $ 1,050

(2) Annual non-refundable notice filing fee for offers and sales of each class of an issuer of open end mutual funds which are covered securities under section 18(b)(2) of the Securities Act of 1933, due on or before May 1 of each year $ 1,000

(3) Annual non-refundable registration fee for each class of an issuer of open end mutual funds, due on or before May 1 of each year, if required to register under RSA 421-B:3-301 $ 1,000

(4) Annual registration fee for securities offered in this state, due one year from the effective date of registration, and each year thereafter

2/10 of one percent of the offering value of the securities offered in the registration statement, provided that the fee shall not be more than $ 1,050

(c) In addition to any other penalties, provisions, or fees prescribed under this chapter, a late filing fee of 1/10 of one percent of the offering value of (1) securities offered in the registration statement, or (2) an offering of federal covered securities, provided that the fee shall not be more than $525, shall be imposed if:

(1) It is requested that the provisions of RSA 421-B:3-303(c)(2) be waived; or

(2) Securities sold in this state are more than registered on the effective application filed with the secretary of state, where the maximum registration fee has not been paid; or

(3) The registration application is amended to increase the amount registered in this state, where the maximum registration fee has not been paid, subsequent to the effectiveness of the registration in this state; or

(4) Federal covered securities sold in this state are more than described in the notice filing made, where the maximum notice filing fee or the total amount of a flat fee has not been paid; or

(5) The notice filing for federal covered securities sold in this state is amended to increase the amount to be sold, subsequent to the date the filing was made in this state.

(d)(1) Any person who offers or sells securities in New Hampshire under (A) RSA 421-B:3-303 or RSA

421-B:3-304, where less than the maximum filing fee has been paid in this state, or (B) a notice filing under section 18(b) of the Securities Act of 1933 where less than the maximum filing fee has been paid in this state shall file a sales report with the secretary of state. The sales report shall be filed one year from (1) the effective date of the registration or exemption or (2) the date the notice filing under section 18(b) of the Securities Act of 1933 was made with the secretary of state, and a final sales report shall be filed within 60 days of the termination of the offering. The sales report shall indicate the termination date, the total number and amount of sales in this state, and the total number and amount of sales in all jurisdictions. Any person who fails to file a sales report shall pay a penalty of $25 for each day of delinquency; provided, however, that, for good cause shown, the secretary of state may abate all or a portion of the delinquency penalty. Subdivision (d)(1) shall not apply to federal covered securities pursuant to section 18(b)(2) of 18(b)(4)(D) of the Securities Act of 1933 15 U.S.C. section 77r(b)(2) or 77r(b)(4)(D).

(2) Any person who fails to timely file the notice required by RSA 421-B:3-302(c) shall pay a penalty of $500 if the notice filing is delinquent by no more than 90 days or a penalty of $1,000 if the notice filing is delinquent by more than 90 days; provided, however, that if the filing is delinquent by more than one year, the person failing to timely file the required notice may be subject to RSA 421-B:6-603, RSA 421-B:6-604 and RSA 421-B:5-508 for that failure.

Source. 2015, 273:1, eff. Jan. 1, 2016.

Article 7
Application of Chapter

Section 421-B:7-701

[RSA 421-B:7-701 effective January 1, 2016; see also RSA Chapter 421-B set out above.]

421-B:7-701 Application of Act to Existing Proceeding and Existing Rights and Duties. –

(a) Applicability of predecessor act to pending proceedings and existing rights. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this chapter or may be instituted on the basis of conduct occurring before the effective date of this chapter, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within 5 years after the effective date of this chapter, whichever is earlier.

(b) Continued effectiveness under predecessor act. All effective registrations under the predecessor chapter, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued, or imposed under this chapter, but are exclusively governed by the predecessor act.

(c) Applicability of predecessor act to offers or sales. The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this chapter pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

Source. 2015, 273:1, eff. Jan. 1, 2016.