

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

03/26/2015 1106s  
3June2015... 1743h  
06/24/2015 2152CofC  
06/24/2015 2364EBA

2015 SESSION

15-1025  
09/08

SENATE BILL **266-FN**

AN ACT adopting the Uniform Securities Act.

SPONSORS: Sen. Little, Dist 8; Sen. Avard, Dist 12; Sen. Boutin, Dist 16; Sen. Bradley, Dist 3; Sen. D'Allesandro, Dist 20; Sen. Soucy, Dist 18; Sen. Watters, Dist 4; Sen. Pierce, Dist 5; Sen. Stiles, Dist 24; Sen. Lasky, Dist 13; Rep. Butler, Carr 7; Rep. Williams, Hills 4

COMMITTEE: Commerce

---

ANALYSIS

This bill adopts the Uniform Securities Act of 2002 as New Hampshire law.

-----

Explanation: Matter added to current law appears in **bold italics**.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 266-FN - VERSION ADOPTED BY BOTH BODIES

03/26/2015 1106s  
3June2015... 1743h  
06/24/2015 2152CofC  
06/24/2015 2364EBA

15-1025  
09/08

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT adopting the Uniform Securities Act.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Hampshire Uniform Securities Act. RSA 421-B is repealed and reenacted to read as follows:

2 UNIFORM SECURITIES ACT

3 Article 1

4 General Provisions

5 421-B:1-101 Short Title. This chapter may be cited as the New Hampshire Uniform Securities Act.

6 421-B:1-102 Definitions. In this chapter, unless the context otherwise requires:

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

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

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

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

16 (3) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer  
17 in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting  
18 or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director  
19 of a broker-dealer or issuer, or an individual having a similar status or performing similar functions  
20 is an agent only if the individual otherwise comes within the term. The term does not include an  
21 individual excluded by order issued under this chapter.

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

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

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

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

26 (D) a trust company;

27 (E) any other banking institution, whether incorporated or not, doing business under the

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 2 -**

1 laws of a State or of the United States, a substantial portion of the business of which consists of  
2 receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by  
3 national banks under the authority of the Comptroller of the Currency pursuant to section 1 of  
4 Public Law 87-722 12 U.S.C. section 92a, and which is supervised and examined by a state or federal  
5 agency having supervision over banks, and which is not operated for the purpose of evading this  
6 chapter; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 3 -**

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

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

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

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

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

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

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

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

23 (6) "Broker-dealer" means a person engaged in the business of effecting transactions in  
24 securities for the account of others or for the person's own account. The term does not include:

25 (A) an agent;

26 (B) an issuer;

27 (C) a bank;

28 (D) an international banking institution; or

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 4 -**

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

4           (9) “CRD” means the Central Registration Depository maintained by FINRA.

5           (10) “Department” means the department of state.

6           (11) “Depository institution” means:

7               (A) a bank; or

8               (B) a savings institution, trust company, credit union or similar institution, whether  
9 incorporated or not, doing business under the laws of a state or of the United States, a substantial  
10 portion of the business of which consists of receiving deposits or share accounts insured to the  
11 maximum amount authorized by statute by the Federal Deposit Insurance Corporation, National  
12 Credit Union Share Insurance Fund or a successor authorized by federal law and which is  
13 supervised and examined by a state or federal agency having supervision over such institutions, and  
14 which is not operated for the purpose of evading this chapter. The term does not include:

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

17               (ii) a Morris Plan bank; or

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

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

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

27           (13) “Federal covered investment adviser” means a person registered under the Investment  
28 Advisers Act of 1940.

29           (14) “Federal covered security” means a security that is, or upon completion of a transaction  
30 will be, a covered security under section 18(b) of the Securities Act of 1933 15 U.S.C. section 77r(b).

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

32           (16) “FINRA” means the Financial Industry Regulatory Authority.

33           (17) “Fraud,” “deceit,” and “defraud” are not limited to common law deceit.

34           (18) “Guaranteed” means guaranteed as to payment of all principal and all interest.

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

37               (A) Conducting trial-type evidentiary hearings;

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

2 (C) Directing the delivery of oral argument; or

3 (D) Any combination of these or similar methods.

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

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

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

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

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

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

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

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

21 (B) an insurance company;

22 (C) a separate account of an insurance company;

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

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

25 (F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in  
26 excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the  
27 Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the  
28 Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under  
29 the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a  
30 depository institution, a trust company, or an insurance company;

31 (G) a plan established and maintained by a state, a political subdivision of a state, or an  
32 agency or instrumentality of a state or a political subdivision of a state for the benefit of its  
33 employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made  
34 by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement  
35 Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of  
36 1934, an investment adviser registered or exempt from registration under the Investment Advisers  
37 Act of 1940, an investment adviser registered under this chapter, a depository institution, a trust

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 6 -**

1 company, or an insurance company;

2 (H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository  
3 institution or trust company, and its participants are exclusively plans of the types identified in  
4 subsection (22)(F) or (22)(G), regardless of the size of their assets, except a trust that includes as  
5 participants self-directed individual retirement accounts or similar self-directed plans;

6 (I) an organization described in 26 U.S.C. section 501(c)(3), corporation, Massachusetts  
7 trust or similar business trust, limited liability company, or partnership, not formed for the specific  
8 purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

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

12 (K) a private business development company as defined in section 202(a)(22) of the  
13 Investment Advisers Act of 1940, 15 U.S.C. section 80b-2(a)(22), with total assets in excess of  
14 \$10,000,000;

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

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

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

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

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

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

27 (24) “Insured” means insured as to payment of all principal and all interest.

28 (25) “International banking institution” means an international financial institution of  
29 which the United States is a member and whose securities are exempt from registration under the  
30 Securities Act of 1933.

31 (26) “Investment adviser” means a person that, for compensation, engages in the business of  
32 advising others, either directly or through publications or writings, as to the value of securities or  
33 the advisability of investing in, purchasing, or selling securities or that, for compensation and as a  
34 part of a regular business, issues or promulgates analyses or reports concerning securities. The term  
35 includes a financial planner or other person that, as an integral component of other financially  
36 related services, provides investment advice to others for compensation as part of a business or that

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 7 -**

1 holds itself out as providing investment advice to others for compensation. The term does not  
2 include:

3 (A) an investment adviser representative;

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

6 (C) a broker-dealer or its agents whose performance of investment advice is solely  
7 incidental to the conduct of business as a broker-dealer and that does not receive special  
8 compensation for the investment advice;

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

11 (E) a federal covered investment adviser;

12 (F) a bank;

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

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

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

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

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

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

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

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

1 (A) performs only clerical or ministerial acts;

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

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

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

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

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

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

16 (29)(A) “Investment contract” means either:

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

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

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

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

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

35 (ii) “Profits” shall include the promise to pay money, deliver securities, or deliver  
36 kind goods;

1           (iii) The third party providing the efforts may or may not be an affiliate or associated  
2 with the promoter or the common enterprise. Such efforts are those day-to-day management efforts  
3 which affect the success or failure of the enterprise, and do not include physical or mechanical efforts  
4 or extraordinary efforts such as the removal of the management of the common enterprise.

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

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

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

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

13           (30) “Investment metal” means any object that contains:

14           (A) Gold, silver, or platinum, or

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

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

19           (32) “Investment metal contract” or “investment gem contract”:

20           (A) means:

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

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

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

32           (B) But shall not include:

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

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

1           (iii) The sale of an investment metal or investment gem where full payment is made  
2 to the seller and physical delivery is made to the purchaser personally, and not to an agent, within  
3 20 days of the date of purchase provided that a purchaser may designate a bank or licensed broker-  
4 dealer, within this state only, and not within any other state, to accept physical delivery on his or  
5 her behalf if such bank or licensed broker-dealer maintains such investment metal or investment  
6 gem in safekeeping and as the specifically identifiable property of the purchaser;

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

9           (33) "Issuer" means a person that issues or proposes to issue a security, subject to the  
10 following:

11           (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit  
12 for a security, or share in an investment company without a board of directors or individuals  
13 performing similar functions is the person performing the acts and assuming the duties of depositor or  
14 manager pursuant to the trust or other agreement or instrument under which the security is issued.

15           (B) The issuer of an equipment trust certificate or similar security serving the same  
16 purpose is the person by which the property is or will be used or to which the property or equipment  
17 is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring  
18 payment of the certificate.

19           (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or  
20 in payments out of production under a lease, right, or royalty is the owner of an interest in the lease  
21 or in payments out of production under a lease, right, or royalty, whether whole or fractional, that  
22 creates fractional interests for the purpose of sale.

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

25           (35) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to  
26 sell, a security or interest in a security for value. The term does not include a tender offer that is  
27 subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78n(d).

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

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

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

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

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

3 (41) "Place of business" of a broker-dealer, an investment adviser, or a federal covered  
4 investment adviser means:

5 (A) an office at which the broker-dealer, investment adviser, or federal covered  
6 investment adviser regularly provides brokerage or investment advice or solicits, meets with, or  
7 otherwise communicates with customers or clients; or

8 (B) any other location that is held out to the general public as a location at which the  
9 broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or  
10 investment advice or solicits, meets with, or otherwise communicates with customers or clients.

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

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

14 (44) "Price amendment" means the amendment to a registration statement filed under the  
15 Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed  
16 under the Securities Act of 1933 that includes a statement of the offering price, underwriting and  
17 selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters  
18 dependent upon the offering price.

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

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

28 (47) "Record," except in the phrases "of record," "official record," and "public record," means  
29 information that is inscribed on a tangible medium or that is stored in an electronic or other medium  
30 and is retrievable in perceivable form.

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

33 (49) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or  
34 interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or  
35 solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 12 -**

1           (A) a security given or delivered with, or as a bonus on account of, a purchase of  
2 securities or any other thing constituting part of the subject of the purchase and having been offered  
3 and sold for value;

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

5           (C) a sale or offer of a warrant or right to purchase or subscribe to another security of  
6 the same or another issuer and a sale or offer of a security that gives the holder a present or future  
7 right or privilege to convert the security into another security of the same or another issuer,  
8 including an offer of the other security.

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

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

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

15           (53)(A) "Security" means a note; stock; treasury stock; security future; bond; debenture;  
16 evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement;  
17 membership interest in a limited liability company; partnership interest in a limited partnership;  
18 partnership interest in a registered limited liability partnership; collateral trust certificate;  
19 preorganization certificate or subscription; transferable share; investment contract; investment  
20 metal contract or investment gem contract; voting trust certificate; certificate of deposit for a  
21 security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option,  
22 or privilege on a security, certificate of deposit, or group or index of securities, including an interest  
23 therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a  
24 national securities exchange relating to foreign currency; or, in general, an interest or instrument  
25 commonly known as a "security"; or a certificate of interest or participation in, temporary or interim  
26 certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the  
27 foregoing. The term:

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

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

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

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

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

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

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

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

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

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

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

20           (ii) either:

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

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

25           (c) The partnerships are affiliates.

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

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

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 14 -**

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

2 (56) “Solicitor” means an investment adviser, or investment adviser representative that:

3 (A) Is licensed under this chapter;

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

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

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

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

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

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

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

18 (58) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
19 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the  
20 United States.

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

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

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

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

33 421-B:1-103 References to Federal Statutes. “Securities Act of 1933” (15 U.S.C. section 77a et  
34 seq.), “Securities Exchange Act of 1934” (15 U.S.C. section 78a et seq.), “Public Utility Holding  
35 Company Act of 1935”(15 U.S.C. section 79 et seq.), “Investment Company Act of 1940” (15 U.S.C.  
36 section 80a-1 et seq.), “Investment Advisers Act of 1940” (15 U.S.C. section 80b-1 et seq.), “Employee  
37 Retirement Income Security Act of 1974” (29 U.S.C. section 1001 et seq.), “National Housing Act” (12

1 U.S.C. section 1701 et seq.), “Commodity Exchange Act” (7 U.S.C. section 1 et seq.), “Internal Revenue  
2 Code” (26 U.S.C. section 1 et seq.), “Securities Investor Protection Act of 1970” (15 U.S.C. section 78aaa  
3 et seq.), “Securities Litigation Uniform Standards Act of 1998” (112 Stat. 3227), “Small Business  
4 Investment Act of 1958” (15 U.S.C. section 661 et seq.), and “Electronic Signatures in Global and  
5 National Commerce Act” (15 U.S.C. section 7001 et seq.) mean those statutes and the rules and  
6 regulations adopted under those statutes, as in effect on the date of enactment of this chapter.

7 421-B:1-104 References to Federal Agencies. A reference in this chapter to an agency or  
8 department of the United States is also a reference to a successor agency or department.

9 421-B:1-105 Electronic Records and Signatures. This chapter is subject to UETA. This chapter  
10 authorizes the filing of records and signatures, when specified by provisions of this chapter or by an  
11 order issued under this chapter, in a manner consistent with UETA.

12 **ARTICLE 2**

13 **Exemptions from Registration of Securities**

14 421-B:2-201 Exempt Securities. The following securities are exempt from the requirements of  
15 RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504:

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

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

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

28 (A) an international banking institution; or

29 (B) a bank or depository institution;

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

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

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 16 -**

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

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

15 (7) a security issued by a person organized and operated exclusively for religious,  
16 educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a  
17 chamber of commerce or trade or professional association, and not for pecuniary profit, no part of the  
18 net earnings of which inures to the benefit of a private stockholder or other person, or a security of a  
19 company that is excluded from the definition of an investment company under section 3(c)(10)(B) of  
20 the Investment Company Act of 1940; provided that such issuer shall have filed with the secretary of  
21 state a notice, on a form prescribed by the secretary of state, together with a copy of all offering  
22 material used in such offering of such security, at least 30 days before the first issuance under such  
23 offering. With respect to the offer or sale of a security offered under this exemption, upon the receipt  
24 of such notice of such an offering, the secretary of state may require that the availability of this  
25 exemption be limited by classifying securities, persons, and transactions, imposing different  
26 requirements for different classes, specifying the scope of the exemption and the grounds for denial  
27 or suspension, and requiring the issuer to file a notice specifying the material terms of the proposed  
28 offer and sale and copies of any proposed sales and advertising literature to be used. The exemption  
29 shall become effective if the secretary of state does not disallow the exemption within 30 days of the  
30 filing of such notice and other required information.

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

34 (9) Any interest in a common trust fund or similar fund maintained by a state bank  
35 organized and operating under the laws of New Hampshire, or a national bank wherever located, for  
36 the collective investment and reinvestment of funds contributed to such common trust fund or  
37 similar fund by the bank in its capacity as trustee, executor, administrator, or guardian; and any

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 17 -**

1 interest in a collective investment fund or similar fund maintained by the bank, or in a separate  
2 account maintained by an insurance company, for the collective investment and reinvestment of  
3 funds contributed to such collective investment fund or similar fund by the bank, or insurance  
4 company in its capacity as trustee or agent, which interest is issued in connection with an employee's  
5 savings, pension, profit sharing, or similar benefit, or a self-employed person's retirement plan.

6 421-B:2-202 Exempt Transactions. The following transactions are exempt from the  
7 requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504:

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

12 (2) a nonissuer transaction by or through a broker-dealer registered, or exempt from  
13 registration, under this chapter, and a resale transaction by a sponsor of a unit investment trust  
14 registered under the Investment Company Act of 1940, in a security of a class that has been  
15 outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

16 (A) the issuer of the security is engaged in business, the issuer is not in the  
17 organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool,  
18 or shell company that has no specific business plan or purpose or has indicated that its primary  
19 business plan is to engage in a merger or combination of the business with, or an acquisition of, an  
20 unidentified person;

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

22 (C) the security does not constitute the whole or part of an unsold allotment to, or a  
23 subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

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

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

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

30 (iii) an audited balance sheet of the issuer as of a date within 18 months before the  
31 date of the transaction or, in the case of a reorganization or merger when the parties to the  
32 reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the  
33 combined organization; and

34 (iv) an audited income statement for each of the issuer's 2 immediately previous  
35 fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a  
36 reorganization or merger when each party to the reorganization or merger had audited income  
37 statements, a pro forma income statement; and

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

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

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

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

9 (iv) the issuer of the security has total assets of at least \$2,000,000 based on an  
10 audited balance sheet as of a date within 18 months before the date of the transaction or, in the case  
11 of a reorganization or merger when the parties to the reorganization or merger each had such an  
12 audited balance sheet, a pro forma balance sheet for the combined organization;

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

16 (4) a nonissuer transaction by or through a broker-dealer registered, or exempt from  
17 registration, under this chapter in an outstanding security if the guarantor of the security files  
18 reports with the Securities and Exchange Commission under the reporting requirements of section  
19 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. section 78m or 78o(d);

20 (5) a nonissuer transaction by or through a broker-dealer registered, or exempt from  
21 registration, under this chapter in a security that:

22 (A) is rated at the time of the transaction by a nationally recognized statistical rating  
23 organization in one of its 4 highest rating categories; or

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

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

28 (ii) the issuer is engaged in business, is not in the organizational stage or in  
29 bankruptcy or receivership, and is not and has not been within the previous 12 months a blank  
30 check, blind pool, or shell company that has no specific business plan or purpose or has indicated  
31 that its primary business plan is to engage in a merger or combination of the business with, or an  
32 acquisition of, an unidentified person;

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 19 -**

1           (8) a nonissuer transaction involving an offer or sale to a federal covered investment adviser  
2 with investments under management in excess of \$100,000,000 acting in the exercise of  
3 discretionary authority in a signed record for the account of others;

4           (9) a transaction in a security, whether or not the security or transaction is otherwise  
5 exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests,  
6 or partly in such exchange and partly for cash, if the terms and conditions of the issuance and  
7 exchange or the delivery and exchange and the fairness of the terms and conditions have been  
8 approved by the secretary of state after a hearing conducted pursuant to RSA 421-B:6-605;

9           (10) a transaction between the issuer or other person on whose behalf the offering is made  
10 and an underwriter, or a transaction among underwriters;

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

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

16           (13) a sale or offer to sell to:

17               (A) an institutional investor;

18               (B) a federal covered investment adviser; or

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

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

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

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

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

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

33           (15) a transaction under an offer to bona fide existing security holders of the issuer,  
34 including persons that at the date of the transaction are holders of convertible securities, options, or  
35 warrants, if a commission or other remuneration, other than a standby commission, is not paid or  
36 given, directly or indirectly, for soliciting a security holder in this state;

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

3           (A) a registration or offering statement or similar record as required under the  
4 Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule  
5 165 adopted under the Securities Act of 1933, 17 C.F.R. 230.165; and

6           (B) a stop order of which the offeror is aware has not been issued against the offeror by  
7 the secretary of state or the Securities and Exchange Commission, and an audit, inspection, or  
8 proceeding that is public and that may culminate in a stop order is not known by the offeror to be  
9 pending;

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

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

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

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

18          (18) a transaction involving the distribution of the securities of an issuer to the security  
19 holders of another person in connection with a merger, consolidation, exchange of securities, sale of  
20 assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person,  
21 or its parent or subsidiary, are parties;

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

25          (20) an offer or sale of a security to a person not a resident of this state and not present in  
26 this state if the offer or sale does not constitute a violation of the laws of the state or foreign  
27 jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or  
28 scheme to evade this chapter;

29          (21) an employees' stock purchase, savings, stock option, restricted stock, profit-sharing,  
30 pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees  
31 issued under a compensatory benefit plan or compensation contract, contained in a record, established  
32 by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the  
33 issuer's parent for the participation of their employees including offers or sales of such securities to:

34           (A) directors; general partners; trustees, if the issuer is a business trust; officers;  
35 consultants; and advisors;

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 21 -**

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

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

7 (22) a transaction involving:

8 (A) a stock dividend or equivalent equity distribution, whether the corporation or other  
9 business organization distributing the dividend or equivalent equity distribution is the issuer or not, if  
10 nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity  
11 distribution other than the surrender of a right to a cash or property dividend if each stockholder or other  
12 equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

13 (B) an act incident to a judicially approved reorganization in which a security is issued  
14 in exchange for one or  
15 more outstanding securities, claims, or property interests, or partly in such exchange and partly for  
16 cash; or

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

19 (23) a nonissuer transaction in a outstanding security by or through a broker dealer  
20 registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a  
21 foreign jurisdiction designated by subsection (23) or by order issued under this chapter by the  
22 secretary of state; has been subject to continuous reporting requirements in the foreign jurisdiction  
23 for not less than 180 days before the transaction; and the security is listed on the foreign  
24 jurisdiction's securities exchange that has been designated by subsection (23) or by order issued  
25 under this chapter by the secretary of state, or is a security of the same issuer that is of senior or  
26 substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any  
27 of the foregoing. For purposes of subsection (23), Canada, together with its provinces and territories,  
28 is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities  
29 exchange. After an administrative hearing in compliance with RSA 421-B:6-605, the secretary of  
30 state, by order issued under this chapter, may revoke the designation of a securities exchange under  
31 subsection (23), if the secretary of state finds that revocation is necessary or appropriate in the  
32 public interest and for the protection of investors; or

33 (24) an offer or sale by a cooperative association organized and operated as a nonprofit entity  
34 under the laws of any state of its securities only if (A) such securities are either (i) offered and sold in  
35 connection with establishing bona fide membership in such association or (ii) issued as a patronage  
36 dividend to its bona fide members, (B) in the case of a purchase, the purchase of such securities is

1 necessary or incidental to establishing membership in such association, and (iii) the primary purpose  
2 of membership in such association is to obtain or derive one or both of goods and services.

3 421-B:2-202-A Implementing Provisions.

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

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

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

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

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

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

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

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

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

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

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

36 (2) Integration of Offerings. Offers and sales of securities that are made more than 6  
37 months before the start of an offering or are made more than 6 months after completion of an

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

- 8 (A) Whether the sales are part of a single plan of financing;
- 9 (B) Whether the sales involve issuance of the same class of securities;
- 10 (C) Whether the sales have been made at or about the same time;
- 11 (D) Whether the same type of consideration is being received; and
- 12 (E) Whether the sales are made for the same general purpose.

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

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

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

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

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

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

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

37 421-B:2-203 Additional Exemptions and Waivers. An order issued by the secretary of state

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

6 421-B:2-204 Denial, Suspension, Revocation, Conditions, or Limitation of Exemptions.

7 (a) Enforcement related powers. Except with respect to securities or a transaction preempted by  
8 section 18(b) of the Securities Act of 1933, an order by the secretary of state under this chapter may  
9 deny, suspend application of, condition, limit, or revoke an exemption created under RSA 421-B:2-  
10 201(3)(C) or RSA 421-B:2-202 or an exemption or waiver created under RSA 421-B:2-203 with  
11 respect to a specific security, transaction, or offer. An order under this section may be issued only  
12 pursuant to the procedures in RSA 421-B:3-306(d) or RSA 421-B:6-604 and only prospectively.

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

20 ARTICLE 3

21 Registration of Securities and

22 Notice Filing of Federal Covered Securities

23 421-B:3-301 Securities Registration Requirement.

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

25 (1) the security is a federal covered security;

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

28 (3) the security is registered under this chapter.

29 (b) Articles of incorporation for a new corporation or an application for a certificate of authority  
30 for a foreign corporation under RSA 293-A, articles of incorporation for a professional corporation or  
31 an application for a certificate of authority for a foreign professional corporation under RSA 294-A,  
32 an application for registration of a registered limited liability partnership or a notice of registration  
33 of a foreign registered limited liability partnership under RSA 304-A, a certificate of limited  
34 partnership for a new limited partnership or an application for registration of a foreign limited  
35 partnership under RSA 304-B, a certificate of formation for a new limited liability company or an  
36 application for registration as a foreign limited liability company under RSA 304-C, and a certificate  
37 of formation for a new professional limited liability company or an application for registration as a

1 foreign professional limited liability company under RSA 304-D shall contain a statement that the  
2 capital stock of the corporation, memberships, or the interests of the limited partnership, limited  
3 liability partnership, or limited liability company have been registered, or when offered will be  
4 registered, under this chapter or are exempted, or when offered will be exempted, under this chapter,  
5 or are or will be offered in a transaction exempted from registration under this chapter, or are not  
6 securities under this chapter, or are federal covered securities under this chapter. In the case of a  
7 New Hampshire corporation, professional corporation, limited partnership, registered limited  
8 liability partnership, limited liability company, or professional limited liability company, the articles  
9 of incorporation, certificate of limited partnership, or certificate of formation shall state that the  
10 capital stock, memberships, or interests in the limited partnership, limited liability partnership, or  
11 limited liability company will be sold or offered for sale in compliance with this chapter. The  
12 statement included pursuant to this paragraph shall not by itself constitute a registration, or a  
13 notice of exemption from registration, of securities within the meaning of sections 448 and 461(i)(3)  
14 of the United States Internal Revenue Code and the regulations promulgated thereunder.

15 421-B:3-302 Notice Filing.

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

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

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

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

32 (b) Notice filing effectiveness and renewal. A notice filing under subsection (a) is effective for  
33 one year commencing on the later of the notice filing or the effectiveness of the offering filed with the  
34 Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing  
35 by filing a copy of those records filed by the issuer with the Securities and Exchange Commission  
36 and by paying a renewal fee. A previously filed consent to service of process complying with

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 26 -**

1 RSA 421-B:6-611 may be incorporated by reference in a renewal. A renewed notice filing becomes  
2 effective upon the expiration of the filing being renewed.

3 (c) Notice filings for federal covered securities described in section 18(b)(4)(D) of the Securities Act of  
4 1933. Any person selling a security that is a federal covered security described in section 18(b)(4)(D) the  
5 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,  
6 including the Appendix, as promulgated by the Securities and Exchange Commission, a consent to  
7 service of process complying with RSA 421-B:6-611 signed by the issuer not later than 15 days after the  
8 first sale of the federal covered security in this state, and the payment of a fee including any late filing  
9 fee, under RSA 421-B:6-614.

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

18 421-B:3-303 Securities Registration by Coordination.

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

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

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

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

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

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

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

36 (6) copies of disclosures, which shall be included in the offering documents, consistent with  
37 policies, guidelines, and standards, including suitability standards, promulgated by the North

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 27 -**

1 American Securities Administrators Association, in order to provide full and fair disclosure for the  
2 benefit of investors.

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

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

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

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

20 (e) Effectiveness of registration statement. If the federal registration statement becomes  
21 effective before each of the conditions in this section is satisfied or is waived by the secretary of state,  
22 the registration statement is automatically effective under this chapter when all the conditions are  
23 satisfied or waived. If the registrant notifies the secretary of state of the date when the federal  
24 registration statement is expected to become effective, the secretary of state shall promptly notify  
25 the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a  
26 record, indicating whether all the conditions are satisfied or waived and whether the secretary of  
27 state intends the institution of a proceeding under RSA 421-B:3-306. The notice by the secretary of  
28 state does not preclude the institution of such a proceeding.

29 421-B:3-304 Securities Registration and Qualification.

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

31 (b) Required records. A registration statement under this section must contain the information  
32 or records specified in RSA 421-B:3-305, a consent to service of process complying with RSA 421-B:6-  
33 611, and the following information or records, which may be satisfied if included in the materials  
34 provided pursuant to subsection (b)(13):

35 (1) with respect to the issuer and any significant subsidiary, its name, address, and form of  
36 organization; the state or foreign jurisdiction and date of its organization; the general character and

1 location of its business; a description of its physical properties and equipment; and a statement of  
2 the general competitive conditions in the industry or business in which it is or will be engaged;

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

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

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

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

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

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

30 (8) the kind and amount of securities to be offered; the proposed offering price or the method  
31 by which it is to be computed; any variation at which a proportion of the offering is to be made to a  
32 person or class of persons other than the underwriters, with a specification of the person or class; the  
33 basis on which the offering is to be made if otherwise than for cash; the estimated aggregate  
34 underwriting and selling discounts or commissions and finders' fees, including separately cash,  
35 securities, contracts, or anything else of value to accrue to the underwriters or finders in connection  
36 with the offering or, if the selling discounts or commissions are variable, the basis of determining  
37 them and their maximum and minimum amounts; the estimated amounts of other selling expenses,

1 including legal, engineering, and accounting charges; the name and address of each underwriter and  
2 each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which  
3 the distribution is to be made or the proposed form of any such agreement whose terms have not yet  
4 been determined; and a description of the plan of distribution of any securities that are to be offered  
5 otherwise than through an underwriter;

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

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

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

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

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

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

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

36 (16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other  
37 person whose profession gives authority for a statement made by the person, if the person is named

1 as having prepared or certified a report or valuation, other than an official record, that is public,  
2 which is used in connection with the registration statement;

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

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

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

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

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

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

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

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

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

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

33 (3) payment pursuant to such a sale; or

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

35 421-B:3-305 Securities Registration Filings.

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

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

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

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

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

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

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

15 (e) Nonissuer distribution. In the case of a nonissuer distribution, information or a record may  
16 not be required under subsection (i) or RSA 421-B:3-304, unless it is known to the person filing the  
17 registration statement or to the person on whose behalf the distribution is to be made or unless it  
18 can be furnished by those persons without unreasonable effort or expense.

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

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

32 (h) Effective period. Except while a stop order is in effect under RSA 421-B:3-306, a registration  
33 statement is effective for one year after its effective date, or for any longer period designated in an  
34 order under this chapter during which the security is being offered or distributed in a nonexempted  
35 transaction by or for the account of the issuer or other person on whose behalf the offering is being  
36 made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or  
37 subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction,

1 all outstanding securities of the same class identified in the registration statement as a security  
2 registered under this chapter are considered to be registered while the registration statement is  
3 effective. If any securities of the same class are outstanding, a registration statement may not be  
4 withdrawn until one year after its effective date. A registration statement may be withdrawn only  
5 with the approval of the secretary of state.

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

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

16 421-B:3-306 Denial, Suspension, and Revocation of Securities Registration.

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

20 (1) the registration statement as of its effective date or before the effective date in the case of  
21 an order denying effectiveness, an amendment under RSA 421-B:3-305(j) as of its effective date, or a  
22 report under RSA 421-B:3-305(i) is incomplete in a material respect or contains a statement that, in  
23 the light of the circumstances under which it was made, was false or misleading with respect to a  
24 material fact;

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

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

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

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

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

7 (7) the offering:

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

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

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

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

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

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

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

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

37 (2) an opportunity for hearing; and



1 adviser, or a federal covered investment adviser by an order of the secretary of state under this  
2 chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer  
3 or issuer does not violate subsection (c) if the broker-dealer or issuer did not know and in the  
4 exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon  
5 request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or  
6 waive, in whole or in part, the application of the prohibitions of subsection (c) to the broker-dealer.

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

9 (e) Canadian broker-dealers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (C) As otherwise permitted by this chapter.

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

1 revoked for a breach of the anti-fraud provisions of this chapter or the requirements in subsection  
2 (e).

3 (f) Branch offices.

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

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

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

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

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

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

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

26 (iii) The volume of business conducted.

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

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

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

30 421-B:4-402 Agent Registration Requirements and Exemptions.

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

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 38 -**

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

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

13           (4) an individual who represents an issuer that effects transactions solely in federal covered  
14 securities of the issuer, but an individual who effects transactions in a federal covered security  
15 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  
16 77r(b)(4)(D), is not exempt if the individual is compensated in connection with the agent's  
17 participation by the payment of commissions or other remuneration based, directly or indirectly, on  
18 transactions in those securities;

19           (5) an individual who represents a broker-dealer registered in this state under RSA 421-B:4-  
20 401(a) or exempt from registration under RSA 421-B:4-401(b) in the offer and sale of securities for an  
21 account of a nonaffiliated federal covered investment adviser with investments under management  
22 in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a  
23 signed record;

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

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

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

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

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

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

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

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

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

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

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

14               (B) institutional investors; or

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

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

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

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

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

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

1 (f) Name of branch office.

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

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

10 421-B:4-404 Investment Adviser Representative Registration Requirement and Exemptions.

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

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

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

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

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

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

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

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

10 421-B:4-405 Federal Covered Investment Adviser Notice Filing Requirement.

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

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

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

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

21 (B) institutional investors;

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

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

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

25 (c) Notice filing procedure. A person acting as a federal covered investment adviser, not  
26 excluded under subsection (b), shall file a notice, a consent to service of process complying with  
27 RSA 421-B:6-611, and such records as have been filed with the SEC under the Investment Advisers  
28 Act of 1940 required by order issued under this chapter and pay the fees specified in RSA 421-B:4-  
29 410(c). Initial fees shall be paid before business is transacted in this state, and annual fees shall be  
30 paid on or before December 31 of the current year for the ensuing year. Federal covered advisers  
31 shall submit copies to the secretary of state of all documents filed with the SEC pursuant to the  
32 federal securities laws within 10 business days of their submission to the SEC. Documents and fees  
33 that are accepted by IARD may be submitted through IARD. Other documents filed or deemed filed  
34 with the SEC shall be submitted directly to the secretary of state.

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

36 421-B:4-406 Registration by Broker-Dealer, Agent, Investment Adviser, and Investment Adviser  
37 Representative.

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

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

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

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

19           (c) Effectiveness of registration.

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

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

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

31           (d) Registration renewal. A registration is effective until midnight on December 31 of the year  
32 for which the application for registration is filed. Unless an order is in effect under RSA 421-B:4-  
33 412, a registration may be automatically renewed each year by filing such records within 60 days  
34 after the close of its fiscal year (subject to any extension by order promulgated by the secretary of  
35 state) as are required by order issued under this chapter, by paying the fee specified in RSA 421-B:4-  
36 410, and by paying costs charged by the secretary of state for processing the filings. In addition, the  
37 secretary of state may require at any reasonable time and in any reasonable manner from any

1 person subject to this chapter or any person controlling any such person any statements, reports,  
2 financial statements, answers to questionnaires and other information in whatever reasonable form  
3 he or she designates, including information from any electronic data processing or storage system.

4 (e) Certain requirements for broker-dealers.

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

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

12 (f) Certain requirements for investment advisers.

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

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

17 (A) specimens of investment advisory contracts.

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

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

23 (4)(A) Any documents or fees required to be filed with the secretary of state that are not  
24 permitted to be filed with or cannot be accepted by the IARD shall be filed directly with the secretary  
25 of state. The application shall not be complete until all documents and fees required by this chapter  
26 have been submitted through the IARD, where possible, or submitted to and received directly by the  
27 secretary of state.

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

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

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

35 (5)(A) An investment adviser shall file with the IARD, in accordance with the instructions to  
36 Form ADV, any amendments to the investment adviser's Form ADV. An amendment shall be

1 considered to be filed promptly if the amendment is filed within 30 days of the event that requires  
2 the filing of the amendment.

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

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

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

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

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

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

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

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

33 421-B:4-407 Succession and Change in Registration of Broker-Dealer or Investment Adviser.

34 (a) Succession. A broker-dealer or investment adviser may succeed to the current registration of  
35 another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser,  
36 and a federal covered investment adviser may succeed to the current registration of an investment  
37 adviser or notice filing of another federal covered investment adviser, by filing as a successor an

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 45 -**

1 application for registration pursuant to RSA 421-B:4-401 or RSA 421-B:4-403 or a notice pursuant to  
2 RSA 421-B:4-405 for the unexpired portion of the current registration or notice filing.

3 (b) Organizational change. A broker-dealer or investment adviser that changes its form of  
4 organization or state of incorporation or organization may continue its registration by filing an  
5 amendment to its registration if the change does not involve a material change in its financial  
6 condition or management. The amendment becomes effective when filed or on a date designated by  
7 the registrant in its filing. The new organization is a successor to the original registrant for the  
8 purposes of this chapter. If there is a material change in financial condition or management, the  
9 broker-dealer or investment adviser shall file a new application for registration. A predecessor  
10 registered under this chapter shall stop conducting its securities business other than winding down  
11 transactions and shall file for withdrawal of broker-dealer or investment adviser registration within  
12 45 days after filing its amendment to effect succession.

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

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

18 421-B:4-408 Termination of Employment or Association of Agent and Investment Adviser  
19 Representative and Transfer of Employment or Association.

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 46 -**

1 requirement of RSA 421-B:4-406(a) and payment of the filing fee required under RSA 421-B:4-410,  
2 the registration of the agent or investment adviser representative is:

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

6 (2) temporarily effective as of the date of the completed filing, if the agent's CRD record or  
7 successor record or the investment adviser representative's IARD record or successor record contains  
8 a new or amended disciplinary disclosure since the agent's most recent previous registration or  
9 licensure application in the state.

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

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

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

26 421-B:4-409 Withdrawal of Registration of Broker-Dealer, Agent, Investment Adviser, and  
27 Investment Adviser Representative.

28 (a) The secretary of state may determine by order the requirements and procedures for  
29 withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser  
30 representative. Withdrawal of registration by a broker-dealer, agent, investment adviser, or  
31 investment adviser representative becomes effective 60 days after the filing of the application to  
32 withdraw or within any shorter period as provided by order issued under this chapter unless a  
33 revocation or suspension proceeding is pending when the application is filed. If a proceeding is  
34 pending, withdrawal becomes effective when and upon such conditions as required by order issued  
35 under this chapter. The secretary of state may institute a revocation or suspension proceeding under  
36 RSA 421-B:4-412 within one year after the withdrawal became effective automatically and issue a

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 47 -**

1 revocation or suspension order as of the last date on which registration was effective if a proceeding  
2 is not pending.

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

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

11 421-B:4-410 Filing Fees.

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

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

20 (c) Investment advisers. A person shall pay a fee of \$250 when filing an application for  
21 registration as an investment adviser and a fee of \$200 when filing a renewal of registration as an  
22 investment adviser. If the filing results in a denial or withdrawal, the secretary of state shall retain  
23 \$50 of the fee.

24 (d) Investment adviser representatives. The fee for an individual is \$125 when filing an  
25 application for registration as an investment adviser representative, a fee of \$100 (\$50 per agent;  
26 \$50 per license) when filing a renewal of registration as an investment adviser representative, and a  
27 fee of \$100 when filing a change of registration as an investment adviser representative. If the filing  
28 results in a denial or withdrawal, the secretary of state shall retain \$25 of the fee.

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

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

33 (g) Dual agent/investment adviser representative. An investment adviser representative who is  
34 registered as an agent under RSA 421-B:4-402 and who represents a person that is both registered as a  
35 broker-dealer under RSA 421-B:4-401 and registered as an investment adviser under RSA 421-B:4-403  
36 or required as a federal covered investment adviser to make a notice filing under RSA 421-B:4-405 is

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 48 -**

1 not required to pay an initial or annual registration fee for registration as an investment adviser  
2 representative.

3 421-B:4-411 Postregistration Requirements.

4 (a) Financial requirements. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section  
5 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, an order issued under this  
6 chapter may establish minimum financial requirements for broker-dealers registered or required to  
7 be registered under this chapter and investment advisers registered or required to be registered  
8 under this chapter, including without limitation the following:

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

16 (2) Each investment adviser registered or required to be registered under this chapter which  
17 has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000  
18 and every investment adviser registered or required to be registered under this chapter which has  
19 discretionary authority over client funds or securities, but does not have custody of client funds or  
20 securities, shall maintain at all times a minimum net worth of \$10,000. The secretary of state shall  
21 specify by order the requirements for determining and reporting such net worth to the secretary of  
22 state. Any such investment adviser which has its principal place of business in another state shall  
23 maintain such minimum net worth as required by the state in which it maintains its principal place  
24 of business, provided that the investment adviser is registered or licensed in such state and is in  
25 compliance with such state's minimum net worth requirements.

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

29 (b) Financial reports.

30 (1) Every broker-dealer or agent doing business in this state unless otherwise directed shall,  
31 within 60 days after the close of its fiscal year, make and transmit to the secretary of state a filing  
32 under oath of its chief managing officer showing or providing the financial statement, changes in  
33 management, changes in ownership, and any significant changes in the method of doing business for  
34 the preceding fiscal year, except as provided by section 15(h) of the Securities Exchange Act of 1934 in  
35 the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an  
36 investment adviser. The filing shall include statements or periodic reports filed with any regulatory,  
37 state, or federal authority or exchange if so directed by order or rule of the secretary of state. Every

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 49 -**

1 broker-dealer shall include audited financial statements certified by an independent certified public  
2 accountant consisting of a balance sheet, income statement, statement of cash flows, a reconciliation of  
3 surplus and appropriate notes prepared in accordance with generally accepted accounting principles.

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

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

14 (1) A broker-dealer registered or required to be registered under this chapter and an  
15 investment adviser registered or required to be registered under this chapter shall make and  
16 maintain the accounts, correspondence, memoranda, papers, books, and other records required by  
17 order issued under this chapter except as provided by Section 15 of the Securities Exchange Act of  
18 1934 in the case of broker-dealers and Section 222 of the Investment Advisers Act of 1940 in the case  
19 of investment advisers;

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

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

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

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

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

31 (C) A memorandum of each order given by the investment adviser for the purchase or  
32 sale of any security or any instruction received by the investment adviser from the client concerning  
33 the purchase, sale, receipt, or delivery of a particular security, and of any modification or  
34 cancellation of any such order or instruction. Such memoranda shall show the terms and conditions  
35 of the order, instruction, modification, or cancellation; shall identify the person connected with the  
36 investment adviser who recommended the transaction to the client and the person who placed such  
37 order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 50 -**

1 by or through whom executed where appropriate. Orders entered pursuant to the exercise of  
2 discretionary power shall be so designated.

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

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

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

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

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

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

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

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

34 (L)(i) A record of every transaction in a security in which the investment adviser or any  
35 advisory representative of such investment adviser has, or by reason of such transaction, acquires any  
36 direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither  
37 the investment adviser nor any investment adviser representative has any direct or indirect influence or

1 control; and (ii) transactions in securities which are direct obligations of the United States. Such record  
2 shall state the title and amount of the security involved; the date and nature of the transaction (i.e.,  
3 purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the  
4 broker-dealer or bank with or through whom the transaction was effected. Such record may also contain  
5 a statement declaring that the reporting or recording of any such transaction shall not be construed as an  
6 admission that the investment adviser or investment adviser representative has any direct or indirect  
7 beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end  
8 of the calendar quarter in which the transaction was effected.

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

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

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 52 -**

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

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

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

8           (ii) A memorandum describing any legal or disciplinary event listed in Item 8 of Part  
9 2A or Item 3 of Part 2B of Form ADV and presumed to be material, if the event involved the  
10 investment adviser or any of its supervised persons and is not disclosed in the written statements  
11 described in subsection (c)(13)(A). The memorandum shall explain the investment adviser's  
12 determination that the presumption of materiality is overcome, and shall discuss the factors  
13 described in those items.

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

24           (P) Copies, with original signatures of the investment adviser's appropriate signatory  
25 and the investment adviser representative, of each initial Form U-4 and each amendment to  
26 Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf  
27 of the investment adviser representative), and shall be made available for inspection upon request by  
28 the secretary of state.

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

36           (R) A litigation file open to inspection by the secretary of state documenting any  
37 criminal or civil actions filed in any state or federal court against the investment adviser's branch

1 office or against any of its personnel with respect to a securities transaction and the disposition of  
2 any such litigation.

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

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

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

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

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

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

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

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

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

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

35 (B) Partnership articles and any amendments thereto, articles of incorporation, charters,  
36 minute books, and stock certificate books of the investment adviser and of any predecessor shall be

1 maintained in the principal office of the investment adviser and preserved until at least 3 years after  
2 termination of the enterprise.

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

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

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

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

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

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

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

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

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

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

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

4           (13)(A)(i) Unless otherwise provided in this section, an investment adviser registered or  
5 required to be registered under this chapter shall, in accordance with the provisions of this section,  
6 furnish each advisory client and prospective advisory client with a written disclosure statement  
7 which may be a copy of Part 2 of its Form ADV or written documents containing at least the  
8 information then so required by Part 2 of Form ADV, and such other information as the secretary of  
9 state may require. Each investment adviser shall furnish each advisory client and prospective  
10 advisory client with a firm brochure and one or more supplements as required by this section. The  
11 brochure and supplements shall contain all information required by Part 2 of Form ADV (17 C.F.R.  
12 279.1), and such other information as the secretary of state may require.

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

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

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

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

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

36           (E) The investment adviser shall amend its brochure and any brochure supplements and  
37 deliver the amendments to clients promptly when information contained in the brochure or brochure

1 supplements becomes materially inaccurate. The instructions to Part 2 of Form ADV contain  
2 updating and delivery instructions that the investment adviser shall follow. An amendment will be  
3 considered to be delivered promptly if the amendment is delivered within 30 days of the event that  
4 requires the filing of the amendment.

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

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

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

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

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

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

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

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

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

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

36 (14)(A) Every registered investment adviser who has custody of client funds or securities or  
37 requires payment of advisory fees 6 months or more in advance and in excess of \$500 per client shall

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 57 -**

1 file with the secretary of state an audited balance sheet as of the end of the investment adviser's  
2 fiscal year. Each balance sheet filed pursuant to subsection (c)(14)(A) shall be:

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

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

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

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

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

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

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

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

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

24 (B) Each broker-dealer licensed or required to be licensed under this chapter shall  
25 comply with Rules 17a-11 under the Securities and Exchange Act of 1934, (17 C.F.R. 240.17a-11) and  
26 shall file with the secretary of state upon request, or as required by this chapter or orders or rules  
27 promulgated thereunder, copies of notices and reports required under Rules 17a-5, 17a-10, and 17a-  
28 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  
29 C.F.R. 240.17a-11.

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 58 -**

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

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

- 12                   (i) A trial balance of all ledger accounts;
- 13                   (ii) A statement of all client funds or securities which are not segregated;
- 14                   (iii) A computation of the aggregate amount of client ledger debit balances; and
- 15                   (iv) A statement as to the number of client accounts.

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

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

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

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

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

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

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

8 (d) Audits or inspections.

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

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

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

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

32 (C) Any rating bureau or organization;

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

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

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

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

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

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

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

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

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

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

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

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

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

11           (C) If no such closed hearing has been requested or held, then the examination report,  
12 with any modifications, that the secretary of state deems proper, shall be accepted by the secretary  
13 of state and filed upon expiration of the review period provided for in subsection (d)(5)(A). The report  
14 shall in any event be so accepted and filed within 6 months after final hearing thereon.

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

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

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

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

36           (8) Notwithstanding any other provision of law, the broker-dealer or other person liable for  
37 the travel expense of an examination pursuant to subsection (d)(7) shall make such payment either

1 directly to the individual conducting the examination, whether or not such individual is a classified  
2 state employee, or to the state of New Hampshire, as may be directed by the secretary of state. The  
3 secretary of state may direct that the travel expense allowance be paid directly to the individual  
4 conducting the examination. The compensation allowance shall be paid directly to the state. The  
5 amounts paid directly to individuals conducting the examination pursuant to subsection (d) may be  
6 in excess of any amounts that may be appropriated for such purposes.

7 (e) Custody and discretionary authority bond or insurance. Subject to the Securities Exchange  
8 Act of 1934, 15 U.S.C. section 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-  
9 18a, a rule adopted or order issued under this chapter may require a broker-dealer or investment  
10 adviser that has custody of or discretionary authority over funds or securities of a customer or client  
11 to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed  
12 \$100,000. The secretary of state may determine the requirements of the insurance, bond, or other  
13 satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be  
14 required of a broker-dealer registered under this chapter whose net capital exceeds, or of an  
15 investment adviser registered under this chapter whose minimum financial requirements exceed,  
16 the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory  
17 form of security must permit an action by a person to enforce any liability on the insurance, bond, or  
18 other satisfactory form of security if instituted within the time limitations in RSA 421-B:5-509(j)(2).

19 (f) Requirements for custody. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section  
20 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, an agent may not have  
21 custody of funds or securities of a customer except under the supervision of a broker-dealer and an  
22 investment adviser representative may not have custody of funds or securities of a client except  
23 under the supervision of an investment adviser or a federal covered investment adviser. An order  
24 issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding  
25 custody of funds or securities of a customer and on an investment adviser regarding custody of  
26 securities or funds of a client.

27 (g) Investment adviser brochure rule. Each investment adviser registered or required to be  
28 registered under this chapter shall furnish to its customers the information set forth in Part 2 of  
29 Form ADV.

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 63 -**

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

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

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

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

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

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

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

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

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

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

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

36 (r) Incorporation of other securities laws and rules. Persons registered under this chapter to  
37 conduct securities business shall abide by the rules of the Securities and Exchange Commission,

1 FINRA or successor organization, national and regional stock exchanges, and other self-regulatory  
2 organizations which have jurisdiction over the registrant, which set forth standards of conduct in the  
3 securities industry.

4 (s) Other Information for advisory clients. With respect to investment advisers, the secretary of  
5 state may require that certain information be furnished or disseminated as necessary or appropriate  
6 in the public interest or for the protection of investors and advisory clients. To the extent  
7 determined by the secretary of state, in the secretary of state's discretion, information furnished to  
8 clients or prospective clients of an investment adviser that would be in compliance with the  
9 Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial  
10 satisfaction of this requirement.

11 421-B:4-412 Denial, Revocation, Suspension, Withdrawal, Restriction, Condition, or Limitation  
12 of Registration.

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

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

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

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

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

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

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

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

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

18           (A) the securities, depository institution, insurance, or other financial services regulator  
19 of a state or by the Securities and Exchange Commission or other federal agency denying, revoking,  
20 barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered  
21 investment adviser, or investment adviser representative;

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

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

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

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

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

32           (6) is the subject of an adjudication or determination, after notice and opportunity for  
33 hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission;  
34 the Federal Trade Commission; a federal depository institution regulator, or a depository institution,  
35 insurance, or other financial services regulator of a state that the person willfully violated the  
36 Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the  
37 Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 66 -**

1 law of a state, or a federal or state law under which a business involving investments, franchises,  
2 insurance, banking, or finance is regulated;

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

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

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

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

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

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

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

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

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

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

31 (14) is not qualified on the basis of factors such as training, experience, and knowledge of the  
32 securities business. However, in the case of an application by an agent for a broker-dealer that is a  
33 member of a self-regulatory organization or by an individual for registration as an investment  
34 adviser representative, a denial order may not be based on subsection (d)(14) if the individual has  
35 successfully completed all examinations required by subsection (e). The secretary of state may  
36 require an applicant for registration under RSA 421-B:4-402 or RSA 421-B:4-404 who has not been

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 67 -**

1 registered in a state within the 2 years preceding the filing of an application in this state to  
2 successfully complete an examination.

3 (e) Examinations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (ii) A copy of the solicitation agreement;



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

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

6           (b) Supplemental provisions.

7           (1) Suitability of recommendation; reasonable grounds required.

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

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

17                   (i) The customer's financial status;

18                   (ii) The customer's tax status;

19                   (iii) The customer's investment objectives; and

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

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

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

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

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

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

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

- 1 (i) the name of such customer;
- 2 (ii) the name, amount and price of the security; and
- 3 (iii) the date and time when such transaction took place; and

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

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

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

12 (B) creating unreasonable delays in delivering securities.

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

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

17 421-B:5-502 Prohibited Conduct in Providing Investment Advice.

18 (a) Fraud in providing investment advice. It is unlawful for any person that advises others for  
19 compensation, either directly or indirectly or through publications or writings, as to the value of  
20 securities or the advisability of investing in, purchasing, or selling securities or that, for  
21 compensation and as part of a regular business, issues or promulgates analyses or reports relating to  
22 securities:

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

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

26 (b) Supplemental provisions.

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

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

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

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

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

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

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

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

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

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

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

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

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 72 -**

1 (I) Providing a report or recommendation to any advisory client prepared by someone  
2 other than the investment adviser or investment adviser representative without disclosing that fact.  
3 This prohibition does not apply to a situation where the investment adviser or investment adviser  
4 representative uses published research reports or statistical analysis to render advice or where a  
5 representative orders such a report in the normal course of providing service.

6 (J) Charging a client an unreasonable advisory fee.

7 (K) Failing to disclose to clients in writing before any advice is rendered any material  
8 conflict of interest relating to the investment adviser, investment adviser representative, or any of  
9 its employees which could reasonably be expected to impair the rendering of unbiased and objective  
10 advice. including:

11 (i) Compensation arrangements connected with advisory services to clients which  
12 are in addition to compensation from such clients or such services; and

13 (ii) Charging a client an advisory fee for rendering advice when a commission for  
14 executing securities transactions pursuant to such advice will be received by the adviser or its employees.

15 (L) Guaranteeing a client that a specific result will be achieved, such as gain or no loss,  
16 with advice which will be rendered.

17 (M) Publishing, circulating, or distributing any advertisement which does not comply  
18 with Rule 206(4)-1 under the Investment Advisers Act of 1940, 17 C.F.R. 275.206(4)-1.

19 (N) Disclosing the identity, affairs, or investments of any client unless required by law to  
20 do so, or unless consented to in writing by the client.

21 (O) Taking any action, directly or indirectly, with respect to those securities or funds in  
22 which any client has any beneficial interest, where the investment adviser or investment adviser  
23 representative has custody or possession of such securities or funds when the adviser's action is  
24 subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment  
25 Advisers Act of 1940, 17 C.F.R. 275.206(4)-2.

26 (P) Entering into, extending, or renewing any investment adviser contract unless such  
27 contract is in writing and discloses, in substance, the services to be provided, the term of the  
28 contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be  
29 returned in the event of contract termination or non-performance, whether the contract grants  
30 discretionary power to the investment adviser or investment adviser representative, and that no  
31 assignment of such contract shall be made by the investment adviser without the written consent of  
32 the other party to the contract.

33 (Q) Entering into, extending, or renewing any investment adviser contract that provides  
34 for compensation to the investment adviser on the basis of a share of capital gains upon or capital  
35 appreciation of the funds or any portion of the funds of the client.

36 (i) Subsection (b)(2)(Q) shall not:

1 (a) be construed to prohibit an investment advisory contract which provides for compensation  
2 based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken  
3 as of a definite date; or

4 (b) apply to an investment advisory contract with a person (except a trust, governmental plan,  
5 collective trust fund, or separate account), provided that the contract relates to the investment of  
6 assets in excess of \$1,000,000, if the contract provides for compensation based on the asset value of  
7 the company or fund under management averaged over a specified period and increasing and  
8 decreasing proportionately with the investment performance of the company or fund over a specified  
9 period in relation to the investment record of an appropriate index of securities prices or such other  
10 measure of investment performance as the secretary of state by rule may specify.

11 (ii) Subsection (b)(2)(Q) shall not be deemed to prohibit an investment adviser from  
12 entering into, performing, renewing, or extending an investment advisory contract that provides for  
13 compensation to the investment adviser on the basis of a share of the capital gains upon, or the  
14 capital appreciation of, the funds, or any portion of the funds, of a client, provided that the client  
15 entering into the contract subject to subsection (b)(2)(Q) is a qualified client defined as any one of the  
16 following persons:

17 (a) A natural person who or a company that immediately after entering into the contract has as  
18 least \$750,000 under the management of the investment adviser.

19 (b) A natural person who or a company that the investment adviser entering into the contract  
20 (and any person acting on his behalf) reasonably believes, immediately prior to entering into the  
21 contract, either:

22 (1) has a net worth (together, in the case of a natural person, with assets held jointly with a  
23 spouse) of more than \$1,500,000 at the time the contract is entered into; or

24 (2) is a qualified purchaser as defined in the Investment Company Act of 1940, 14 U.S.C.  
25 802-a(a)(51)(A), at the time the contract is entered into.

26 (c) A natural person who immediately prior to entering into the contract is:

27 (1) an executive officer, director, trustee, general partner, or person serving in a similar  
28 capacity, of the investment adviser; or

29 (2) an employee of the investment adviser (other than an employee performing solely  
30 clerical, secretarial or administrative functions with regard to the investment adviser) who, in  
31 connection with his or her regular functions or duties, participates in the investment activities of  
32 such investment adviser, provided that such employee has been performing such functions and  
33 duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on  
34 behalf of another company for at least 12 months.

35 (d) The secretary of state, upon his or her own motion, or by order upon application, may  
36 conditionally or unconditionally exempt any person or transaction, or any class or classes of persons  
37 or transactions, from subsection (b)(2)(Q), if and to the extent that the exemption relates to an

1 investment advisory contract with any person that the secretary of state determines does not need  
2 the protections of subsection (b)(2)(Q), on the basis of such factors as financial sophistication, net  
3 worth, knowledge of and experience in financial matters, amount of assets under management,  
4 relationship with a registered investment adviser, and such other factors as the secretary of state  
5 determines are consistent with subsection (b)(2).

6 (R) Failing to establish, maintain, and enforce written policies and procedures  
7 reasonably designed to prevent the misuse of material nonpublic information in violation of section  
8 204A of the Investment Advisers Act of 1940.

9 (S) Entering into, extending, or renewing any advisory contract which would violate  
10 section 205 of the Investment Advisers Act of 1940. This provision shall apply to all investment  
11 advisers and investment adviser representatives registered or required to be registered under this  
12 chapter.

13 (T) Indicating, in an advisory contract, any condition, stipulation, or provisions binding  
14 any person to waive compliance with any provision of this chapter or of the Investment Advisers Act  
15 of 1940 or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

16 (U) Engaging in any act, practice, or course of business which is fraudulent or deceptive  
17 in contravention of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact  
18 that such investment adviser is not registered or required to be registered under section 203 of the  
19 Investment Advisers Act of 1940.

20 (V) Engaging in conduct or any act, indirectly or through or by any other person, which  
21 would be unlawful for such person to do directly under the provisions of this chapter or any rule  
22 adopted under it.

23 (3) The conduct set forth in subsection (b)(2) is not inclusive. Engaging in other conduct  
24 such as nondisclosure, incomplete disclosure, or deceptive practices, shall be deemed an unethical  
25 business practice. The federal statutory and regulatory provisions referenced in subsection (b)(2)  
26 shall apply to investment advisers and investment adviser representatives, regardless of whether  
27 the federal provision limits its application to investment advisers subject to federal registration.

28 421-B:5-502-A Custody of Client Funds or Securities by Investment Advisers.

29 (a) Safekeeping required. It is unlawful and deemed to be a fraudulent or deceitful act, practice,  
30 or course of business for an investment adviser, registered or required to be registered, to have  
31 custody of client funds or securities unless:

32 (1) Notice to secretary of state. The investment adviser notifies the secretary of state  
33 promptly in writing that the investment adviser has or may have custody. Such notification is  
34 required to be given on Form ADV;

35 (2) Qualified custodian. A qualified custodian maintains those funds and securities:

36 (A) in a separate account for each client under that client's name; or

1 (B) in accounts that contain only the investment adviser's clients' funds and securities,  
2 under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled  
3 investment vehicle that the investment adviser manages, in the name of the pooled investment  
4 vehicle.

5 (3) Notice to clients. If an investment adviser opens an account with a qualified custodian  
6 on its client's behalf, under the client's name, under the name of the investment adviser as agent, or  
7 under the name of a pooled investment vehicle, the investment adviser must notify the client in  
8 writing of the qualified custodian's name, address, and the manner in which the funds or securities  
9 are maintained, promptly when the account is opened and following any changes to this information.  
10 If the investment adviser sends account statements to a client to which the investment adviser is  
11 required to provide this notice, the investment adviser must include in the notification provided to  
12 that client and in any subsequent account statement the investment adviser sends that client a  
13 statement urging the client to compare the account statements from the custodian with those from  
14 the investment adviser.

15 (4) Account statements. The investment adviser has a reasonable basis, after due inquiry, for  
16 believing that the qualified custodian sends an account statement, at least quarterly, to each client for  
17 which it maintains funds or securities, identifying the amount of funds and the amount of each  
18 security in the account at the end of the period and setting forth all transactions in the account during  
19 that period.

20 (5) Special rule for limited partnerships and limited liability companies. If the investment  
21 adviser or a related person is a general partner of a limited partnership (or managing member of a  
22 limited liability company, or holds a comparable position for another type of pooled investment  
23 vehicle), the account statements required under subsection (a)(4) must be sent to each limited  
24 partner (or member or other beneficial owner).

25 (6) Independent verification. The client funds and securities of which the investment  
26 adviser has custody are verified by actual examination at least once during each calendar year, by an  
27 independent certified public accountant, pursuant to a written agreement between the investment  
28 adviser and the independent certified public accountant, at a time that is chosen by the independent  
29 certified public accountant without prior notice or announcement to the investment adviser and that  
30 is irregular from year to year. The written agreement must provide for the first examination to  
31 occur within 6 months of becoming subject to subsection (a)(6), except that, if the investment adviser  
32 maintains client funds or securities pursuant to this section as a qualified custodian, the agreement  
33 must provide for the first examination to occur no later than 6 months after obtaining the internal  
34 control report. The written agreement must require the independent certified public accountant to:

35 (A) file a certificate on Form ADV-E with the secretary of state within 120 days of the  
36 time chosen by the independent certified public accountant in subsection (a)(6), stating that it has  
37 examined the funds and securities and describing the nature and extent of the examination.

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 76 -**

1 (B) notify the secretary of state within one business day of the finding of any material  
2 discrepancies during the course of the examination, by means of a facsimile transmission or  
3 electronic mail, followed by first class mail, directed to the attention of the secretary of state; and

4 (C) file within 4 business days of the resignation or dismissal from, or other termination  
5 of, the engagement, or removing itself or being removed from consideration for being reappointed,  
6 Form ADV-E accompanied by a statement that includes:

7 (i) The date of such resignation, dismissal, removal, or other termination, and the  
8 name, address, and contact information of the independent certified public accountant; and

9 (ii) An explanation of any problems relating to examination scope or procedure that  
10 contributed to such resignation, dismissal, removal, or other termination.

11 (7) Investment advisers acting as qualified custodians. If the investment adviser maintains,  
12 or if the investment adviser has custody because a related person maintains, client funds or  
13 securities pursuant to this section as a qualified custodian in connection with advisory services the  
14 investment adviser provides to clients, the following shall apply:

15 (A) The independent certified public accountant the investment adviser retains to  
16 perform the independent verification required by subsection (a)(6) must be registered with, and  
17 subject to regular inspection as of the commencement of the professional engagement period, and as  
18 of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with  
19 its rules; and

20 (B) The investment adviser must obtain, or receive from its related person, within 6  
21 months of becoming subject to subsection (a)(7) and thereafter no less frequently than once each  
22 calendar year a written internal control report prepared by an independent certified public accountant:

23 (i) The internal control report must include an opinion of an independent certified  
24 public accountant as to whether controls have been placed in operation as of a specific date, and are  
25 suitably designed and are operating effectively to meet control objectives relating to custodial  
26 services, including the safeguarding of funds and securities held by either the investment adviser or  
27 a related person on behalf of the investment adviser's clients, during the year;

28 (ii) The independent certified public accountant must verify that the funds and  
29 securities are reconciled to a custodian other than the investment adviser or the investment advisers  
30 related person; and

31 (iii) The independent certified public accountant must be registered with, and  
32 subject to regular inspection as of the commencement of the professional engagement period, and as  
33 of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with  
34 its rules.

35 (8) Independent representatives. A client may designate an independent representative to  
36 receive, on his or her behalf, notices and account statements as required under subsections (a)(3) and  
37 (a)(4).

1 (b) Exceptions.

2 (1) Shares of open end mutual funds. With respect to shares of an open end mutual fund,  
3 the investment adviser may use the open end mutual fund's transfer agent in lieu of a qualified  
4 custodian for purposes of complying with subsection (a);

5 (2) Certain privately offered securities.

6 (A) The investment adviser is not required to comply with subsection (a)(2) with respect  
7 to securities that are:

8 (i) acquired from the issuer in a transaction or chain of transactions not involving  
9 any public offering; and

10 (ii) uncertificated and ownership thereof is recorded only on the books of the issuer  
11 or its transfer agent in the name of the client; and transferable only with prior consent of the issuer  
12 or holders of the outstanding securities of the issuer.

13 (iii) Notwithstanding subsection (b)(2)(A), subsection (b)(2) shall apply with respect  
14 to securities held for the account of a limited partnership (or limited liability company, or other type  
15 of pooled investment vehicle) only if the limited partnership is audited, and the audited financial  
16 statements are distributed, as described in subsection (b)(4) and the investment adviser notifies the  
17 secretary of state in writing that the investment adviser intends to provide audited financial  
18 statements, as described in subsection (a). Such notification is required to be provided on Form  
19 ADV.

20 (3) Fee deduction. Notwithstanding subsection (a)(6), an investment adviser is not required  
21 to obtain an independent verification of client funds and securities maintained by a qualified  
22 custodian if all of the following conditions are met:

23 (A) The investment adviser has custody of the funds and securities solely as a  
24 consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

25 (B) The investment adviser has written authorization from the client to deduct advisory  
26 fees from the account held with the qualified custodian;

27 (C) Each time a fee is directly deducted from a client account, the investment adviser  
28 concurrently:

29 (i) sends the qualified custodian an invoice or statement of the amount of the fee to  
30 be deducted from the client's account; and

31 (ii) sends the client an invoice or statement itemizing the fee. Itemization includes  
32 the formula used to calculate the fee, the amount of assets under management the fee is based on,  
33 and the time period covered by the fee; and

34 (D) The investment adviser notifies the secretary of state in writing that the investment  
35 adviser intends to use the safeguards provided in subsection (b)(3). Such notification is required to  
36 be given on Form ADV.

1           (4) Limited partnerships subject to annual audit. An investment adviser is not required to  
2 comply with subsections (a)(3) and (a)(4) and shall be deemed to have complied with subsection (a)(6)  
3 with respect to the account of a limited partnership (or limited liability company, or another type of  
4 pooled investment vehicle) if each of the following conditions are met:

5           (A) The adviser sends to all limited partners (or members or other beneficial owners) at  
6 least quarterly, a statement showing:

7                 (i) the total amount of all additions to and withdrawals from the fund as a whole as  
8 well as the opening and closing value of the fund at the end of the quarter based on the custodian's  
9 records;

10                (ii) a listing of all long and short positions on the closing date of the statement in  
11 accordance with FASB Rule ASC 946-210-50; and

12                (iii) the total amount of additions to and withdrawals from the fund by the investor  
13 as well as the total value of the investor's interest in the fund at the end of the quarter;

14           (B) At least annually the fund is subject to an audit and distributes its audited financial  
15 statements prepared in accordance with generally accepted accounting principles to all limited  
16 partners (or members or other beneficial owners) and the secretary of state within 120 days of the  
17 end of its fiscal year;

18           (C) The audit is performed by an independent certified public accountant that is  
19 registered with, and subject to regular inspection as of the commencement of the professional  
20 engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight  
21 Board in accordance with its rules;

22           (D) Upon liquidation, the adviser distributes the fund's final audited financial  
23 statements prepared in accordance with generally accepted accounting principles to all limited  
24 partners (or members or other beneficial owners) and the secretary of state promptly after the  
25 completion of such audit;

26           (E) The written agreement with the independent certified public accountant must  
27 require the independent certified public accountant to, upon resignation or dismissal from, or other  
28 termination of, the engagement, or upon removing itself or being removed from consideration for  
29 being reappointed, notify the secretary of state within 4 business days accompanied by a statement  
30 that includes:

31                 (i) The date of such resignation, dismissal, removal, or other termination, and the  
32 name, address, and contact information of the independent certified public accountant; and

33                 (ii) An explanation of any problems relating to audit scope or procedure that  
34 contributed to such resignation, dismissal, removal, or other termination;

35           (F) The investment adviser must also notify the secretary of state in writing that the  
36 investment adviser intends to employ the use of the statement delivery and audit safeguards  
37 described above. Such notification is required to be given on Form ADV.

1           (5) Registered investment companies. The investment adviser is not required to comply  
2 with this section with respect to the account of an investment company registered under the  
3 Investment Company Act of 1940.

4           (c) Delivery to related persons. Sending an account statement under subsection (a)(5) or  
5 distributing audited financial statements under subsection (b)(4) shall not satisfy the  
6 requirements of this section if such account statements or financial statements are sent solely to  
7 limited partners (or members or other beneficial owners) that themselves are limited partnerships  
8 (or limited liability companies, or another type of pooled investment vehicle) and are related  
9 persons of the investment adviser.

10          (d) Definitions. For purposes of this section the following definitions shall apply:

11           (1) "Control" means the power, directly or indirectly, to direct the management or policies of  
12 a person whether through ownership of securities, by contract, or otherwise. Control includes:

13                   (A) (or persons having similar status or functions) is presumed to control the investment  
14 adviser;

15                   (B) A person is presumed to control a corporation if the person:

16                           (i) directly or indirectly has the right to vote 25 percent or more of a class of the  
17 corporation's voting securities; or

18                           (ii) has the power to sell or direct the sale of 25 percent or more of a class of the  
19 corporation's voting securities;

20                   (C) A person is presumed to control a partnership if the person has the right to receive  
21 upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

22                   (D) A person is presumed to control a limited liability company if the person:

23                           (i) directly or indirectly has the right to vote 25 percent or more of a class of the  
24 interests of the limited liability company;

25                           (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more  
26 of the capital of the limited liability company; or

27                           (iii) is an elected manager of the limited liability company; and

28                   (E) A person is presumed to control a trust if the person is a trustee or managing agent  
29 of the trust.

30           (2) "Custody" means holding directly or indirectly, client funds or securities, having any  
31 authority to obtain possession of them or having the ability to appropriate them. The investment  
32 adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has  
33 any authority to obtain possession of them, in connection with advisory services the investment  
34 adviser provides to clients.

35                   (A) Custody includes:

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**

**- Page 80 -**

1 (i) Possession of client funds or securities unless the investment adviser receives  
2 them inadvertently and returns them to the sender promptly but in any case within 3 business days  
3 of receiving them;

4 (ii) Any arrangement (including a general power of attorney) under which the  
5 investment adviser is authorized or permitted to withdraw client funds or securities maintained with  
6 a custodian upon the investment adviser's instruction to the custodian; and

7 (iii) Any capacity (such as general partner of a limited partnership, managing  
8 member of a limited liability company or a comparable position for another type of pooled investment  
9 vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal  
10 ownership of or access to client funds or securities.

11 (B) Receipt of checks drawn by clients and made payable to third parties will not meet  
12 the definition of custody if forwarded to the third party within 3 business days of receipt and the  
13 investment adviser maintains a ledger or other listing of all securities or funds held or obtained,  
14 including the following information:

15 (i) Issuer;

16 (ii) Type of security and series;

17 (iii) Date of issue;

18 (iv) For debt instruments, the denomination, interest rate, and maturity date;

19 (v) Certificate number, including alphabetical prefix or suffix;

20 (vi) Name in which registered;

21 (vii) Date given to the adviser;

22 (viii) Date sent to client or sender;

23 (ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender;

24 and

25 (x) Mail confirmation number, if applicable, or confirmation by client or sender of the  
26 fund's or security's return.

27 (3) "Independent certified public accountant" means a certified public accountant that meets  
28 the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X 17 C.F.R. 210.2-  
29 01(b) and (c).

30 (4) "Independent party" means a person that:

31 (A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees,  
32 expenses and capital withdrawals from the pooled investment;

33 (B) does not control and is not controlled by and is not under common control with the  
34 investment adviser;

35 (C) does not have, and has not had within the past 2 years, a material business  
36 relationship with the investment adviser; and

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 81 -**

1 (D) shall not negotiate or agree to have material business relations or commonly  
2 controlled relations with an investment adviser for a period of 2 years after serving as the person  
3 engaged in an independent party agreement.

4 (5) "Independent representative" means a person who:

5 (A) acts as agent for an advisory client, including in the case of a pooled investment vehicle,  
6 for limited partners or a limited partnership, members of a limited liability company, or other beneficial  
7 owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best  
8 interest of the advisory client or the limited partners, members, or other beneficial owners;

9 (B) does not control, is not controlled by, and is not under common control with  
10 investment adviser; and

11 (C) does not have, and has not had within the past 2 years, a material business  
12 relationship with the investment adviser.

13 (6) "Qualified custodian" means the following:

14 (A) A bank or savings association that has deposits insured by the Federal Deposit  
15 Insurance Corporation under the Federal Deposit Insurance Act;

16 (B) A trust company;

17 (C) A broker-dealer registered in this jurisdiction and with the SEC holding the client  
18 assets in customer accounts;

19 (D) A registered futures commission merchant registered under section 4f(a) of the  
20 Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to  
21 clients' funds and security futures, or other securities incidental to transactions in contracts for the  
22 purchase or sale of a commodity for future delivery and options thereon; and

23 (E) A foreign financial institution that customarily holds financial assets for its  
24 customers, provided that the foreign financial institution keeps the advisory clients' assets in  
25 customer accounts segregated from its proprietary assets.

26 (7) "Related person" means any person, directly or indirectly, controlling or controlled by the  
27 investment adviser, or any person that is under common control with the investment adviser.

28 421-B:5-503 Evidentiary Burden.

29 (a) Civil. In a civil action or administrative proceeding under this chapter, a person claiming an  
30 exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

31 (b) Criminal. In a criminal proceeding under this chapter, a person claiming an exemption,  
32 exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

33 421-B:5-504 Filing of Sales and Advertising Literature.

34 (a) Filing requirement. Except as otherwise provided in subsection (b), an order issued under  
35 this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement,  
36 sales literature, or other advertising record relating to a security or investment advice, addressed or

1 intended for distribution to prospective investors, including clients or prospective clients of a person  
2 registered or required to be registered as an investment adviser under this chapter.

3 (b) Secretary of state's discretionary information requests. The secretary of state may require at  
4 any reasonable time and in any reasonable manner from any person or issuer subject to this title,  
5 statements; reports, including reports audited by independent public accountants and sales reports;  
6 answers to questionnaires; and other information and evidence thereof, in whatever reasonable form  
7 the secretary of state designates, and at such reasonable intervals as the secretary of state may  
8 choose, or from time to time.

9 (c) Excluded communications. This section does not apply to sales and advertising literature  
10 specified in subsection (a), or statements, reports or any other information referenced in subsection  
11 (b), which relate to a federal covered security, a federal covered investment adviser, or a security or  
12 transaction exempted by RSA 421-B:2-201, RSA 421-B:2-202, or RSA 421-B:2-203 except as required  
13 pursuant to RSA 421-B:2-201(7).

14 421-B:5-505 Misleading Filings. It is unlawful for a person to make or cause to be made, in a  
15 record that is used in an action or proceeding or filed under this chapter, a statement that, at the  
16 time and in the light of the circumstances under which it is made, is false or misleading in a material  
17 respect, or, in connection with the statement, to omit to state a material fact necessary to make the  
18 statement made, in the light of the circumstances under which it was made, not false or misleading.

19 421-B:5-506 Misrepresentations Concerning Registration or Exemption. The filing of an  
20 application for registration, a registration statement, a notice filing under this chapter, the  
21 registration of a person, the notice filing by a person, or the registration of a security under this  
22 chapter does not constitute a finding by the secretary of state that a record filed under this chapter is  
23 true, complete, and not misleading. The filing or registration or the availability of an exemption,  
24 exception, preemption, or exclusion for a security or a transaction does not mean that the secretary  
25 of state has passed upon the merits or qualifications of, or recommended or given approval to, a  
26 person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser,  
27 customer, client, or prospective customer or client a representation inconsistent with this section.

28 421-B:5-507 Qualified Immunity. A broker-dealer, agent, investment adviser, federal covered  
29 investment adviser, or investment adviser representative is not liable to another broker-dealer,  
30 agent, investment adviser, federal covered investment adviser, or investment adviser representative  
31 for defamation relating to a statement that is contained in a record required by the secretary of  
32 state, or designee of the secretary of state, the Securities and Exchange Commission, or a self-  
33 regulatory organization, unless the person knew, or should have known at the time that the  
34 statement was made, that it was false in a material respect or the person acted in reckless disregard  
35 of the statement's truth or falsity.

36 421-B:5-508 Criminal Penalties.

1 (a) Any person who willfully violates any provisions of RSA 421-B:5-501(a) or RSA 421-B:5-  
2 502(a) or a cease and desist order or injunction issued pursuant to RSA 421-B:6-603 or RSA 421-B:6-  
3 604, or who violates RSA 421-B:5-505 knowing that the statement was false or misleading in any  
4 material respect, shall be guilty of a class B felony. Each of the acts specified shall constitute a  
5 separate offense and a prosecution or conviction for any one of such offenses shall not bar  
6 prosecution or conviction for any other offense.

7 (b) Any person who willfully violates RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-  
8 403(a), RSA 421-B:3-301(a), or RSA 421-B:5-506 shall be guilty of a misdemeanor. Each of the acts  
9 specified shall constitute a separate offense and a prosecution or conviction for any one of such  
10 offenses shall not bar prosecution or conviction for any other offense. For any subsequent offense,  
11 any person shall be guilty of a class B felony.

12 (c) Nothing in this chapter limits the power of the state to punish any person for any conduct  
13 which constitutes a crime by statute.

14 421-B:5-509 Civil Liability.

15 (a) Securities Litigation Uniform Standards Act. Enforcement of civil liability under this section  
16 is subject to the Securities Litigation Uniform Standards Act of 1998.

17 (b) Liability of seller to purchaser. A person is liable to the purchaser if the person sells a  
18 security in violation of RSA 421-B:3-301 or, by means of an untrue statement of a material fact or an  
19 omission to state a material fact necessary in order to make the statement made, in light of the  
20 circumstances under which it is made, not misleading, the purchaser not knowing the untruth or  
21 omission and the seller not sustaining the burden of proof that the seller did not know and, in the  
22 exercise of reasonable care, could not have known of the untruth or omission. An action under this  
23 subsection is governed by the following:

24 (1) The purchaser may maintain an action to recover the consideration paid for the security,  
25 less the amount of any income received on the security, and interest at the legal rate of interest from  
26 the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the  
27 tender of the security, or for actual damages as provided in subsection (b)(3).

28 (2) The tender referred to in subsection (b)(1) may be made any time before entry of  
29 judgment. Tender requires only notice in a record of ownership of the security and willingness to  
30 exchange the security for the amount specified. A purchaser that no longer owns the security may  
31 recover actual damages as provided in subsection (3).

32 (3) Actual damages in an action arising under subsection (b) are the amount that would be  
33 recoverable upon a tender less the value of the security when the purchaser disposed of it, and  
34 interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys'  
35 fees determined by the court.

36 (c) Liability of purchaser to seller. A person is liable to the seller if the person buys a security by  
37 means of an untrue statement of a material fact or omission to state a material fact necessary in

1 order to make the statement made, in light of the circumstances under which it is made, not  
2 misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the  
3 burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not  
4 have known of the untruth or omission. An action under subsection (c) is governed by the following:

5 (1) The seller may maintain an action to recover the security, and any income received on  
6 the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the  
7 purchase price, or for actual damages as provided in subsection (c) 3).

8 (2) The tender referred to in subsection (c)(1) may be made any time before entry of  
9 judgment. Tender requires only notice in a record of the present ability to pay the amount tendered  
10 and willingness to take delivery of the security for the amount specified. If the purchaser no longer  
11 owns the security, the seller may recover actual damages as provided in subsection (c)(3).

12 (3) Actual damages in an action arising under subsection (c) are the difference between the  
13 price at which the security was sold and the value the security would have had at the time of the sale  
14 in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest  
15 from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

16 (d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or  
17 agent that sells or buys a security in violation of RSA 421-B:4-401(a), RSA 421-B:4-402(a), or RSA  
18 421-B:5-506 is liable to the customer. The customer, if a purchaser, may maintain an action for  
19 recovery of actual damages as specified in subsections (b)(1) through (c)(3), or, if a seller, for a  
20 remedy as specified in subsections (c)(1) through (c)(3).

21 (e) Liability of unregistered investment adviser and investment adviser representative. A  
22 person acting as an investment adviser or investment adviser representative that provides  
23 investment advice for compensation in violation of RSA 421-B:4-403(a), RSA 421-B:4-404(a), or  
24 RSA 421-B:5-506 is liable to the client. The client may maintain an action to recover the  
25 consideration paid for the advice, interest at the legal rate of interest from the date of payment,  
26 costs, and reasonable attorneys' fees determined by the court.

27 (f) Liability for investment advice. A person that receives directly or indirectly any  
28 consideration for providing investment advice to another person and that employs a device, scheme,  
29 or artifice to defraud the other person or engages in an act, practice, or course of business that  
30 operates or would operate as a fraud or deceit on the other person, is liable to the other person. An  
31 action under subsection (f) is governed by the following:

32 (1) The person defrauded may maintain an action to recover the consideration paid for  
33 the advice and the amount of any actual damages caused by the fraudulent conduct, interest at  
34 the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable  
35 attorneys' fees determined by the court, less the amount of any income received as a result of the  
36 fraudulent conduct.

1           (2) This subsection does not apply to a broker-dealer or its agents if the investment advice  
2 provided is solely incidental to transacting business as a broker-dealer and no special compensation  
3 is received for the investment advice.

4           (g) Joint and several liability. The following persons are liable jointly and severally with and to  
5 the same extent as persons liable under subsections (b) through (f):

6           (1) a person that directly or indirectly controls a person liable under subsections (b) through  
7 (f), unless the controlling person sustains the burden of proof that the person did not know, and in  
8 the exercise of reasonable care could not have known, of the existence of conduct by reason of which  
9 the liability is alleged to exist.

10           (2) an individual who is a managing partner, executive officer, or director of a person liable  
11 under subsections (b) through (f), including an individual having a similar status or performing  
12 similar functions, unless the individual sustains the burden of proof that the individual did not know  
13 and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of  
14 which the liability is alleged to exist;

15           (3) an individual who is an employee of or associated with a person liable under subsections (b)  
16 through (f) and who materially aids the conduct giving rise to the liability, unless the individual  
17 sustains the burden of proof that the individual did not know and, in the exercise of reasonable care  
18 could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

19           (4) a person that is a broker-dealer, agent, investment adviser, or investment adviser  
20 representative that materially aids the conduct giving rise to the liability under subsections (b)  
21 through (f), unless the person sustains the burden of proof that the person did not know and, in the  
22 exercise of reasonable care could not have known, of the existence of conduct by reason of which  
23 liability is alleged to exist.

24           (h) No civil cause of action. No civil cause of action may be based solely upon the failure of a broker-  
25 dealer or agent to comply with the registration requirements of RSA 421-B:4-401(a) or RSA 421-B:4-  
26 402(a), except a cause of action arising under subsection (d), RSA 421-B:6-603 , or RSA 421-B:6-604.

27           (i) Right of contribution. A person liable under this section has a right of contribution as in  
28 cases of contract against any other person liable under this section for the same conduct.

29           (j) Survival of cause of action. A cause of action under this section survives the death of an  
30 individual who might have been a plaintiff or defendant.

31           (k) Statute of limitations. A person may not obtain relief:

32           (1) under subsection (b) for violation of RSA 421-B:3-301, or under subsection (d) or (e),  
33 unless the action is instituted within 2 years after the violation occurred; or

34           (2) under subsection (b), other than for violation of RSA 421-B:3-301, or under subsection (c)  
35 or (f), unless the action is instituted within the earlier of 2 years after discovery of the facts  
36 constituting the violation and 6 years after the violation.

1           (l) No enforcement of violative contract. A person that has made, or has engaged in the  
2 performance of, a contract in violation of this chapter or a rule adopted or order issued under this  
3 chapter, or that has acquired a purported right under the contract with knowledge of conduct by  
4 reason of which its making or performance was in violation of this chapter, may not base an action  
5 on the contract.

6           (m) No contractual waiver. A condition, stipulation, or provision binding a person purchasing or  
7 selling a security or receiving investment advice to waive compliance with this chapter or a rule  
8 adopted or order issued under this chapter is void.

9           (n) Survival of other rights or remedies. The rights and remedies provided by this chapter are in  
10 addition to any other rights or remedies that may exist, but this chapter does not create a cause of  
11 action not specified in this section or RSA 421-B:4-411(e).

12           421-B:5-510 Rescission Offers. A purchaser or seller of a security, or a recipient of investment  
13 advice may not maintain an action under RSA 421-B:5-509 if:

14           (1) The purchaser or seller of a security, or recipient of investment advice receives in a  
15 record, before the action is instituted:

16                   (A) an offer stating the respect in which liability under RSA 421-B:5-509 may have  
17 arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's  
18 rights in connection with the offer, and any financial or other information necessary to correct all  
19 material misrepresentations or omissions in the information that was required by this chapter to be  
20 furnished to that person at the time of the purchase, sale, or investment advice;

21                   (B) if the basis for relief under this section may have been a violation of RSA 421-B:5-  
22 509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the  
23 consideration paid, and interest at the legal rate of interest from the date of the purchase, less the  
24 amount of any income received on the security, or, if the purchaser no longer owns the security, an  
25 offer to pay the purchaser upon acceptance of the offer damages in an amount that would be  
26 recoverable upon a tender, less the value of the security when the purchaser disposed of it, and  
27 interest at the legal rate of interest from the date of the purchase in cash equal to the damages  
28 computed in the manner provided in subsection (1);

29                   (C) if the basis for relief under this section may have been a violation of RSA 421-B:5-  
30 509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase  
31 price paid, less income received on the security by the purchaser and interest at the legal rate of  
32 interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the  
33 seller upon acceptance of the offer, in cash, damages in the amount of the difference between the  
34 price at which the security was purchased and the value the security would have had at the time of  
35 the purchase in the absence of the purchaser's conduct that may have caused liability and interest at  
36 the legal rate of interest from the date of the sale;

1 (D) if the basis for relief under this section may have been a violation of RSA 421-B:5-  
2 509(d); and if the customer is a purchaser, an offer to pay as specified in subsection (1)(B); or, if the  
3 customer is a seller, an offer to tender or to pay as specified in subsection (1)(C);

4 (v) if the basis for relief under this section may have been a violation of RSA 421-B:5-  
5 509(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal  
6 rate of interest from the date of payment; or

7 (vi) if the basis for relief under this section may have been a violation of RSA 421-B:5-  
8 509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual  
9 damages that may have been caused by the conduct, and interest at the legal rate of interest from  
10 the date of the violation causing the loss;

11 (2) the offer under subsection (1) states that it must be accepted by the purchaser or seller of  
12 a security, or the recipient of investment advice within 30 days after the date of its receipt by the  
13 purchaser, seller, or recipient of investment advice or any shorter period, of not less than 3 days, that  
14 the secretary of state, by order, specifies;

15 (3) the offeror has the present ability to pay the amount offered (a firm financing  
16 commitment from a reputable investor or other reputable financial source may be included in  
17 present ability to pay the amount offered) or, if the purchaser of a security, has the present ability to  
18 tender the security under subsection (1);

19 (4) the offer under subsection (1) is delivered to the purchaser or seller of a security, or the  
20 recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or  
21 recipient of investment advice;

22 (5) the purchaser or seller of a security, or the recipient of investment advice that accepts  
23 the offer under subsection (1) in a record within the period specified under subsection (2) is paid in  
24 accordance with the terms of the offer; and

25 (6) The offer under subsection (1) is required to be filed with the secretary of state 20 days  
26 before the offering and conform in form and content as prescribed by order of the secretary of state.

27 Article 6

28 Administration and Judicial Review

29 421-B:6-601 Administration of Chapter.

30 (a) Administration. The secretary of state shall administer this chapter. The secretary of state  
31 may appoint deputy secretaries of state or designees who shall serve as director and who may be  
32 classified or unclassified employees whose salary shall be that of or comparable to that of a deputy  
33 secretary of state, to administer the provisions of this chapter. The secretary of state may also  
34 appoint deputy directors who shall perform such duties as may be assigned by the secretary of state,  
35 deputy secretary of state, or designee, or director, to administer the provisions of this chapter. The  
36 secretary of state shall, to the greatest extent practical, physically and substantively consolidate the  
37 activities and functions related to corporations, limited partnerships, and other business

1 organizations and entities administered by the department of state with the activities and functions  
2 related to the registration of securities.

3 (b) Notwithstanding any other provision of law, the secretary of state shall have exclusive  
4 authority and jurisdiction:

5 (1) To register securities.

6 (2) To license the following:

7 (A) Broker-dealers.

8 (B) Investment advisers.

9 (C) Agents.

10 (D) Investment adviser representatives.

11 (3) Together with the attorney general, to issue, amend, or rescind such orders as are  
12 reasonably necessary to carry out the provisions of this chapter.

13 (4) To bring administrative actions to enforce the securities law.

14 (5) To investigate and impose penalties for violations of the securities laws, including:

15 (A) Revoking, suspending, or denying licenses and registrations.

16 (B) Fines.

17 (C) Rescission, restitution, or disgorgement.

18 (6) Together with the attorney general, to bring actions pursuant to RSA 421-B:6-603.

19 (7) To investigate conduct that would be an unfair or deceptive act or practice under RSA 358-A  
20 and that is subject to the jurisdiction of the director of securities regulation pursuant to RSA 358-A:3, I.

21 (8) To issue letters of censure, caution, warning, or admonition pursuant to audits or  
22 inspections under RSA 421-B:4-409(d), investigations under RSA 421-B:6-602, or hearings under  
23 RSA 421-B:6-613.

24 (c) The exclusive authority and jurisdiction to issue licenses pursuant to RSA 421-B:6-601(b)(2)  
25 shall not be read to limit the authority of the department of insurance to license sellers of products  
26 where licensure is required both by RSA 421-B and Title XXXVII.

27 (d) The secretary of state shall have all powers specifically granted or reasonably implied in  
28 order to perform the substantive responsibilities imposed by this chapter.

29 (e) Unlawful use of records or information. It is unlawful for the secretary of state or officer,  
30 employee, or designee of the secretary of state to use for personal benefit or the benefit of others records  
31 or other information obtained by or filed with the secretary of state that are not public under  
32 RSA 421-B:6-607(b). The secretary of state may disclose records or information in accordance with  
33 RSA 91-A.

34 (f) No common law privilege or exemption created or diminished. Except for the privilege from  
35 defamation in RSA 421-B:4-406(i), this chapter does not create or diminish any privilege or  
36 exemption that exists at common law, by statute, rule, or otherwise.

37 (g) Investor education. The secretary of state may develop and implement investor education

1 initiatives to inform the public about investing in securities, with particular emphasis on the  
2 prevention and detection of securities fraud. In developing and implementing these initiatives, the  
3 secretary of state may collaborate with public and nonprofit organizations with an interest in  
4 investor education. The secretary of state may accept grants or donations from a person that is not  
5 affiliated with the securities industry or from a nonprofit organization, regardless of whether or not  
6 the organization is affiliated with the securities industry, to develop and implement investor  
7 education initiatives. This subsection does not authorize the secretary of state to require  
8 participation or monetary contributions of a registrant in an investor education program.

9 (h) Investor education fund. All moneys collected as an administrative penalty under this  
10 chapter and all moneys collected pursuant to RSA 421-B:6-614(a)(4), and (5), shall be credited to an  
11 investor education fund to be maintained by the state treasurer. Funds in excess of \$725,000 at the  
12 end of each fiscal year shall be credited to the general fund. The secretary of state, after deducting  
13 administrative costs, shall use moneys credited to that fund to provide information to residents of  
14 this state about investments in securities, to help investors and potential investors evaluate their  
15 investment decisions, protect themselves from unfair, inequitable, or fraudulent offerings, choose  
16 their broker-dealers, agents, or investment advisers more carefully, be alert for false or misleading  
17 advertising or other harmful practices, and know their rights as investors. The state treasurer shall  
18 pay the expenses of investor education out of the investor education fund consisting of the funds.  
19 The investor education fund shall be nonlapsing and continually appropriated for the purpose of  
20 paying the expenses of investor education, except that the fund shall at no time exceed \$725,000.

21 (i) The secretary of state shall collect all fees and charges required under this chapter and shall  
22 pay them to the state treasurer to be deposited in the general fund as unrestricted revenue, except  
23 as provided in RSA 421-B:6-601(h).

24 421-B:6-602 Investigations and Subpoenas.

25 (a) Authority to investigate. The secretary of state may:

26 (1) conduct public or private investigations within or outside of this state that the secretary  
27 of state considers necessary or appropriate to determine whether any person has violated, is  
28 violating, or is about to violate this chapter or an order issued under this chapter, or to aid in the  
29 enforcement of this chapter or in the adoption of forms under this chapter;

30 (2) require or permit a person to testify, file a statement, or produce a record, under oath or  
31 otherwise as the secretary of state determines, as to all the facts and circumstances concerning a  
32 matter to be investigated or about which an action or proceeding is to be commenced; and

33 (3) publish information concerning an action, proceeding, or an investigation under, or a  
34 violation of, this chapter or an order issued under this chapter if the secretary of state determines it  
35 is necessary or appropriate in the public interest and for the protection of investors.

36 (4) hold hearings, upon reasonable notice, in respect to any matter arising out of the  
37 administration of this chapter;

1           (5) conduct investigations and hold hearings for the purpose of compiling information with a  
2 view to recommending changes in this chapter to the legislature; and

3           (6) require a broker-dealer, agent, or issuer, subject to the limitations set forth in section 18  
4 of the Securities Act of 1933, to report to the secretary of state all transactions as they pertain to any  
5 security. Such reports shall be made within 10 days after demand therefor by the secretary of state  
6 and shall be open for public inspection only upon a court order. The secretary of state shall not make  
7 known, in any manner not provided by law, any information contained in such reports.

8           (b) Secretary of state's powers to investigate. For the purpose of an investigation under this  
9 chapter, the secretary of state or a designated officer may administer oaths and affirmations,  
10 subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of a statement,  
11 and require the production of any records that the secretary of state considers relevant or material to  
12 the investigation.

13           (c) Procedure and remedies for noncompliance. If a person fails to appear or refuses to testify,  
14 file a statement, produce records, or otherwise fails to obey a subpoena as required by the secretary  
15 of state under this chapter, the attorney general or the secretary of state may apply to the superior  
16 court or a court of another state to enforce compliance. The court may:

17               (1) hold the person in contempt;

18               (2) order the person to appear before the attorney general or secretary of state;

19               (3) order the person to testify about the matter under investigation or in question;

20               (4) order the production of records;

21               (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or  
22 the providing of investment advice;

23               (6) order a civil penalty of not less than \$2,500 for each violation; and

24               (7) grant any other necessary or appropriate relief.

25           (d) Assistance to securities regulator of another state. At the request of the securities regulator  
26 of another state or a foreign jurisdiction, the secretary of state may provide assistance if the  
27 requesting regulator states that it is conducting an investigation to determine whether a person has  
28 violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction  
29 relating to securities matters which the requesting regulator administers or enforces. The secretary  
30 of state may provide the assistance by using the authority to investigate and the powers conferred by  
31 this section as the secretary of state determines is necessary or appropriate. The assistance may be  
32 provided without regard to whether the facts stated in the request would also constitute a violation  
33 of this chapter or other law of this state if occurring in this state. In deciding whether to provide the  
34 assistance, the secretary of state may consider whether the requesting regulator is permitted and  
35 has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the secretary  
36 of state on securities matters when requested; whether compliance with the request would violate or

1 prejudice the public policy of this state; and the availability of resources and employees of the  
2 secretary of state to carry out the request for assistance.

3 421-B:6-603 Civil Enforcement.

4 (a) Civil action instituted by attorney general or secretary of state. If it appears to the attorney  
5 general or secretary of state that a person has engaged, is engaging, or is about to engage in an act,  
6 practice, or course of business constituting a violation of this chapter or an order issued under this  
7 chapter, or that a person has, is, or is about to engage in an act, practice, or course of business that  
8 materially aids a violation of this chapter or an order issued under this chapter, the attorney general  
9 or the secretary of state may maintain an action in the superior court to enjoin the act, practice, or  
10 course of business and to enforce compliance with this chapter or an order issued under this chapter.  
11 The action may be brought in the superior court of the county in which the defendant resides or has  
12 his or her principal place of business, or, with the consent of the parties or if the defendant is a  
13 nonresident and has no place of business within the state, in the superior court of Merrimack county.

14 (b) Relief available In an action under this section and upon a proper showing, the court may:

15 (1) grant or require a permanent or temporary injunction, restraining order, writ of  
16 mandamus, or a declaratory judgment;

17 (2) issue an order for other appropriate or ancillary relief, to include:

18 (A)(i) an asset freeze, accounting, writ of attachment, writ of general or specific  
19 execution, and an appointment of a receiver or conservator, that may be the secretary of state, for  
20 the defendant or the defendant's assets.

21 (ii) Notwithstanding any law to the contrary, the court may grant, upon a proper  
22 showing by the secretary of state, a writ of attachment for the state of New Hampshire for the  
23 benefit of all aggrieved investors identified by the secretary of state which will have priority over any  
24 other attachment or lien granted in connection with a civil action brought by an aggrieved investor  
25 asserting a claim based on the same act or omission.

26 (B) an order to the secretary of state to take charge and control of a defendant's  
27 property, including investment accounts and accounts in a depository institution, rents, and profits;  
28 to collect debts; and to acquire and dispose of property;

29 (C) the imposition of a civil penalty up to a maximum of \$5,000 for a single violation; an  
30 order of rescission, restitution, or disgorgement directed to a person that has engaged in an act,  
31 practice, or course of business constituting a violation of this chapter or the predecessor act or an  
32 order issued under this chapter or the predecessor act; and

33 (D) an order for the payment of prejudgment and postjudgment interest; or

34 (3) granting other relief that the court considers appropriate.

35 (c) No bond requirement. The attorney general or the secretary of state may not be required to  
36 post a bond.

1 (d) In a proceeding in superior court under this section where the state prevails, the secretary of  
2 state and the attorney general shall be entitled to recover all costs and expenses of investigation, and  
3 the court shall include the costs in its final judgment.

4 421-B:6-604 Administrative Enforcement.

5 (a) Issuance of an order or notice. If the secretary of state determines that a person has  
6 engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a  
7 violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to  
8 materially aid an act, practice, or course of business constituting a violation of this chapter or an  
9 order issued under this chapter, the secretary of state may:

10 (1) issue an order directing the person to cease and desist from engaging in the act, practice,  
11 or course of business or to take other action necessary or appropriate to comply with this chapter; or

12 (2) issue an order under RSA 421-B:2-204.

13 (b) Summary process. An order under subsection (a) is effective on the date of issuance. Upon  
14 issuance of the order, the secretary of state shall promptly serve each person subject to the order  
15 with a copy of the order and a notice that the order has been entered. The order shall include a  
16 statement of the reasons for the order and notice that, within 15 days after receipt of a request in a  
17 record from the person, the matter will be scheduled for a hearing. If a person subject to the order  
18 does not request a hearing and none is ordered by the secretary of state within 30 days after the date  
19 of service of the order, the order becomes final as to that person. If a hearing is requested or ordered,  
20 the secretary of state, after notice of and opportunity for hearing to each person subject to the order,  
21 may modify or vacate the order or extend it until final determination. If the person to whom a cease  
22 and desist order is issued fails to appear at the hearing after being duly notified, such person shall  
23 be deemed in default, and the proceeding may be determined against him or her upon consideration  
24 of the cease and desist order, the allegations of which may be deemed to be true.

25 (c) Procedure for final order. If a hearing is requested or ordered pursuant to subsection (b), a  
26 hearing shall be held pursuant to RSA 421-B:6-612. In accordance with RSA 421-B:6-612, the  
27 secretary of state shall issue a written decision stating the action to be taken by the department and  
28 may set forth findings of fact, conclusions of law, and disposition. The final order may make final,  
29 vacate, or modify the order issued under subsection (a).

30 (d) Civil penalty. In a final order, the secretary of state may impose a civil penalty up to a  
31 maximum of \$2,500 for a single violation. In addition, every such person who is subject to such civil  
32 penalty, upon hearing, and in addition to any other penalty provided for by law, be subject to such  
33 suspension, revocation, or denial of any registration or license, or be barred from registration or  
34 licensure, including the forfeiture of any application fee.

35 (e) After notice and hearing, the secretary of state may enter an order of rescission, restitution,  
36 or disgorgement directed to a person who has violated this chapter, or a rule or order under this

1 chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided  
2 for under this chapter.

3 (f) The secretary of state may order any person who violates RSA 421-B:5-501, RSA 421-B:5-502,  
4 RSA 421-B:3-301, RSA 421-B:3-302, RSA 421-B:5-505 or a cease and desist order issued under this  
5 chapter, upon hearing, and in addition to any other penalty provided for by law, to make a written  
6 offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the  
7 security, equal to the consideration paid for the security together with interest at the legal rate, less  
8 the amount of any income received by the purchaser on the security, or if the purchaser no longer  
9 owns the security, an offer to pay an amount in cash equal to consideration paid for the security  
10 together with interest at the legal rate, less the amount the purchaser received on disposition of the  
11 security and less the amount of any income received by the purchaser on the security.

12 (g) Costs. In a final order, the secretary of state may charge the actual cost of an investigation  
13 or proceeding for a violation of this chapter or an order issued under this chapter.

14 (h) Enforcement by court; further civil penalty. If a person fails to comply with an order under  
15 this section, the attorney general or secretary of state may petition a court of competent jurisdiction  
16 to enforce the order. The court may not require the attorney general or secretary of state to post a  
17 bond. If the court finds, after service and opportunity for hearing, that the person is not in  
18 compliance with the order, the court may adjudge the person in civil contempt of the order. The  
19 court may impose a further civil penalty against the person for contempt in an amount not less than  
20 \$5,000 for each violation, and may grant any other relief the court determines is just and proper in  
21 the circumstances.

22 421-B:6-605 Orders, Interpretative Opinions, and Hearings.

23 (a) Issuance and adoption of forms, orders, and rules. The secretary of state may:  
24 by order, define terms, whether or not used in this chapter, when those definitions are not  
25 inconsistent with this chapter.

26 (b) Findings and cooperation. All actions undertaken by the secretary of state pursuant to this  
27 section shall be taken only when the secretary of state finds such action necessary or appropriate to  
28 the public interest or for the protection of investors and consistent with the purposes fairly intended  
29 by the policy and provisions of this title. In preparing forms, setting standards, and reviewing  
30 offerings, the secretary of state may cooperate with the securities regulators of other states, self  
31 regulatory organizations, and the Securities and Exchange Commission in order to implement the  
32 policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the  
33 form and content of registration statements, applications, reports, and requirements for issuers,  
34 broker-dealers, and investment advisors, where practicable.

35 (c) Financial statements. Subject to section 15(h) of the Securities Exchange Act and Section  
36 222 of the Investment Advisers Act of 1940, the secretary of state may require that a financial  
37 statement filed under this chapter be prepared in accordance with generally accepted accounting

1 principles in the United States and comply with other requirements specified by rule or order under  
2 this chapter. Subject to section 15(h) of the Securities Exchange Act and section 222 of the  
3 Investment Advisors Act of 1940, a rule or order under this chapter may establish the form and  
4 content of financial statements required under this chapter.

5 (d) Interpretative opinions. The secretary of state may provide interpretative opinions or may  
6 issue determinations that the secretary of state will not institute an enforcement proceeding or  
7 commence an action under this chapter against a specified person for engaging in a specified act,  
8 practice, or course of business if the determination is consistent with the purposes intended by this  
9 chapter. The secretary of state may assess a reasonable charge for interpretative opinions or  
10 determinations that the secretary of state will not commence an action or institute an enforcement  
11 proceeding under this chapter.

12 421-B:6-606 Administrative Files and Opinions.

13 (a) Public register of filings. The secretary of state shall maintain a register of all applications  
14 for registration of securities; registration statements; notice filings, applications for registration of  
15 broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings  
16 by federal covered investment advisers that are or have been effective under this chapter or the  
17 predecessor act; notices of claims of exemption from registration or notice filing requirements  
18 contained in a record; orders issued under this chapter or the predecessor act; and interpretative  
19 opinions or no-action determinations issued under this chapter.

20 (b) Public availability. The secretary of state shall make all forms, interpretative opinions, and  
21 orders available to the public.

22 (c) Copies of public records. Upon request, the secretary of state shall furnish to a person a copy of  
23 a record that is a public record pursuant to RSA 91-A or a certification that the public record does not  
24 exist. The secretary of state may prescribe a reasonable charge for furnishing the record. A copy of the  
25 record certified or a certificate of its nonexistence by the secretary of state is prima facie evidence.

26 421-B:6-607 Public Records; Confidentiality.

27 (a) Presumption of public records. Except as otherwise provided in subsection (b), records  
28 obtained by the secretary of state or filed under this chapter, including a record contained in or filed  
29 with any registration statement, application, notice filing, or report, are public records and are  
30 available for public examination.

31 (b) The information contained in or filed with any registration statement, application, or report  
32 may be made available to the public in accordance with RSA 91-A. A person who files a record in  
33 connection with a registration statement under RSA 421-B:3-301 and RSA 421-B:3-303 through  
34 RSA 421-B:3-305 or a record under RSA 421-B:4-411(d) that contains trade secrets or confidential  
35 information may request that the secretary of state treat such record as confidential or privileged  
36 and subject to the exemptions from public disclosure under RSA 91-A.

37 421-B:6-608 Uniformity and Cooperation with Other Agencies.

1           (a) Interstate cooperation. The secretary of state and the secretary of state's staff shall  
2 maintain close relations with the securities and corporate administrators of other states and shall  
3 actively participate in the activities and affairs of the North American Security Administrators  
4 Association and other organizations so far as it will, in the secretary of state's judgment, enhance the  
5 purposes of the securities and corporate laws. The actual and necessary travel and related expenses  
6 incurred in attending meetings of said association, their committees, subcommittees, hearings, and  
7 other official activities, as well as the general expenses of participation in such associations, shall be  
8 a charge on available funds and the appropriation of the office of the secretary of state.

9           (b) Statutory policy. This chapter shall be so construed as to effectuate its general purpose to  
10 make uniform the laws of those states which enact it and to coordinate the interpretation of this  
11 chapter with the related federal regulation.

12           421-B:6-609 Judicial Review. Final orders issued by the secretary of state under this chapter  
13 are subject to judicial review in accordance with RSA 541.

14           421-B:6-610 Jurisdiction.

15           (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-  
16 402(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,  
17 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  
18 made in this state, or the offer to purchase or the purchase is made and accepted in this state.

19           (b) Purchases and offers to purchase. RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-  
20 403(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-  
21 510 apply to a person that purchases or offers to purchase a security if the offer to purchase or the  
22 purchase is made in this state, or the offer to sell or the sale is made and accepted in this state.

23           (c) Offers in this state. For the purpose of this section, an offer to sell or to purchase a security  
24 is made in this state, whether or not either party is then present in this state, if the offer:

25               (1) originates from this state; or

26               (2) is directed by the offeror to a place in this state and received at the place to which it  
27 is directed.

28           (d) Acceptances in this state. For the purpose of this section, an offer to purchase or to sell is  
29 accepted in this state, whether or not either party is then present in this state, if the acceptance:

30               (1) is communicated to the offeror in this state and the offeree reasonably believes the  
31 offeror to be present in this state and the acceptance is received at the place in this state to which it  
32 is directed; and

33               (2) has not previously been communicated to the offeror, orally or in a record, outside this state.

34           (e) Publications, radio, television, or electronic communication. An offer to sell or to purchase is  
35 not made in this state when a publisher circulates or there is circulated on the publisher's behalf in  
36 this state a bona fide newspaper or other publication of general, regular, and paid circulation that is  
37 not published in this state, or that is published in this state but has had more than two-thirds of its

1 circulation outside this state during the previous 12 months, or when a radio or television program or  
2 other electronic communication originating outside this state is received in this state. A radio,  
3 television program, or other electronic communication is considered as having originated in this state if  
4 either the broadcast studio or the originating source of transmission is located in this state, unless:

5 (1) the program or communication is syndicated and distributed from outside this state for  
6 redistribution to the general public in this state;

7 (2) the program or communication is supplied by a radio, television, or other electronic  
8 network with the electronic signal originating from outside this state for redistribution to the  
9 general public in this state;

10 (3) the program or communication is an electronic communication that originates outside  
11 this state and is captured for redistribution to the general public in this state by a community  
12 antenna or cable, radio, cable television, or other electronic system; or

13 (4) the program or communication consists of an electronic communication that originates in  
14 this state, but which is not intended for distribution to the general public in this state.

15 (f) Investment advice and misrepresentations. RSA 421-B:4-403(a), RSA 421-B:4-404(a),  
16 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  
17 an act, practice, or course of business instrumental in effecting prohibited or actionable conduct is  
18 engaged in this state, whether or not either party is then present in this state.

19 421-B:6-611 Service of Process.

20 (a) Signed consent to service of process. A consent to service of process required by this chapter  
21 must be signed and filed in the form required by the secretary of state. A consent appointing the  
22 secretary of state the person's agent for service of process in a noncriminal action or proceeding  
23 against the person, or the person's successor, or personal representative under this chapter or an  
24 order issued by the secretary of state under this chapter after the consent is filed, has the same force  
25 and validity as if the service were made personally on the person filing the consent. A person that  
26 has filed a consent complying with this subsection in connection with a previous application for  
27 registration or notice filing need not file an additional consent.

28 (b) Conduct constituting appointment of agent for service. If a person, including a nonresident  
29 of this state, engages in an act, practice, or course of business prohibited or made actionable by this  
30 chapter or an order issued by the secretary of state under this chapter and the person has not filed a  
31 consent to service of process under subsection (a), that act, practice, or course of business constitutes  
32 the appointment of the secretary of state as the person's agent for service of process in a noncriminal  
33 action or proceeding against the person, the person's successor, or personal representative.

34 (c) Procedure for service of process. Service under subsection (a) or (b) may be made by  
35 providing a copy of the process to the office of the secretary of state, but it is not effective unless:

36 (1) the plaintiff, which may be the secretary of state, promptly sends notice of the service  
37 and a copy of the process, return receipt requested, to the defendant or respondent at the address set

1 forth in the consent to service of process or, if a consent to service of process has not been filed, at the  
2 last known address, or takes other reasonable steps to give notice; and

3 (2) the plaintiff files an affidavit of compliance with this subsection in the action or  
4 proceeding on or before the return day of the process, if any, or within the time that the court, or the  
5 secretary of state, in a proceeding before the secretary of state, allows.

6 (d) Use in administrative proceedings. Service as provided in subsection (c) may be used in a  
7 proceeding before the secretary of state or by the secretary of state in a civil action in which the  
8 secretary of state is the moving party.

9 (e) Provision of opportunity to defend. If the process is served under subsection (c), the court, or  
10 the secretary of state in a proceeding before the secretary of state, shall order continuances as are  
11 necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

12 421-B:6-612 Severability Clause. If any provision of this chapter or its application to any person  
13 or circumstances is held invalid, the invalidity does not affect other provisions or applications of this  
14 chapter that can be given effect without the invalid provision or application, and to this end the  
15 provisions of this chapter are severable.

16 421-B:6-613 Hearing Procedures.

17 (a) Notwithstanding any other law to the contrary, all adjudicatory proceedings pursuant to this  
18 chapter shall be conducted by the secretary of state or by a presiding officer appointed by the  
19 secretary of state. All hearings conducted pursuant to this chapter shall be governed by the  
20 provisions of this section and the provisions of RSA 541-A shall not apply to this chapter.

21 (b) A document shall be considered filed when it is actually received at the department's office in  
22 Concord, New Hampshire, and conforms to the requirements of this chapter.

23 (c) For the purposes of this section:

24 (1) All complaints, petitions, motions, responses, and replies shall be signed by the  
25 proponent of the document or, if the party appears by a representative, by the representative.

26 (2) License, registration, and exemption applications shall be signed only by the applicant or  
27 properly authorized designee.

28 (3) The signature on a document filed with the department shall constitute a certification that:

29 (A) The signer has read the document and is authorized to file it;

30 (B) There are good grounds to support the representations made therein; and

31 (C) The document has not been filed for purposes of delay or harassment.

32 (4) A willful violation of subsection (c), shall, to the extent consistent with the policy of the  
33 statutes administered by the secretary of state, be a basis for entering an order adverse to the party  
34 committing the violation.

35 (d) Within a reasonable time after receipt of a complaint:

36 (1) The department staff or a presiding officer shall review the complaint to determine  
37 whether any basis exists for administrative action.

1           (2) If the complaint is insufficient or no basis exists which warrants administrative action,  
2 the complaint shall be dismissed and no hearing shall be scheduled on such complaint.

3           (3) If the staff determines that sufficient basis exists which warrants administrative action,  
4 the staff shall petition the secretary of state for relief.

5           (4) On any complaint, the staff shall temporarily defer any action and refer the subject matter  
6 of the complaint to the appropriate agency if a more complete investigation is necessary. The results of  
7 the investigation shall be used to determine the necessity of conducting a hearing by the department.

8           (e) Within a reasonable time after receipt of a petition:

9           (1) The secretary of state may issue an order either denying or granting the petition or  
10 granting in part and denying in part. If any part of the petition is granted, the respondent shall be  
11 informed, as part of the hearing notice, of the respondent's right to a hearing.

12           (2) A petition may include a request for summary action prior to a hearing.

13           (3) The staff may, sua sponte, petition for relief whenever it has reasonable grounds to  
14 believe that a violation of law has occurred, is occurring, or is about to occur.

15           (f) Notices of hearings shall:

16           (1) Be prepared and forwarded in a manner which affords interested persons sufficient  
17 opportunity to prepare for and deal with the issues to be considered and decided upon at the hearing.

18           (2) Given in writing and addressed to the address of record of the person being called in for  
19 the hearing. The notice shall be prepared on an official form of the department and shall be sent in a  
20 sealed envelope through the United States mail, personal services, or by Federal Express or other  
21 similar delivery service.

22           (g) A notice of hearing shall include:

23           (1) The time, date, and location of the hearing.

24           (2) The statute which has allegedly been violated and a statement of the legal authority  
25 under which the hearing is to be held.

26           (3) An explicit description of the alleged violation or a copy of the complaint or petition for  
27 relief or both the copy of complaint and petition for relief.

28           (h) Each hearing shall be set for a date as soon as practicable after the complaint has been  
29 received and reviewed. The hearing shall be scheduled to allow sufficient and reasonable time for  
30 the preparation of the case by both the department and interested parties.

31           (i) A request for continuance of a hearing shall be made in writing and received by the  
32 department, absent exigent circumstances, at least 5 working days prior to the hearing. Exigent  
33 circumstances include:

34           (1) Absence from the jurisdiction;

35           (2) Serious illness;

36           (3) Hospitalization;

37           (4) Death of a family member.

1 (j) The written request or motion for continuance shall contain the following:

2 (1) The specific reason or reasons for the request; and

3 (2) Optional dates and times when all interested parties shall be available.

4 (k) Each presiding officer may, at any stage of the hearing process, withdraw from a case if the  
5 presiding officer has or has had a personal or business relationship with any party, witness, or  
6 representative that may hinder such presiding officer from being able to arrive at an impartial  
7 decision on the issue or issues, or for any other reason that may interfere with the presiding officer's  
8 ability to remain impartial.

9 (l) Parties shall have the right to:

10 (1) Appear pro se or be represented by an attorney.

11 (2) Cross-examine witnesses; and

12 (3) Present evidence and witnesses on their own behalf.

13 (m) Except as provided as follows, administrative hearings shall be open to the public:

14 (1) The presiding officer may, on the presiding officer's own motion or at the request of a  
15 party, rule that the public be excluded from a hearing if necessary, pursuant to RSA 91-A:3, II, to  
16 protect the interests and rights of the parties to the hearing.

17 (2) In matters involving sensitive issues, a presiding officer may consult with the office of  
18 the attorney general for a ruling on the privacy issue.

19 (3) Members of the press shall be admitted to the hearing whenever the public is permitted.  
20 If the press is present at a hearing, the presiding officer shall brief them, off the record, in the  
21 presence of all parties, as to the nature and purpose of the hearing.

22 (4) In the event a party objects to the attendance of persons not involved in the hearing, the  
23 presiding officer shall ascertain the reason for such objection and determine whether the reason  
24 given justifies closing the hearing to such persons.

25 (n) Subject to the laws governing the department of state, and within the general scope of his  
26 powers, each presiding officer shall have the authority to:

27 (1) Schedule and hold hearings.

28 (2) Administer oaths and affirmations.

29 (3) Issue subpoenas on behalf of the state.

30 (4) Determine the order of proof in any proceeding.

31 (5) Receive relevant evidence and rule on offers of proof in hearings.

32 (6) Take judicial notice of any facts which are of common knowledge and general notoriety.

33 (7) Take, or cause to be taken, depositions.

34 (8) Regulate and control the course of an administrative hearing.

35 (9) Hold conferences for the settlement or simplification of issues, or for obtaining  
36 stipulations as to issues of fact or proof by consent of the parties.

1           (10) Dispose of procedural requests, including adjournments or continuances at the request  
2 of the parties or on the presiding officer's own motion.

3           (11) Interview and examine witnesses and parties as the case may require.

4           (12) Direct parties to appear at hearings.

5           (13) Consider and evaluate the facts and evidence on the record in making findings of fact  
6 and conclusions of law and dispositions.

7           (14) Determine credibility or weight of evidence in making findings of fact and conclusions  
8 of law.

9           (15) Render oral and written decisions, reports, or recommendations as authorized by statute.

10          (16) Take any action in a proceeding necessary to conduct and complete the case, consistent  
11 with applicable statutes, and precedents.

12          (o) During any proceeding, the secretary of state shall, upon motion or upon his own motion, direct  
13 all parties to attend an informal conference to aid in the disposition of the proceeding. Such conferences:

14           (1) May be recorded unless all parties wish to discuss possible settlements off the record.  
15 Such recordings shall be part of the record.

16           (2) Shall be held, in addition to settlement possibilities, to consider:

17           (A) Possible simplification of the issues.

18           (B) Possible amendments to the pleadings.

19           (C) Possible admissions of fact, admissions of documents, or other stipulations which  
20 might avoid unnecessary proof.

21           (D) The identification and possible limitations on the number of witnesses.

22           (E) Possible changes to the method of proceeding or hearing schedule which would  
23 otherwise be applicable.

24           (F) The distribution of written testimony, if any, and exhibits to the parties.

25           (G) Possible consolidation of the examination of witnesses by the parties.

26           (H) Any other matters which might contribute to the prompt, orderly, and fair conduct of  
27 the proceeding.

28          (p) A prehearing conference or other informal conference shall be conducted in person or, with  
29 the consent of the parties, shall be conducted by means of electronic communications.

30          (q) The presiding officer shall cause the administrative hearing to be electronically recorded.  
31 Such recording shall be made available, upon written request by a party and upon a fee sufficient to  
32 reimburse the full cost of providing the tape, or a true and accurate copy of such tape or tapes. A  
33 party may request, in writing, a transcript of the hearing but shall first pay the full costs for such  
34 transcription as determined by the secretary of state.

35          (r) In the event there is a clear dispute of facts between the parties in which credibility of  
36 testimony will determine the outcome of the hearing, the presiding officer on his own motion or that  
37 of a party, may sequester witnesses until they are called to testify.

1           (s) In any administrative hearing in which administrative action affecting the rights or  
2 privileges of any party may be taken, an oath or affirmation shall be administered by the presiding  
3 officer to each witness prior to receiving testimony, provided, however, that if a witness asserts an  
4 objection to the taking of an oath for religious or other related reasons, an affirmation shall be  
5 administered. Once a witness has been sworn at any hearing, it shall not be necessary to swear the  
6 witness again for subsequent testimony on the same day and in the same case. The record of the  
7 proceeding shall indicate that a person was recalled to testify and reminded that such person was  
8 still under oath or affirmation.

9           (t) Motions shall be in written form unless presented at the hearing. Written motions shall be  
10 included in the record of the proceeding and filed together with the case file. Oral motions shall be  
11 recorded in full in any transcript of the proceeding or, at the discretion of the presiding officer, noted  
12 in the minutes of the proceeding and submitted in written form within a reasonable time. A  
13 presiding officer may rule upon a motion when made or may defer decision until a later time in the  
14 hearing, or until after the conclusion of the hearing.

15           (u) Administrative hearings shall not be bound by common law or statutory rules of evidence,  
16 nor by technical or formal rules of procedure. All relevant, material, and reliable evidence shall be  
17 admissible. Such evidence may include, but shall not be limited to, depositions, affidavits, official  
18 documents, and testimony of witnesses. Provided, however, the presiding officer may, in the  
19 presiding officer's discretion, exclude any irrelevant, immaterial, unreliable, or unduly cumulative or  
20 repetitious evidence. Applicable statutory and constitutional provisions and immunities requiring  
21 exclusion of evidence in civil proceedings shall be recognized, provided, however, that nothing  
22 contained herein shall prohibit a party from waiving such party's privilege or immunity.

23           (v) Within a reasonable time after the hearing, the presiding officer shall issue a written  
24 decision stating the action to be taken by the department and may set forth findings of fact,  
25 conclusions of law, and disposition. All decisions shall be reached upon the basis of a preponderance  
26 of the evidence. The decision of the presiding officer shall be construed as the decision of the  
27 secretary of state.

28           (w) Any party to whom notice has been forwarded pursuant to and in accordance with this  
29 section who fails to appear shall have a default judgment rendered against him.

30           (x) The presiding officer may take judicial notice.

31           (y) Where the interests of justice will be better served without prejudice to the substantial rights  
32 of any party, a presiding officer may sever one case from another or may consolidate 2 or more cases,  
33 preserving to all parties the right of appeal from the single or several decisions rendered.

34           (z) Once a hearing notice has been issued commencing an adjudicatory proceeding, no party shall  
35 communicate with the presiding officer or the secretary of state concerning the merits of the case except  
36 upon notice to all parties nor shall any party cause another person to make such communications.

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 102 -**

1 (aa) Within 30 days after a final decision, any party may file a motion for reconsideration which  
2 shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the  
3 terms “reconsideration” and “rehearing.” A motion for reconsideration shall:

4 (1) Identify each error of law, error of reasoning, or erroneous conclusion contained in the  
5 final order which the moving party wishes the secretary of state to reconsider.

6 (2) Concisely state the correct factual finding, correct reasoning, and correct conclusion  
7 being advocated.

8 (3) Include any memorandum of law the petitioner wishes to submit.

9 (bb) Within 30 days after a final decision, the presiding officer may reconsider, revise or reverse  
10 any final action on the presiding officer’s own motion. If reconsideration is based upon the existing  
11 record, prior notice shall not be given to the parties. If the presiding officer believes further  
12 information or argument should be considered, the parties shall be provided with an appropriate  
13 notice and opportunity to be heard before any revision is made in the previous action.

14 (cc) The filing of a motion for reconsideration shall not operate as a stay of any order or decision,  
15 but a motion for stay may be combined with a motion for reconsideration.

16 421-B:6-614 Fees.

17 (a) Initial fees and fees for amendments shall be as follows:

18 (1) Non-refundable registration fee for offers and  
19 sales of each class of open end mutual funds  
20 required to register under RSA 421-B:301 \$ 1,000

21 (2) Registration fee prior to offers or sales of securities in this state  
22 2/10 of one percent  
23 of the offering  
24 value of the  
25 securities offered  
26 in the registration  
27 statement, provided  
28 said fee shall not  
29 be more than  
30 \$1,050, plus a  
31 \$200 non-refundable  
32 examination fee

33 (3) Fee prior to offers and sales of securities in  
34 initial public offerings in this state under  
35 the Securities Act of 1933, \$ 1,000  
36 15 U.S.C. section 77r(b)(1)(A)

37 (4) Non-refundable fee prior to offers or sales of:

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 103 -**

1	(A) Covered securities of other investment		
2	companies under section 18(b)(2) of the		
3	Securities Act of 1933	\$	500
4	(B) Non-issuer transactions under section		
5	18(b)(4)(A) of the Securities Act of		
6	1933-- a one-time filing fee	\$	500
7	(5) Fee for a notice filing under RSA 421-B:3-302(c)	\$	500
8	(6) A copying and printing charge may be assessed		
9	per page for each document		
10	(7) Non-refundable initial notice filing fee prior	\$	1,000
11	to offers or sales of each class of an open		
12	end mutual fund under section 18(b)(2) of the		
13	Securities Act of 1933		
14	(8) Initial notice filing fee prior to offers or		
15	sales of covered securities under sections		
16	18(b)(4)(C) and 18(b)(3) of the Securities Act		
17	of 1933		
18		2/10 of one percent of the offering	
19		value of the	
20		securities offered	
21		in the registration	
22		statement, provided	
23		said fee shall not	
24		be more than	
25		\$1,050, plus a	
26		\$200 non-refundable	
27		initial notice fee	
28	(b) Renewal fees shall be as follows:		
29	(1) Annual notice filing fee for offers or sales of		
30	covered securities under sections 18(b)(4)(C)		
31	and 18(b)(3) of the Securities Act of 1933		
32		2/10 of one percent of the offering	
33		value of the	
34		securities offered	
35		in the registration	
36		statement, provided	
37		that the fee shall not	

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 104 -**

1 be more than  
2 \$ 1,050  
3 (2) Annual non-refundable notice filing fee for  
4 offers and sales of each class of an issuer of  
5 open end mutual funds which are covered  
6 securities under section 18(b)(2) of the  
7 Securities Act of 1933, due on or before May 1  
8 of each year \$ 1,000  
9 (3) Annual non-refundable registration fee for each  
10 class of an issuer of open end mutual funds,  
11 due on or before May 1 of each year, if  
12 required to register under RSA 421-B:3-301 \$ 1,000  
13 (4) Annual registration fee for securities offered in  
14 this state, due one year from the effective  
15 date of registration, and each year thereafter  
16 2/10 of one percent  
17 of the offering  
18 value of the  
19 securities offered  
20 in the registration  
21 statement, provided  
22 that the fee shall not  
23 be more than  
24 \$1,050  
25 (c) In addition to any other penalties, provisions, or fees prescribed under this chapter, a late  
26 filing fee of 1/10 of one percent of the offering value of (1) securities offered in the registration  
27 statement, or (2) an offering of federal covered securities, provided that the fee shall not be more  
28 than \$525, shall be imposed if:  
29 (1) It is requested that the provisions of RSA 421-B:3-303(c)(2) be waived; or  
30 (2) Securities sold in this state are more than registered on the effective application filed  
31 with the secretary of state, where the maximum registration fee has not been paid; or  
32 (3) The registration application is amended to increase the amount registered in this state,  
33 where the maximum registration fee has not been paid, subsequent to the effectiveness of the  
34 registration in this state; or  
35 (4) Federal covered securities sold in this state are more than described in the notice filing  
36 made, where the maximum notice filing fee or the total amount of a flat fee has not been paid; or



**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 106 -**

1 made in good faith before the effective date of this act on the basis of an exemption available under  
2 the predecessor act.

3 2 Cross Reference; Informational Filing Required. Amend RSA 5-B:4 to read as follows:

4 5-B:4 Informational Filing Required; Fee. Pooled risk management programs established for  
5 the benefit of political subdivisions shall make an informational filing, as defined in RSA 5-B:2, II,  
6 with the department and shall pay an annual filing fee of \$150. The department may make requests  
7 for additional information necessary to exercise regulatory or enforcement authority pursuant to, but  
8 not limited to, the hearings procedures under ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613** over any pooled  
9 risk management program formed or affirmed in accordance with this chapter. Pooled workers'  
10 compensation and unemployment compensation programs which are regulated by and which report  
11 to the department of labor and the department of employment security, under RSA 281-A and  
12 RSA 282-A, respectively, shall be exempt from the requirements of this section as long as their  
13 operations and reports conform to the laws and rules adopted by those departments.

14 3 Cross Reference; Authority of the Secretary of State. Amend RSA 5-B:4-a, VI to read as  
15 follows:

16 VI. Whenever it appears to the secretary of state that any person has engaged or is about to  
17 engage in any act or practice constituting a violation of this chapter or any rule or order under this  
18 chapter the secretary of state shall have the power to issue and cause to be served upon such person  
19 an order requiring the person to cease and desist from violations of this chapter. The order shall be  
20 calculated to give reasonable notice of the rights of the person to request a hearing on the order and  
21 shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with  
22 ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613**.

23 4 Cross Reference; Investor Education Fund. Amend RSA 6:12, I(b)(53) to read as follows:

24 (53) Moneys ~~[received under RSA 421-B:26, I, II and III, which shall be]~~ **that are** credited to  
25 the investor education fund ~~[established in RSA 421-B:26, IV]~~ **pursuant to RSA 421-B:6-601(h)**.

26 5 Cross Reference; Incorporators. Amend RSA 293-A:2.01 to read as follows:

27 293-A:2.01 Incorporators. One or more persons may act as the incorporator or incorporators of  
28 a corporation by delivering articles of incorporation ~~[and the certificate required by RSA 421-B:11,~~  
29 ~~H(a)]~~ to the secretary of state for filing.

30 6 Cross Reference; Articles of Domestication. Amend RSA 293-A:9.22(c) to read as follows:

31 (c) The articles of domestication with articles of incorporation ~~[and the certificate required by~~  
32 ~~RSA 421-B:11, H(a)]~~ shall be delivered to the secretary of state for filing, and shall take effect at the  
33 effective time provided in RSA 293-A:1.23.

34 7 Cross Reference; Articles of Merger or Share Exchange. Amend RSA 293-A:11.06(a)(3) to read  
35 as follows:

36 (3) if the articles of incorporation of the survivor of a merger are amended, the amendments  
37 to the survivor's articles of incorporation, or if a new corporation is created as a result of a merger,

1 the articles of incorporation of the new corporation [~~and the certificate required by RSA 421-B:11,~~  
2 ~~H(a)~~];

3 8 Cross Reference; Procedure for and Effect of Administrative Dissolution. Amend RSA 293-  
4 A:14.21(f) to read as follows:

5 (f) In connection with the issuance of a notice of dissolution by the secretary of state under  
6 RSA 293-A:14.21(a) on grounds set forth in RSA 293-A:14.20(a)(6), a hearing shall be set for 10  
7 business days after the issuance of the notice of dissolution. All hearings shall be conducted in  
8 accordance with [~~RSA 421-B:26-a~~] **RSA 421-B:6-613**. If the person whom the notice is issued fails to  
9 appear for the hearing, then such person shall be deemed in default, and the dissolution shall  
10 become final.

11 9 Cross Reference; Late Reinstatement. Amend RSA 293-A:14.22-a(g) to read as follows:

12 (g) Except for provisions and requirements set forth in this section, late reinstatement hearings  
13 shall be subject to [~~RSA 421-B:26-a~~] **RSA 421-B:6-613**.

14 10 Cross Reference; Inspection of Records by Shareholders. Amend RSA 293-A:16.02(e) to read  
15 as follows:

16 (e) For purposes of RSA 293-A:16.02(d), if a shareholder makes a written demand on a  
17 corporation for an alphabetical list of the names and addresses of its shareholders who are entitled  
18 to notice of a shareholders' meeting for the purpose of communicating with other shareholders  
19 relating to an item of business listed in the notice, and the corporation refuses to allow inspection  
20 and copying of the list, the shareholder may petition the secretary of state to issue an order requiring  
21 the corporation to allow the shareholder to inspect and copy the list of shareholders pursuant to the  
22 provisions of [~~RSA 421-B:26-a~~] **RSA 421-B:6-613**. The secretary of state, or his or her designee,  
23 shall confirm that (i) the petitioner is a shareholder of the corporation, (ii) the corporation has given  
24 a notice of shareholder meeting to its shareholders, and (iii) the shareholder made a written demand  
25 to inspect and copy the shareholder list for the purpose of communicating with the shareholders  
26 regarding an item of business set forth in the notice. If the secretary of state confirms such  
27 information, he or she shall schedule a hearing no later than 10 business days after making such  
28 confirmation. The secretary of state shall promptly give the petitioner and the corporation notice of  
29 the hearing. At such hearing, the presiding officer shall determine whether the petitioner has made  
30 the demand for the inspection and copying of the shareholder list for a proper purpose and in good  
31 faith and in accordance with RSA 293-A:16.02(d) and, if so, he or she shall order the corporation to  
32 comply with the law. If the corporation fails to attend the hearing, the corporation shall be deemed to  
33 be in default, and the presiding officer may issue an order requiring it to allow the petitioner to  
34 inspect and copy the shareholder list. Such order in the case of default shall be deemed final and  
35 may be enforced by the secretary of state pursuant to RSA 293-A:16.02(f).

36 11 Cross Reference; Certificate of Formation; General Requirements. Amend RSA 304-C:31, I to  
37 read as follows:

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 108 -**

1 I. In order to form a domestic limited liability company, one or more authorized persons  
2 shall deliver a certificate of formation [~~and the certificate required by RSA 421-B:11, II(a)~~] to the  
3 secretary of state for filing.

4 12 Cross Reference; Late Reinstatements. Amend RSA 304-C:145, VII to read as follows:

5 VII. Except for provisions and requirements set forth in this section, late reinstatement  
6 hearings shall be subject to [~~RSA 421-B:26-a~~] **RSA 421-B:6-613**.

7 13 Cross Reference; Statutory Conversions of Other Business Entities to Limited Liability  
8 Companies. Amend RSA 304-C:149, IV to read as follows:

9 IV. A converting business entity making a statutory conversion under this section shall file  
10 with the secretary of state:

11 (a) A certificate of statutory conversion to a limited liability company; **and**

12 (b) A certificate of formation that complies with the requirements of RSA 304-C:31[~~]; and~~

13 [~~(c) The certificate required by RSA 421-B:11, II~~].

14 14 Cross Reference; Requirement of Registration by a Foreign Limited Liability Companies.  
15 Amend the introductory paragraph of RSA 304-C:175 to read as follows:

16 Before doing business in New Hampshire, a foreign limited liability company shall register with  
17 the secretary of state. In order to register, a foreign limited liability company shall pay the fee  
18 required by RSA 304-C:191, II(h) and shall file [~~the certificate required by RSA 421-B:11, II(a) and~~]  
19 an application for registration as a foreign limited liability company, setting forth:

20 15 Cross Reference; Membership. Amend RSA 403-F:9, IV to read as follows:

21 IV. A membership interest in a mutual insurance holding company shall not constitute a  
22 security, as defined [~~by RSA 421-B:2~~] **in RSA 421-B:1-102(53)**.

23 16 Cross Reference; Filing with Secretary of State. Amend RSA 405:65 to read as follows:

24 405:65 Filing with Secretary of State. An insurer transferring its domicile to this state shall file  
25 the following documents with the secretary of state, together with applicable filing fees:

26 I. Restated articles of incorporation or equivalent, as amended pursuant to RSA 405:62; **and**

27 II. Executed order of the commissioner approving the redomestication[~~]; and~~

28 [~~III. The statement set forth in RSA 421-B:11, II~~].

29 17 Cross Reference; Definition; Variable Contract. Amend RSA 408:27 to read as follows:

30 408:27 Definition. A “variable contract” shall mean any life insurance policy or annuity contract  
31 issued by an insurance company which provides that the dollar amount of benefits or other  
32 contractual payments thereunder may vary according to the investment experience of any separate  
33 account or accounts maintained by the insurance company in which amounts received in connection  
34 with such policies or contracts have been placed. Variable contracts shall not be deemed subject to  
35 [~~RSA 421~~] **RSA 421-B**.

36 18 Cross Reference; Definition; Funding Agreement. Amend RSA 408-E:2, I to read as follows:

1 I. "Funding agreement" means an agreement issued by a life insurance company, not based  
2 on mortality or morbidity, providing for the accumulation of funds by the insurer for the purpose of  
3 making one or more payments to the holder, where the initial premium paid is \$1,000,000 or more.  
4 Except as provided in this chapter, a "funding agreement" does not constitute life insurance or an  
5 annuity and does not constitute a security[;] as defined by [~~RSA 421-B:2, XX~~] **in RSA 421-B:1-**  
6 **102(53).**

7 19 Cross Reference; Authorization for Interception of Telecommunications or Oral  
8 Communications. Amend RSA 570-A:7 to read as follows:

9 570-A:7 Authorization for Interception of Telecommunications or Oral Communications. The  
10 attorney general, deputy attorney general, or a county attorney, upon the written approval of the  
11 attorney general or deputy attorney general, may apply to a judge of competent jurisdiction for an  
12 order authorizing or approving the interception of telecommunications or oral communications, and  
13 such judge may grant, in conformity with RSA 570-A:9, an order authorizing or approving the  
14 interception of telecommunications or oral communications by investigative or law enforcement  
15 officers having responsibility for the investigation of the offenses as to which the application is made,  
16 when such interception may provide, or has provided, evidence of the commission of organized crime,  
17 as defined in RSA 570-A:1, XI, or evidence of the commission of the offenses of homicide, kidnapping,  
18 gambling, theft as defined in RSA 637, corrupt practices as defined in RSA 640, child pornography  
19 under RSA 649-A, computer pornography and child exploitation under RSA 649-B, criminal conduct  
20 in violation of the securities law, as defined in [~~RSA 421-B:3, 421-B:4, 421-B:5, 421-B:10, and 421-~~  
21 ~~B:24~~] **RSA 421-B:5-501, RSA 421-B:5-502, RSA 421-B:5-502-A, RSA 421-B:5-505, RSA 421-B:5-**  
22 **506, and RSA 421-B-5-508**, criminal conduct in violation of the security takeover disclosure laws, as  
23 defined in RSA 421-A:3, 421-A:7, 421-A:8, 421-A:11, and 421-A:13, robbery as defined in RSA 636:1,  
24 arson as defined in RSA 634:1, hindering apprehension or prosecution as defined in RSA 642:3,  
25 tampering with witnesses and informants as defined in RSA 641:5, aggravated felonious sexual  
26 assault as defined in RSA 632-A:2, felonious sexual assault as defined in RSA 632-A:3, escape as  
27 defined in RSA 642:6, bail jumping as defined in RSA 642:8, insurance fraud as defined in  
28 RSA 638:20, dealing in narcotic drugs, marijuana, or other dangerous drugs, hazardous waste  
29 violations under RSA 147-A:4, I, or any conspiracy to commit any of the foregoing offenses.

30 20 Cross Reference; Loan of Securities. Amend RSA 387:24-b, VI to read as follows:

31 VI. Every brokerage firm receiving a loan of securities under this section shall be registered,  
32 and every agent soliciting such a loan of securities shall be licensed, with the [~~securities division of~~  
33 ~~the New Hampshire insurance department~~] **bureau of securities regulation of the secretary of**  
34 **state** pursuant to [~~RSA 424~~] **RSA 421-B.**

35 21 Cross Reference; Loan of Securities. Amend RSA 394-B:23, VI to read as follows:

36 VI. Every brokerage firm receiving a loan of securities under this section shall be registered,  
37 and every agent soliciting such a loan of securities shall be licensed, with the [~~securities division of~~

1 ~~the New Hampshire insurance department]~~ *bureau of securities regulation of the secretary of*  
2 *state* pursuant to ~~[RSA 421]~~ ***RSA 421-B***.

3 22 Repeal. RSA 304-B:50, III, relative to application for registration of foreign limited liability  
4 partnerships, is repealed.

5 23 Filing; Service and Copying Fees. Amend RSA 293-A:1.22(a) to read as follows:

6 (a) The secretary of state shall collect the following fees for:

7 (1) Articles of incorporation [~~\$50~~] ***\$100***

8 (2) Amendment of articles of incorporation \$35

9 (3) Restatement of articles of incorporation with amendment of articles \$35

10 (4) Articles or certificate of merger or articles of share exchange \$35

11 (5) Articles of domestication \$35

12 (6) Articles of charter surrender \$35

13 (7) Articles of domestication and conversion \$35

14 (8) Articles of entity conversion \$35

15 (9) Statement of Abandonment of a Domestication \$35

16 (9A) Statement of Abandonment of a Merger or Share Exchange \$35

17 (10) Articles of dissolution \$35

18 (11) Articles of revocation of dissolution \$35

19 (12) Application for reinstatement following administrative dissolution \$135

20 (13) Application for certificate of authority [~~\$50~~] ***\$100***

21 (14) Application for amended certificate of authority \$35

22 (15) Application for certificate of withdrawal \$35

23 (16) Articles of correction \$35

24 (17) Late filing \$50

25 (18) Late reinstatement fee \$500

26 (19) Restatement of articles of incorporation without amendment \$35

27 24 Filing; Service and Copying Fees. Amend RSA 304-B:64, I to read as follows:

28 I. For a certificate of limited partnership or registration as a foreign limited partnership,  
29 [~~\$50~~] ***\$100***.

30 25 Filing; Service and Copying Fees. Amend RSA 304-C:191, II to read as follows:

31 II. The following fees shall be paid to and collected by the secretary of state for deposit in the  
32 general fund of the state of New Hampshire:

33 (a) Upon the receipt for filing of an application for reservation of name or a notice of transfer of  
34 reservation under RSA 304-C:27, a fee in the amount of \$15.

35 (b) Upon the receipt for filing of a statement under RSA 304-C:36, II, a fee in the amount of \$15;  
36 upon the receipt for filing of a statement under RSA 304-C:36, V, a fee in the amount of \$15.

37 (c) Upon the receipt for filing of a certificate of formation under RSA 304-C:31, a fee in the

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 111 -**

1 amount of [~~\$50~~] **\$100**.

2 (d) Upon the receipt for filing of a certificate of amendment under RSA 304-C:34, a certificate of  
3 merger under RSA 304-C:158, a certificate of statutory conversion under RSA 304-C:149, or a  
4 restated certificate of formation under RSA 304-C:35, a fee in the amount of \$35.

5 (e) Upon the receipt for filing of a certificate of cancellation of a domestic limited liability  
6 company under RSA 304-C:142, a fee in the amount of \$35.

7 (f) Upon receipt for filing of an annual report under RSA 304-C:194, a fee in the amount of \$100;  
8 for failure or refusal to file an annual report or pay the filing fee on or before April 1 of any year, an  
9 additional late filing fee in the amount of \$50; upon receipt for filing of an application for  
10 reinstatement under RSA 304-C:138, I, a fee of \$135; and upon receipt for filing of an application for  
11 late reinstatement under RSA 304-C:145, I a fee of \$500.

12 (g) For certifying copies of any paper on file as provided for by this act, a fee in the amount of \$1  
13 per page and \$5 for the certificate.

14 (h) Upon the receipt for filing of an application for registration as a foreign limited liability  
15 company under RSA 304-C:175, a fee in the amount of [~~\$50~~] **\$100**; upon the receipt for filing of a  
16 certificate of cancellation under RSA 304-C:179, a fee in the amount of \$35; and upon receipt for  
17 filing of an amendment to an application under RSA 304-C:178, a fee in the amount of \$35.

18 (i) Upon the receipt for filing of a statement under RSA 304-C:177, V, a fee in the amount of \$15,  
19 and upon the receipt for filing of a statement under RSA 304-C:177, VI, a fee in the amount of \$15.

20 (j) For issuing any certificate of the secretary of state, including a certificate of good standing,  
21 other than a certification of a copy under subparagraph II(g), a fee in the amount of \$5, except that  
22 for issuing any certificate of the secretary of state that recites all of a limited liability company's  
23 filings with the secretary of state, a fee of \$10 shall be paid for each such certificate.

24 (k) For receiving, filing or indexing any certificate, affidavit, or agreement or any other paper  
25 provided for by this act, for which no different fee is specifically prescribed, a fee in the amount of  
26 \$15.

27 26 Filing; Service and Copying Fees. Amend RSA 304-A:51, II(a)-(i) to read as follows:

28 (a) Registration of limited liability partnership under RSA 304-A:44, I [~~\$50~~] **\$100**

29 (b) Annual fee under RSA 304-A:47 \$100

30 (c) Late filing fee under RSA 304-A:47, III \$50

31 (d) Withdrawal of registered limited liability partnership under RSA 304-A:44, IV(a)(1) \$35

32 (e) Name reservation, notice of transfer of reservation, or notice of cancellation under RSA 304-  
33 A:46, II \$15

34 (f) Notice of change under RSA 304-A:48 \$35

35 (g) Notice of change of name or address of registered agent or registered office under RSA 304-  
36 A:49, II \$15

**SB 266-FN - VERSION ADOPTED BY BOTH BODIES**  
**- Page 112 -**

1           (h) Notice of registration of foreign limited liability partnership under RSA 304-A:50, IV [~~\$50~~  
2    ***\$100***

3           (i) Withdrawal notice of foreign limited liability partnership under RSA 304-A:50, VIII(a)(1) \$35  
4           27 Contingency. If SB 188 of the 2015 legislative session becomes law, then sections 21 and 22  
5 of this act shall not take effect. If SB 188 of the 2015 legislative session does not become law, then  
6 sections 21 and 22 of this act shall take effect on January 1, 2016.

7           28 Effective Date. This act shall take effect January 1, 2016.

LBAO  
15-1025  
02/23/15

**SB 266-FN - FISCAL NOTE**

AN ACT                    adopting the Uniform Securities Act.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, **as introduced**, at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.