

CHAPTER 273
SB 266-FN – FINAL VERSION

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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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:

1 273:1 New Hampshire Uniform Securities Act. RSA 421-B is repealed and reenacted to read as
2 follows:

UNIFORM SECURITIES ACT

Article 1

General Provisions

6 421-B:1-101 Short Title. This chapter may be cited as the New Hampshire Uniform Securities Act.

7 421-B:1-102 Definitions. In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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1 (D) a trust company;

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

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

11 (5)(A) “Branch office” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (6) “Broker-dealer” means a person engaged in the business of effecting transactions in
27 securities for the account of others or for the person’s own account. The term does not include:

28 (A) an agent;

29 (B) an issuer;

30 (C) a bank;

31 (D) an international banking institution; or

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

33 (7) “Common enterprise” means an enterprise in which the fortunes of the investor are
34 interwoven with those of either the person offering the investment, a third party, or one or more
35 investors. This definition is met if (a) the investor joins with the promoter or some third party to
36 accomplish a common goal, such as earning a profit for the investor, whether the promoter or third

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1 party shares in the profits or is merely paid a commission or fee for his or her services, or (b) 2 or
2 more investors join together in a common goal of making a profit.

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

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

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

8 (11) “Depository institution” means:

9 (A) a bank; or

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

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

19 (ii) a Morris Plan bank; or

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

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

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

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

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

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

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

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

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

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

- 3 (A) Conducting trial-type evidentiary hearings;
4 (B) Directing the filing of exhibits, affidavits, memoranda or briefs;
5 (C) Directing the delivery of oral argument; or
6 (D) Any combination of these or similar methods.

7 (20) “IARD” means the Investment Adviser Registration Depository maintained by FINRA.

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

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

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

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

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

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

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

24 (B) an insurance company;

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

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

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

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

34 (G) a plan established and maintained by a state, a political subdivision of a state, or an
35 agency or instrumentality of a state or a political subdivision of a state for the benefit of its
36 employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made

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1 by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement
2 Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of
3 1934, an investment adviser registered or exempt from registration under the Investment Advisers
4 Act of 1940, an investment adviser registered under this chapter, a depository institution, a trust
5 company, or an insurance company;

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

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

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

16 (K) a private business development company as defined in section 202(a)(22) of the
17 Investment Advisers Act of 1940, 15 U.S.C. section 80b-2(a)(22), with total assets in excess of
18 \$10,000,000;

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

20 (M) a “qualified institutional buyer” as defined in Rule 144A(a)(1), other than Rule
21 144A(a)(1)(i)(H), adopted under the Securities Act of 1933, 17 C.F.R. 230.144A;

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

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

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

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

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

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

35 (26) “Investment adviser” means a person that, for compensation, engages in the business of
36 advising others, either directly or through publications or writings, as to the value of securities or

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1 the advisability of investing in, purchasing, or selling securities or that, for compensation and as a
2 part of a regular business, issues or promulgates analyses or reports concerning securities. The term
3 includes a financial planner or other person that, as an integral component of other financially
4 related services, provides investment advice to others for compensation as part of a business or that
5 holds itself out as providing investment advice to others for compensation. The term does not
6 include:

7 (A) an investment adviser representative;

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

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

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

15 (E) a federal covered investment adviser;

16 (F) a bank;

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

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

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

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

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

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

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

35 (27) "Investment adviser representative" means an individual employed by or associated with
36 an investment adviser or federal covered investment adviser and who makes any recommendations or

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1 otherwise gives investment advice regarding securities, manages accounts or portfolios of clients,
2 determines which recommendation or advice regarding securities should be given, provides investment
3 advice or holds herself or himself out as providing investment advice, receives compensation to solicit,
4 offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform
5 any of the foregoing. The term does not include an individual who:

6 (A) performs only clerical or ministerial acts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) means:

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

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

31 (iii) A sale of an investment metal or investment gem pursuant to a contract known
32 to the trade as a margin account, margin contract, leverage account, or leverage contract provided,
33 however, that, for the purposes of this subsection (32), the term “leverage contract” includes any
34 contract for the purchase or sale of any investment metal or investment gem, whereby the seller, or
35 an agent, affiliate or representative of the seller, directly or indirectly arranges, or offers to arrange,

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1 for the financing of any portion of the total amount of the purchase or sale of the investment metal or
2 investment gem.

3 (B) But shall not include:

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

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

9 (iii) The sale of an investment metal or investment gem where full payment is made
10 to the seller and physical delivery is made to the purchaser personally, and not to an agent, within
11 20 days of the date of purchase provided that a purchaser may designate a bank or licensed broker-
12 dealer, within this state only, and not within any other state, to accept physical delivery on his or
13 her behalf if such bank or licensed broker-dealer maintains such investment metal or investment
14 gem in safekeeping and as the specifically identifiable property of the purchaser;

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

17 (33) “Issuer” means a person that issues or proposes to issue a security, subject to the
18 following:

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

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

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

31 (34) “Nonissuer transaction” or “nonissuer distribution” means a transaction or distribution
32 not directly or indirectly for the benefit of the issuer.

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

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

3 (37) “Order” means an order issued pursuant to this chapter.

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

7 (39) “Person” means an individual; corporation; business trust; estate; trust; partnership;
8 limited liability company; association; joint venture; government; governmental subdivision, agency,
9 or instrumentality; public corporation; or any other legal or commercial entity.

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

12 (41) “Place of business” of a broker-dealer, an investment adviser, or a federal covered
13 investment adviser means:

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

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

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

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

23 (44) “Price amendment” means the amendment to a registration statement filed under the
24 Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed
25 under the Securities Act of 1933 that includes a statement of the offering price, underwriting and
26 selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters
27 dependent upon the offering price.

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

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

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1 (47) “Record,” except in the phrases “of record,” “official record,” and “public record,” means
2 information that is inscribed on a tangible medium or that is stored in an electronic or other medium
3 and is retrievable in perceivable form.

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

6 (49) “Sale” includes every contract of sale, contract to sell, or disposition of, a security or
7 interest in a security for value, and “offer to sell” includes every attempt or offer to dispose of, or
8 solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

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

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

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

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

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

21 (52) “Securities and Exchange Commission” or “SEC” means the United States Securities
22 and Exchange Commission.

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

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

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

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

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

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

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

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

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

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

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

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

28 (ii) either:

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

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

33 (c) The partnerships are affiliates.

34 (D) In connection with the issuance of a cease and desist order issued by the secretary of
35 state, and any hearings conducted, under RSA 421-B:6-604, the secretary of state may presume that
36 a membership interest in a limited liability company or a partnership interest in a registered limited

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1 liability partnership is a security, and the person relying on subsection (53)(B) has the burden of
2 proving that the interest is not a security under subsection (53)(B).

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

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

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

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

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

12 (A) Is licensed under this chapter;

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

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

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

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

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

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

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

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

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

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

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1 obligation of, or be guaranteed by:

2 (A) an international banking institution; or

3 (B) a bank or depository institution;

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

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

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

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

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

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

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

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1 requirements for different classes, specifying the scope of the exemption and the grounds for denial
2 or suspension, and requiring the issuer to file a notice specifying the material terms of the proposed
3 offer and sale and copies of any proposed sales and advertising literature to be used. The exemption
4 shall become effective if the secretary of state does not disallow the exemption within 30 days of the
5 filing of such notice and other required information.

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

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

18 421-B:2-202 Exempt Transactions. The following transactions are exempt from the
19 requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (4) a nonissuer transaction by or through a broker-dealer registered, or exempt from
31 registration, under this chapter in an outstanding security if the guarantor of the security files
32 reports with the Securities and Exchange Commission under the reporting requirements of section
33 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. section 78m or 78o(d);

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (A) an institutional investor;

33 (B) a federal covered investment adviser; or

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

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

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

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

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

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

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

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

19 (A) a registration or offering statement or similar record as required under the
20 Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule
21 165 adopted under the Securities Act of 1933, 17 C.F.R. 230.165; and

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

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

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

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

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

34 (18) a transaction involving the distribution of the securities of an issuer to the security
35 holders of another person in connection with a merger, consolidation, exchange of securities, sale of

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1 assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person,
2 or its parent or subsidiary, are parties;

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

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

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

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

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

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

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

25 (22) a transaction involving:

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

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

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

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

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

21 421-B:2-202-A Implementing Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (3) In connection with an offer and sale of exempt securities or in an exempt transaction, other
34 than in connection with an offer and sale of federal covered securities, additional disclosures shall be
35 made in offering documents, or an application for registration or a filing for exemption from registration

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1 shall be denied, or further conditions for an exemption may be imposed by the secretary of state, if any
2 partner, officer, director, or a person having a similar status or performing a similar function:

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

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

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

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

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

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

22 421-B:2-203 Additional Exemptions and Waivers. An order issued by the secretary of state
23 under this chapter may exempt a security, transaction, or offer; an order by the secretary of state
24 under this chapter may exempt a class of securities, transactions, or offers from any or all of the
25 requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504; and an order by
26 the secretary of state under this chapter may waive, in whole or in part, any or all of the conditions
27 for an exemption or offer under RSA 421-B:2-201 and RSA 421-B:2-202.

28 421-B:2-204 Denial, Suspension, Revocation, Conditions, or Limitation of Exemptions.

29 (a) Enforcement related powers. Except with respect to securities or a transaction preempted by
30 section 18(b) of the Securities Act of 1933, an order by the secretary of state under this chapter may
31 deny, suspend application of, condition, limit, or revoke an exemption created under RSA 421-B:2-
32 201(3)(C) or RSA 421-B:2-202 or an exemption or waiver created under RSA 421-B:2-203 with
33 respect to a specific security, transaction, or offer. An order under this section may be issued only
34 pursuant to the procedures in RSA 421-B:3-306(d) or RSA 421-B:6-604 and only prospectively.

35 (b) Knowledge of order required. A person does not violate RSA 421-B:3-301, RSA 421-B:3-303
36 through RSA 421-B:3-306, RSA 421-B:5-504, or RSA 421-B:5-510 by an offer to sell, offer to

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1 purchase, sale, or purchase effected after the entry of an order issued under this section if the person
2 did not know, and in the exercise of reasonable care could not have known, of the order. For
3 purposes of subsection (b), a person will be conclusively presumed to have knowledge of an order
4 which is mailed to the last address specified by such person to the secretary of state, if any, or which
5 is published in a newspaper of statewide circulation.

6 **ARTICLE 3**

7 **Registration of Securities and**

8 **Notice Filing of Federal Covered Securities**

9 421-B:3-301 Securities Registration Requirement.

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

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

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

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

15 (b) Articles of incorporation for a new corporation or an application for a certificate of authority
16 for a foreign corporation under RSA 293-A, articles of incorporation for a professional corporation or
17 an application for a certificate of authority for a foreign professional corporation under RSA 294-A,
18 an application for registration of a registered limited liability partnership or a notice of registration
19 of a foreign registered limited liability partnership under RSA 304-A, a certificate of limited
20 partnership for a new limited partnership or an application for registration of a foreign limited
21 partnership under RSA 304-B, a certificate of formation for a new limited liability company or an
22 application for registration as a foreign limited liability company under RSA 304-C, and a certificate
23 of formation for a new professional limited liability company or an application for registration as a
24 foreign professional limited liability company under RSA 304-D shall contain a statement that the
25 capital stock of the corporation, memberships, or the interests of the limited partnership, limited
26 liability partnership, or limited liability company have been registered, or when offered will be
27 registered, under this chapter or are exempted, or when offered will be exempted, under this chapter,
28 or are or will be offered in a transaction exempted from registration under this chapter, or are not
29 securities under this chapter, or are federal covered securities under this chapter. In the case of a
30 New Hampshire corporation, professional corporation, limited partnership, registered limited
31 liability partnership, limited liability company, or professional limited liability company, the articles
32 of incorporation, certificate of limited partnership, or certificate of formation shall state that the
33 capital stock, memberships, or interests in the limited partnership, limited liability partnership, or
34 limited liability company will be sold or offered for sale in compliance with this chapter. The
35 statement included pursuant to this paragraph shall not by itself constitute a registration, or a

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1 notice of exemption from registration, of securities within the meaning of sections 448 and 461(i)(3)
2 of the United States Internal Revenue Code and the regulations promulgated thereunder.

3 421-B:3-302 Notice Filing.

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

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

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

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

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

27 (c) Notice filings for federal covered securities described in section 18(b)(4)(D) of the Securities Act of
28 1933. Any person selling a security that is a federal covered security described in section 18(b)(4)(D) the
29 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,
30 including the Appendix, as promulgated by the Securities and Exchange Commission, a consent to
31 service of process complying with RSA 421-B:6-611 signed by the issuer not later than 15 days after the
32 first sale of the federal covered security in this state, and the payment of a fee including any late filing
33 fee, under RSA 421-B:6-614.

34 (d) Stop orders. Except with respect to a federal security described in section 181(b)(1) of the
35 Securities Act of 1933, 15 U.S.C. section 77r(b)(1), if the secretary of state finds that there is a failure
36 to comply with a notice or fee requirement of this section, including any late filing fee requirements,

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1 the secretary of state may issue a stop order suspending the offer and sale of a federal covered
2 security in this state. If the deficiency is corrected, the stop order is void as of the time of its
3 issuance and no penalty may be imposed by the secretary of state. Nothing in this chapter shall
4 prevent the secretary of state from investigating and issuing a stop order suspending the offer and
5 sale of a federal covered security for violation of RSA 421-B:5-501.

6 421-B:3-303 Securities Registration by Coordination.

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

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

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

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

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

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

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

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

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

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

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

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

10 (e) Effectiveness of registration statement. If the federal registration statement becomes
11 effective before each of the conditions in this section is satisfied or is waived by the secretary of state,
12 the registration statement is automatically effective under this chapter when all the conditions are
13 satisfied or waived. If the registrant notifies the secretary of state of the date when the federal
14 registration statement is expected to become effective, the secretary of state shall promptly notify
15 the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a
16 record, indicating whether all the conditions are satisfied or waived and whether the secretary of
17 state intends the institution of a proceeding under RSA 421-B:3-306. The notice by the secretary of
18 state does not preclude the institution of such a proceeding.

19 421-B:3-304 Securities Registration and Qualification.

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

21 (b) Required records. A registration statement under this section must contain the information
22 or records specified in RSA 421-B:3-305, a consent to service of process complying with RSA 421-B:6-
23 611, and the following information or records, which may be satisfied if included in the materials
24 provided pursuant to subsection (b)(13):

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

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

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

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

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

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

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

21 (8) the kind and amount of securities to be offered; the proposed offering price or the method
22 by which it is to be computed; any variation at which a proportion of the offering is to be made to a
23 person or class of persons other than the underwriters, with a specification of the person or class; the
24 basis on which the offering is to be made if otherwise than for cash; the estimated aggregate
25 underwriting and selling discounts or commissions and finders' fees, including separately cash,
26 securities, contracts, or anything else of value to accrue to the underwriters or finders in connection
27 with the offering or, if the selling discounts or commissions are variable, the basis of determining
28 them and their maximum and minimum amounts; the estimated amounts of other selling expenses,
29 including legal, engineering, and accounting charges; the name and address of each underwriter and
30 each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which
31 the distribution is to be made or the proposed form of any such agreement whose terms have not yet
32 been determined; and a description of the plan of distribution of any securities that are to be offered
33 otherwise than through an underwriter;

34 (9) the estimated monetary proceeds to be received by the issuer from the offering; the
35 purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for
36 each purpose; the order or priority in which the proceeds will be used for the purposes stated; the

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1 amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of
2 the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill,
3 otherwise than in the ordinary course of business, the names and addresses of the vendors, the
4 purchase price, the names of any persons that have received commissions in connection with the
5 acquisition, and the amounts of the commissions and other expenses in connection with the
6 acquisition, including the cost of borrowing money to finance the acquisition;

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

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

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

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

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

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

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

32 (17) a balance sheet of the issuer as of a date within 4 months before the filing of the
33 registration statement; a statement of income and changes in financial position for each of the 3
34 fiscal years preceding the date of the balance sheet and for any period between the close of the
35 immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's
36 and any predecessor's existence if less than 3 years; and, if any part of the proceeds of the offering is

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1 to be applied to the purchase of a business, the financial statements that would be required if that
2 business were the registrant; and

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

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

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

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

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

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

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

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

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

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

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

28 421-B:3-305 Securities Registration Filings.

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

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

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

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- 1 (1) the amount of securities to be offered in this state;
- 2 (2) the states in which a registration statement or similar record in connection with the
3 offering has been or is to be filed; and
- 4 (3) any adverse order, judgment, or decree issued in connection with the offering by a state
5 securities regulator, the Securities and Exchange Commission, or a court.
- 6 (d) Incorporation by reference. A record filed under this chapter or the predecessor act within 5
7 years preceding the filing of a registration statement may be incorporated by reference in the
8 registration statement to the extent that the record is currently accurate.
- 9 (e) Nonissuer distribution. In the case of a nonissuer distribution, information or a record may
10 not be required under subsection (i) or RSA 421-B:3-304, unless it is known to the person filing the
11 registration statement or to the person on whose behalf the distribution is to be made or unless it
12 can be furnished by those persons without unreasonable effort or expense.
- 13 (f) Escrow and impoundment. An order issued under this chapter may require as a condition of
14 registration that a security issued within the previous 5 years or to be issued to a promoter for a
15 consideration substantially less than the public offering price or to a person for a consideration other
16 than cash be deposited in escrow; and that the proceeds from the sale of the registered security in
17 this state be impounded until the issuer receives a specified amount from the sale of the security
18 either in this state or elsewhere. The conditions of any escrow or impoundment required under
19 subsection (f) may be established by order issued under this chapter, but the secretary of state may
20 not reject a depository institution or trust company solely because of its location in another state
- 21 (g) Form of subscription. An order issued under this chapter may require as a condition of
22 registration that a security registered under this chapter be sold only on a specified form of
23 subscription or sale contract and that a signed or conformed copy of each contract be filed under
24 this chapter or preserved for a period specified by the rule or order, which may not be longer
25 than 5 years.
- 26 (h) Effective period. Except while a stop order is in effect under RSA 421-B:3-306, a registration
27 statement is effective for one year after its effective date, or for any longer period designated in an
28 order under this chapter during which the security is being offered or distributed in a nonexempted
29 transaction by or for the account of the issuer or other person on whose behalf the offering is being
30 made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or
31 subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction,
32 all outstanding securities of the same class identified in the registration statement as a security
33 registered under this chapter are considered to be registered while the registration statement is
34 effective. If any securities of the same class are outstanding, a registration statement may not be
35 withdrawn until one year after its effective date. A registration statement may be withdrawn only
36 with the approval of the secretary of state.

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

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

11 421-B:3-306 Denial, Suspension, and Revocation of Securities Registration.

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

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

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

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

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

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

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

3 (7) the offering:

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

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

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

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

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

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

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

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

33 (2) an opportunity for hearing; and

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

35 (f) Modification or vacation of stop order. The secretary of state may modify or vacate a stop
36 order issued under this section if the secretary of state finds that the conditions that caused its

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1 issuance have changed or that it is necessary or appropriate in the public interest or for the
2 protection of investors.

3 421-B:3-307 Waiver and Modification. The secretary of state may waive or modify, in whole or
4 in part, any or all of the requirements of RSA 421-B:3-302, RSA 421-B:3-303, and RSA 421-B:3-
5 304(b) or the requirement of any information or record in a registration statement or in a periodic
6 report filed pursuant to RSA 421-B:3-305(i).

7 Article 4

8 Broker-Dealers, Agents, Investment Advisers,
9 Investment Adviser Representatives,
10 and Federal Covered Investment Advisers

11 421-B:4-401 Broker-Dealer Registration Requirements and Exemptions.

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

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

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

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

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

22 (C) an institutional investor; or

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

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

30 (c) Limits on employment or association. It is unlawful for a broker-dealer, or for an issuer
31 engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or
32 indirectly, to employ or associate with an individual to engage in an activity related to securities
33 transactions in this state if the registration of the individual is suspended or revoked or the
34 individual is barred from employment or association with a broker-dealer, an issuer, an investment
35 adviser, or a federal covered investment adviser by an order of the secretary of state under this
36 chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer

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1 or issuer does not violate subsection (c) if the broker-dealer or issuer did not know and in the
2 exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon
3 request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or
4 waive, in whole or in part, the application of the prohibitions of subsection (c) to the broker-dealer.

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

7 (e) Canadian broker-dealers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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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

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1 Canadian broker-dealer or agent may only have its license under this section denied, suspended or
2 revoked for a breach of the anti-fraud provisions of this chapter or the requirements in subsection
3 (e).

4 (f) Branch offices.

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

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

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

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

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

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

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

27 (iii) The volume of business conducted.

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

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

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

31 421-B:4-402 Agent Registration Requirements and Exemptions.

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

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

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

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

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

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

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

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

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

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

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

34 (d) Limit on employment or association. It is unlawful for a broker-dealer, or an issuer engaged
35 in offering, selling, or purchasing securities in this state, to employ or associate with an agent who

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1 transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered
2 under subsection (a) or exempt from registration under subsection (b).

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

6 421-B:4-403 Investment Adviser Registration Requirements and Exemptions.

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

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

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

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

16 (B) institutional investors; or

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

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

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

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

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

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

5 (f) Name of branch office.

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

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

14 421-B:4-404 Investment Adviser Representative Registration Requirement and Exemptions.

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

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

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

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

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

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

33 (e) Limits on employment or association. It is unlawful for an individual acting as an
34 investment adviser representative, directly or indirectly, to conduct business in this state on behalf
35 of an investment adviser or a federal covered investment adviser if the registration of the individual
36 as an investment adviser representative is suspended or revoked or the individual is barred from

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1 employment or association with an investment adviser or a federal covered investment adviser by an
2 order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization.
3 Upon request from a federal covered investment adviser and for good cause, the secretary of state, by
4 order issued, may waive, in whole or in part, the application of the requirements of subsection (e) to
5 the federal covered investment adviser.

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

15 421-B:4-405 Federal Covered Investment Adviser Notice Filing Requirement.

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

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

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

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

26 (B) institutional investors;

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

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

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

30 (c) Notice filing procedure. A person acting as a federal covered investment adviser, not
31 excluded under subsection (b), shall file a notice, a consent to service of process complying with
32 RSA 421-B:6-611, and such records as have been filed with the SEC under the Investment Advisers
33 Act of 1940 required by order issued under this chapter and pay the fees specified in RSA 421-B:4-
34 410(c). Initial fees shall be paid before business is transacted in this state, and annual fees shall be
35 paid on or before December 31 of the current year for the ensuing year. Federal covered advisers
36 shall submit copies to the secretary of state of all documents filed with the SEC pursuant to the

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1 federal securities laws within 10 business days of their submission to the SEC. Documents and fees
2 that are accepted by IARD may be submitted through IARD. Other documents filed or deemed filed
3 with the SEC shall be submitted directly to the secretary of state.

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

5 421-B:4-406 Registration by Broker-Dealer, Agent, Investment Adviser, and Investment Adviser
6 Representative.

7 (a) Application for initial registration. A person shall register as a broker-dealer, agent,
8 investment adviser, or investment adviser representative by filing an application on a form
9 prescribed by the secretary of state and a consent to service of process complying with RSA 421-B:6-
10 611, paying the fee specified in RSA 421-B:4-410 and paying any reasonable fees charged by the
11 designee of the secretary of state for processing the filing. The application must contain:

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

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

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

25 (c) Effectiveness of registration.

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

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

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

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1 (d) Registration renewal. A registration is effective until midnight on December 31 of the year
2 for which the application for registration is filed. Unless an order is in effect under RSA 421-B:4-
3 412, a registration may be automatically renewed each year by filing such records within 60 days
4 after the close of its fiscal year (subject to any extension by order promulgated by the secretary of
5 state) as are required by order issued under this chapter, by paying the fee specified in RSA 421-B:4-
6 410, and by paying costs charged by the secretary of state for processing the filings. In addition, the
7 secretary of state may require at any reasonable time and in any reasonable manner from any
8 person subject to this chapter or any person controlling any such person any statements, reports,
9 financial statements, answers to questionnaires and other information in whatever reasonable form
10 he or she designates, including information from any electronic data processing or storage system.

11 (e) Certain requirements for broker-dealers.

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

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

19 (f) Certain requirements for investment advisers.

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

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

24 (A) specimens of investment advisory contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (l) Satisfaction through Adviser Act filings. The secretary of state may require an investment
35 adviser to furnish or disseminate to investors and advisory clients information specified by order of
36 the secretary of state in the public interest and for the protection of investors. If so determined by

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1 the secretary of state, information furnished to clients or prospective clients that would be in
2 compliance with the Investment Advisers Act of 1940 may be used in whole or partial satisfaction of
3 such requirement.

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

5 (a) Succession. A broker-dealer or investment adviser may succeed to the current registration of
6 another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser,
7 and a federal covered investment adviser may succeed to the current registration of an investment
8 adviser or notice filing of another federal covered investment adviser, by filing as a successor an
9 application for registration pursuant to RSA 421-B:4-401 or RSA 421-B:4-403 or a notice pursuant to
10 RSA 421-B:4-405 for the unexpired portion of the current registration or notice filing.

11 (b) Organizational change. A broker-dealer or investment adviser that changes its form of
12 organization or state of incorporation or organization may continue its registration by filing an
13 amendment to its registration if the change does not involve a material change in its financial
14 condition or management. The amendment becomes effective when filed or on a date designated by
15 the registrant in its filing. The new organization is a successor to the original registrant for the
16 purposes of this chapter. If there is a material change in financial condition or management, the
17 broker-dealer or investment adviser shall file a new application for registration. A predecessor
18 registered under this chapter shall stop conducting its securities business other than winding down
19 transactions and shall file for withdrawal of broker-dealer or investment adviser registration within
20 45 days after filing its amendment to effect succession.

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

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

26 421-B:4-408 Termination of Employment or Association of Agent and Investment Adviser
27 Representative and Transfer of Employment or Association.

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

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

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

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

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

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

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

35 421-B:4-409 Withdrawal of Registration of Broker-Dealer, Agent, Investment Adviser, and
36 Investment Adviser Representative.

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

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

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

20 421-B:4-410 Filing Fees.

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

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

29 (c) Investment advisers. A person shall pay a fee of \$250 when filing an application for
30 registration as an investment adviser and a fee of \$200 when filing a renewal of registration as an
31 investment adviser. If the filing results in a denial or withdrawal, the secretary of state shall retain
32 \$50 of the fee.

33 (d) Investment adviser representatives. The fee for an individual is \$125 when filing an
34 application for registration as an investment adviser representative, a fee of \$100 (\$50 per agent;
35 \$50 per license) when filing a renewal of registration as an investment adviser representative, and a

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1 fee of \$100 when filing a change of registration as an investment adviser representative. If the filing
2 results in a denial or withdrawal, the secretary of state shall retain \$25 of the fee.

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

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

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

13 421-B:4-411 Postregistration Requirements.

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

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

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

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

4 (b) Financial reports.

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

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

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

26 (1) A broker-dealer registered or required to be registered under this chapter and an
27 investment adviser registered or required to be registered under this chapter shall make and
28 maintain the accounts, correspondence, memoranda, papers, books, and other records required by
29 order issued under this chapter except as provided by Section 15 of the Securities Exchange Act of
30 1934 in the case of broker-dealers and Section 222 of the Investment Advisers Act of 1940 in the case
31 of investment advisers;

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

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

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

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

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

7 (C) A memorandum of each order given by the investment adviser for the purchase or
8 sale of any security or any instruction received by the investment adviser from the client concerning
9 the purchase, sale, receipt, or delivery of a particular security, and of any modification or
10 cancellation of any such order or instruction. Such memoranda shall show the terms and conditions
11 of the order, instruction, modification, or cancellation; shall identify the person connected with the
12 investment adviser who recommended the transaction to the client and the person who placed such
13 order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer
14 by or through whom executed where appropriate. Orders entered pursuant to the exercise of
15 discretionary power shall be so designated.

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

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

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

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

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

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

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

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

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

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

27 (M)(i) Notwithstanding the provisions of subsection (c)(4)(L) where the investment
28 adviser is primarily engaged in a business or businesses other than advising advisory clients, a
29 record shall be maintained of every transaction in a security in which the investment adviser or any
30 investment adviser representative of such investment adviser has, or by reason of such transaction
31 acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account
32 over which neither the investment adviser nor any investment adviser representative of the
33 investment adviser has any direct or indirect influence or control; and (ii) transactions in securities
34 which are direct obligations of the United States. Such record shall state the title and amount of the
35 security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or
36 disposition); the price at which it was effected, and the name of the broker-dealer or bank with or

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1 through whom the transaction was effected. Such record may also contain a statement declaring
2 that the reporting or recording of any such transaction shall not be construed as an admission that
3 the investment adviser or investment adviser representative has any direct or indirect beneficial
4 ownership in the security. A transaction shall be recorded not later than 10 calendar days after the
5 end of the calendar quarter in which the transaction was effected.

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

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

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

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

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

22 (ii) A memorandum describing any legal or disciplinary event listed in Item 8 of Part
23 2A or Item 3 of Part 2B of Form ADV and presumed to be material, if the event involved the
24 investment adviser or any of its supervised persons and is not disclosed in the written statements
25 described in subsection (c)(13)(A). The memorandum shall explain the investment adviser’s
26 determination that the presumption of materiality is overcome, and shall discuss the factors
27 described in those items.

28 (O) All accounts, books, internal working papers, and any other records or documents
29 that are necessary to form the basis for or demonstrate the calculation of the performance or rate of
30 return of any or all managed accounts or securities recommendations in any notice, circular,
31 advertisement, newspaper article, investment letter, bulletin, or other communication that the
32 investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than
33 persons connected with, affiliated with or employed by such investment adviser); provided, however,
34 that, with respect to the performance of managed accounts, the retention of all account statements, if
35 they reflect all debts, credits, and other transactions in a client’s account for the period of the

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1 statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of
2 return of all managed accounts shall be deemed to satisfy the requirements of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (13)(A)(i) Unless otherwise provided in this section, an investment adviser registered or
22 required to be registered under this chapter shall, in accordance with the provisions of this section,
23 furnish each advisory client and prospective advisory client with a written disclosure statement
24 which may be a copy of Part 2 of its Form ADV or written documents containing at least the
25 information then so required by Part 2 of Form ADV, and such other information as the secretary of
26 state may require. Each investment adviser shall furnish each advisory client and prospective
27 advisory client with a firm brochure and one or more supplements as required by this section. The
28 brochure and supplements shall contain all information required by Part 2 of Form ADV (17 C.F.R.
29 279.1), and such other information as the secretary of state may require.

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

33 (iii) An investment adviser shall deliver the disclosure statement required by this
34 section to an advisory client or prospective advisory client not less than 48 hours prior to entering
35 into any investment advisory contract with such client or prospective client, or at the time of

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1 entering into any such contract, if the advisory client has the right to terminate the contract without
2 penalty within 5 business days after entering into the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (B) Each broker-dealer licensed or required to be licensed under this chapter shall
9 comply with Rules 17a-11 under the Securities and Exchange Act of 1934, (17 C.F.R. 240.17a-11) and
10 shall file with the secretary of state upon request, or as required by this chapter or orders or rules
11 promulgated thereunder, copies of notices and reports required under Rules 17a-5, 17a-10, and 17a-
12 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
13 C.F.R. 240.17a-11.

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

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

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

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

32 (i) A trial balance of all ledger accounts;

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

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

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

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

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

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

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

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

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

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

28 (d) Audits or inspections.

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

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1 inspection. The secretary of state may assess a reasonable charge for conducting an audit or
2 inspection under this subsection (d)(1).

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

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

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

16 (C) Any rating bureau or organization;

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

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

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

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

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

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

35 (D) If the secretary of state or examiner finds any accounts or records to be inadequate,
36 or kept or posted in a manner not in accordance with commonly accepted securities accounting

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1 principles, then the secretary of state may employ experts to reconstruct, rewrite, post or balance
2 them at the expense of the person being examined if such person has failed to maintain, complete or
3 correct such records or accounting after the secretary of state or examiner has given him or her
4 written notice and a reasonable opportunity to do so.

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

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

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

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

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

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

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

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

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

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

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

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

30 (e) Custody and discretionary authority bond or insurance. Subject to the Securities Exchange
31 Act of 1934, 15 U.S.C. section 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-
32 18a, a rule adopted or order issued under this chapter may require a broker-dealer or investment
33 adviser that has custody of or discretionary authority over funds or securities of a customer or client
34 to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed
35 \$100,000. The secretary of state may determine the requirements of the insurance, bond, or other
36 satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be

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1 required of a broker-dealer registered under this chapter whose net capital exceeds, or of an
2 investment adviser registered under this chapter whose minimum financial requirements exceed,
3 the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory
4 form of security must permit an action by a person to enforce any liability on the insurance, bond, or
5 other satisfactory form of security if instituted within the time limitations in RSA 421-B:5-509(j)(2).

6 (f) Requirements for custody. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section
7 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, an agent may not have
8 custody of funds or securities of a customer except under the supervision of a broker-dealer and an
9 investment adviser representative may not have custody of funds or securities of a client except
10 under the supervision of an investment adviser or a federal covered investment adviser. An order
11 issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding
12 custody of funds or securities of a customer and on an investment adviser regarding custody of
13 securities or funds of a client.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial
2 satisfaction of this requirement.

3 421-B:4-412 Denial, Revocation, Suspension, Withdrawal, Restriction, Condition, or Limitation
4 of Registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (e) Examinations.

34 (1) Each applicant for individual broker-dealer registration or registration as an agent of a
35 broker-dealer shall provide the secretary of state with proof of obtaining a passing score on the

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1 Uniform Securities Agent State Law Examination (Series 63 examination) or the Uniform Combined
2 State Law Examination (Series 66 examination).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (ii) A copy of the solicitation agreement;

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

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

7 (f) Summary process. The secretary of state may suspend or deny an application summarily;
8 restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a
9 registrant before final determination of an administrative proceeding. Upon the issuance of an
10 order, the secretary of state shall promptly notify each person subject to the order that the order has
11 been issued, the reasons for the action, and that within 15 days after the receipt of a request in a
12 record from the person the matter will be scheduled for a hearing. If a hearing is not requested and
13 none is ordered by the secretary of state within 30 days after the date of service of the order, the
14 order becomes final by operation of law. If a hearing is requested or ordered, the secretary of state,
15 after notice of and opportunity for hearing to each person subject to the order, may modify or vacate
16 the order or extend the order until final determination.

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

- 19 (1) appropriate notice to the applicant or registrant;
- 20 (2) opportunity for hearing; and
- 21 (3) findings of fact and conclusions of law in a record in accordance with RSA 541-A.

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

27 Article 5

28 Fraud and Liabilities

29 421-B:5-501 Fraud and Liabilities.

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

- 32 (1) employ a device, scheme, or artifice to defraud;
- 33 (2) make an untrue statement of a material fact or to omit to state a material fact necessary
34 in order to make the statement made, in the light of the circumstances under which they were made,
35 not misleading; or

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

3 (b) Supplemental provisions.

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

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

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

14 (i) The customer's financial status;

15 (ii) The customer's tax status;

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

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

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

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

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

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

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

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

35 (i) the name of such customer;

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

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

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

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

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

10 (B) creating unreasonable delays in delivering securities.

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

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

15 421-B:5-502 Prohibited Conduct in Providing Investment Advice.

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

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

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

24 (b) Supplemental provisions.

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

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

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

35 (2) A person who is an investment adviser or investment adviser representative is a fiduciary
36 and has a duty to act primarily for the benefit of the person's clients. While the extent and nature of

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1 this duty varies according to the nature of the relationship between an investment adviser and the
2 clients and the circumstances of each case, an investment adviser or investment adviser representative
3 shall not engage in unethical business practices which constitute violations of subsection (a), including
4 the following:

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

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

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

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

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

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

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

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

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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:

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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

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1 or transactions, from subsection (b)(2)(Q), if and to the extent that the exemption relates to an
2 investment advisory contract with any person that the secretary of state determines does not need
3 the protections of subsection (b)(2)(Q), on the basis of such factors as financial sophistication, net
4 worth, knowledge of and experience in financial matters, amount of assets under management,
5 relationship with a registered investment adviser, and such other factors as the secretary of state
6 determines are consistent with subsection (b)(2).

7 (R) Failing to establish, maintain, and enforce written policies and procedures
8 reasonably designed to prevent the misuse of material nonpublic information in violation of section
9 204A of the Investment Advisers Act of 1940.

10 (S) Entering into, extending, or renewing any advisory contract which would violate
11 section 205 of the Investment Advisers Act of 1940. This provision shall apply to all investment
12 advisers and investment adviser representatives registered or required to be registered under this
13 chapter.

14 (T) Indicating, in an advisory contract, any condition, stipulation, or provisions binding
15 any person to waive compliance with any provision of this chapter or of the Investment Advisers Act
16 of 1940 or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

17 (U) Engaging in any act, practice, or course of business which is fraudulent or deceptive
18 in contravention of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact
19 that such investment adviser is not registered or required to be registered under section 203 of the
20 Investment Advisers Act of 1940.

21 (V) Engaging in conduct or any act, indirectly or through or by any other person, which
22 would be unlawful for such person to do directly under the provisions of this chapter or any rule
23 adopted under it.

24 (3) The conduct set forth in subsection (b)(2) is not inclusive. Engaging in other conduct
25 such as nondisclosure, incomplete disclosure, or deceptive practices, shall be deemed an unethical
26 business practice. The federal statutory and regulatory provisions referenced in subsection (b)(2)
27 shall apply to investment advisers and investment adviser representatives, regardless of whether
28 the federal provision limits its application to investment advisers subject to federal registration.

29 421-B:5-502-A Custody of Client Funds or Securities by Investment Advisers.

30 (a) Safekeeping required. It is unlawful and deemed to be a fraudulent or deceitful act, practice,
31 or course of business for an investment adviser, registered or required to be registered, to have
32 custody of client funds or securities unless:

33 (1) Notice to secretary of state. The investment adviser notifies the secretary of state
34 promptly in writing that the investment adviser has or may have custody. Such notification is
35 required to be given on Form ADV;

36 (2) Qualified custodian. A qualified custodian maintains those funds and securities:

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1 (A) in a separate account for each client under that client's name; or

2 (B) in accounts that contain only the investment adviser's clients' funds and securities,
3 under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled
4 investment vehicle that the investment adviser manages, in the name of the pooled investment
5 vehicle.

6 (3) Notice to clients. If an investment adviser opens an account with a qualified custodian
7 on its client's behalf, under the client's name, under the name of the investment adviser as agent, or
8 under the name of a pooled investment vehicle, the investment adviser must notify the client in
9 writing of the qualified custodian's name, address, and the manner in which the funds or securities
10 are maintained, promptly when the account is opened and following any changes to this information.
11 If the investment adviser sends account statements to a client to which the investment adviser is
12 required to provide this notice, the investment adviser must include in the notification provided to
13 that client and in any subsequent account statement the investment adviser sends that client a
14 statement urging the client to compare the account statements from the custodian with those from
15 the investment adviser.

16 (4) Account statements. The investment adviser has a reasonable basis, after due inquiry, for
17 believing that the qualified custodian sends an account statement, at least quarterly, to each client for
18 which it maintains funds or securities, identifying the amount of funds and the amount of each
19 security in the account at the end of the period and setting forth all transactions in the account during
20 that period.

21 (5) Special rule for limited partnerships and limited liability companies. If the investment
22 adviser or a related person is a general partner of a limited partnership (or managing member of a
23 limited liability company, or holds a comparable position for another type of pooled investment
24 vehicle), the account statements required under subsection (a)(4) must be sent to each limited
25 partner (or member or other beneficial owner).

26 (6) Independent verification. The client funds and securities of which the investment
27 adviser has custody are verified by actual examination at least once during each calendar year, by an
28 independent certified public accountant, pursuant to a written agreement between the investment
29 adviser and the independent certified public accountant, at a time that is chosen by the independent
30 certified public accountant without prior notice or announcement to the investment adviser and that
31 is irregular from year to year. The written agreement must provide for the first examination to
32 occur within 6 months of becoming subject to subsection (a)(6), except that, if the investment adviser
33 maintains client funds or securities pursuant to this section as a qualified custodian, the agreement
34 must provide for the first examination to occur no later than 6 months after obtaining the internal
35 control report. The written agreement must require the independent certified public accountant to:

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1 (A) file a certificate on Form ADV-E with the secretary of state within 120 days of the
2 time chosen by the independent certified public accountant in subsection (a)(6), stating that it has
3 examined the funds and securities and describing the nature and extent of the examination.

4 (B) notify the secretary of state within one business day of the finding of any material
5 discrepancies during the course of the examination, by means of a facsimile transmission or
6 electronic mail, followed by first class mail, directed to the attention of the secretary of state; and

7 (C) file within 4 business days of the resignation or dismissal from, or other termination
8 of, the engagement, or removing itself or being removed from consideration for being reappointed,
9 Form ADV-E accompanied by a statement that includes:

10 (i) The date of such resignation, dismissal, removal, or other termination, and the
11 name, address, and contact information of the independent certified public accountant; and

12 (ii) An explanation of any problems relating to examination scope or procedure that
13 contributed to such resignation, dismissal, removal, or other termination.

14 (7) Investment advisers acting as qualified custodians. If the investment adviser maintains,
15 or if the investment adviser has custody because a related person maintains, client funds or
16 securities pursuant to this section as a qualified custodian in connection with advisory services the
17 investment adviser provides to clients, the following shall apply:

18 (A) The independent certified public accountant the investment adviser retains to
19 perform the independent verification required by subsection (a)(6) must be registered with, and
20 subject to regular inspection as of the commencement of the professional engagement period, and as
21 of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with
22 its rules; and

23 (B) The investment adviser must obtain, or receive from its related person, within 6
24 months of becoming subject to subsection (a)(7) and thereafter no less frequently than once each
25 calendar year a written internal control report prepared by an independent certified public accountant:

26 (i) The internal control report must include an opinion of an independent certified
27 public accountant as to whether controls have been placed in operation as of a specific date, and are
28 suitably designed and are operating effectively to meet control objectives relating to custodial
29 services, including the safeguarding of funds and securities held by either the investment adviser or
30 a related person on behalf of the investment adviser's clients, during the year;

31 (ii) The independent certified public accountant must verify that the funds and
32 securities are reconciled to a custodian other than the investment adviser or the investment advisers
33 related person; and

34 (iii) The independent certified public accountant must be registered with, and
35 subject to regular inspection as of the commencement of the professional engagement period, and as

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1 of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with
2 its rules.

3 (8) Independent representatives. A client may designate an independent representative to
4 receive, on his or her behalf, notices and account statements as required under subsections (a)(3) and
5 (a)(4).

6 (b) Exceptions.

7 (1) Shares of open end mutual funds. With respect to shares of an open end mutual fund,
8 the investment adviser may use the open end mutual fund's transfer agent in lieu of a qualified
9 custodian for purposes of complying with subsection (a);

10 (2) Certain privately offered securities.

11 (A) The investment adviser is not required to comply with subsection (a)(2) with respect
12 to securities that are:

13 (i) acquired from the issuer in a transaction or chain of transactions not involving
14 any public offering; and

15 (ii) uncertificated and ownership thereof is recorded only on the books of the issuer
16 or its transfer agent in the name of the client; and transferable only with prior consent of the issuer
17 or holders of the outstanding securities of the issuer.

18 (iii) Notwithstanding subsection (b)(2)(A), subsection (b)(2) shall apply with respect
19 to securities held for the account of a limited partnership (or limited liability company, or other type
20 of pooled investment vehicle) only if the limited partnership is audited, and the audited financial
21 statements are distributed, as described in subsection (b)(4) and the investment adviser notifies the
22 secretary of state in writing that the investment adviser intends to provide audited financial
23 statements, as described in subsection (a). Such notification is required to be provided on Form
24 ADV.

25 (3) Fee deduction. Notwithstanding subsection (a)(6), an investment adviser is not required
26 to obtain an independent verification of client funds and securities maintained by a qualified
27 custodian if all of the following conditions are met:

28 (A) The investment adviser has custody of the funds and securities solely as a
29 consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

30 (B) The investment adviser has written authorization from the client to deduct advisory
31 fees from the account held with the qualified custodian;

32 (C) Each time a fee is directly deducted from a client account, the investment adviser
33 concurrently:

34 (i) sends the qualified custodian an invoice or statement of the amount of the fee to
35 be deducted from the client's account; and

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1 (ii) sends the client an invoice or statement itemizing the fee. Itemization includes
2 the formula used to calculate the fee, the amount of assets under management the fee is based on,
3 and the time period covered by the fee; and

4 (D) The investment adviser notifies the secretary of state in writing that the investment
5 adviser intends to use the safeguards provided in subsection (b)(3). Such notification is required to
6 be given on Form ADV.

7 (4) Limited partnerships subject to annual audit. An investment adviser is not required to
8 comply with subsections (a)(3) and (a)(4) and shall be deemed to have complied with subsection (a)(6)
9 with respect to the account of a limited partnership (or limited liability company, or another type of
10 pooled investment vehicle) if each of the following conditions are met:

11 (A) The adviser sends to all limited partners (or members or other beneficial owners) at
12 least quarterly, a statement showing:

13 (i) the total amount of all additions to and withdrawals from the fund as a whole as
14 well as the opening and closing value of the fund at the end of the quarter based on the custodian's
15 records;

16 (ii) a listing of all long and short positions on the closing date of the statement in
17 accordance with FASB Rule ASC 946-210-50; and

18 (iii) the total amount of additions to and withdrawals from the fund by the investor
19 as well as the total value of the investor's interest in the fund at the end of the quarter;

20 (B) At least annually the fund is subject to an audit and distributes its audited financial
21 statements prepared in accordance with generally accepted accounting principles to all limited
22 partners (or members or other beneficial owners) and the secretary of state within 120 days of the
23 end of its fiscal year;

24 (C) The audit is performed by an independent certified public accountant that is
25 registered with, and subject to regular inspection as of the commencement of the professional
26 engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight
27 Board in accordance with its rules;

28 (D) Upon liquidation, the adviser distributes the fund's final audited financial
29 statements prepared in accordance with generally accepted accounting principles to all limited
30 partners (or members or other beneficial owners) and the secretary of state promptly after the
31 completion of such audit;

32 (E) The written agreement with the independent certified public accountant must
33 require the independent certified public accountant to, upon resignation or dismissal from, or other
34 termination of, the engagement, or upon removing itself or being removed from consideration for
35 being reappointed, notify the secretary of state within 4 business days accompanied by a statement
36 that includes:

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1 (i) The date of such resignation, dismissal, removal, or other termination, and the
2 name, address, and contact information of the independent certified public accountant; and

3 (ii) An explanation of any problems relating to audit scope or procedure that
4 contributed to such resignation, dismissal, removal, or other termination;

5 (F) The investment adviser must also notify the secretary of state in writing that the
6 investment adviser intends to employ the use of the statement delivery and audit safeguards
7 described above. Such notification is required to be given on Form ADV.

8 (5) Registered investment companies. The investment adviser is not required to comply
9 with this section with respect to the account of an investment company registered under the
10 Investment Company Act of 1940.

11 (c) Delivery to related persons. Sending an account statement under subsection (a)(5) or
12 distributing audited financial statements under subsection (b)(4) shall not satisfy the
13 requirements of this section if such account statements or financial statements are sent solely to
14 limited partners (or members or other beneficial owners) that themselves are limited partnerships
15 (or limited liability companies, or another type of pooled investment vehicle) and are related
16 persons of the investment adviser.

17 (d) Definitions. For purposes of this section the following definitions shall apply:

18 (1) “Control” means the power, directly or indirectly, to direct the management or policies of
19 a person whether through ownership of securities, by contract, or otherwise. Control includes:

20 (A) (or persons having similar status or functions) is presumed to control the investment
21 adviser;

22 (B) A person is presumed to control a corporation if the person:

23 (i) directly or indirectly has the right to vote 25 percent or more of a class of the
24 corporation’s voting securities; or

25 (ii) has the power to sell or direct the sale of 25 percent or more of a class of the
26 corporation’s voting securities;

27 (C) A person is presumed to control a partnership if the person has the right to receive
28 upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

29 (D) A person is presumed to control a limited liability company if the person:

30 (i) directly or indirectly has the right to vote 25 percent or more of a class of the
31 interests of the limited liability company;

32 (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more
33 of the capital of the limited liability company; or

34 (iii) is an elected manager of the limited liability company; and

35 (E) A person is presumed to control a trust if the person is a trustee or managing agent
36 of the trust.

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1 (2) “Custody” means holding directly or indirectly, client funds or securities, having any
2 authority to obtain possession of them or having the ability to appropriate them. The investment
3 adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has
4 any authority to obtain possession of them, in connection with advisory services the investment
5 adviser provides to clients.

6 (A) Custody includes:

7 (i) Possession of client funds or securities unless the investment adviser receives
8 them inadvertently and returns them to the sender promptly but in any case within 3 business days
9 of receiving them;

10 (ii) Any arrangement (including a general power of attorney) under which the
11 investment adviser is authorized or permitted to withdraw client funds or securities maintained with
12 a custodian upon the investment adviser’s instruction to the custodian; and

13 (iii) Any capacity (such as general partner of a limited partnership, managing
14 member of a limited liability company or a comparable position for another type of pooled investment
15 vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal
16 ownership of or access to client funds or securities.

17 (B) Receipt of checks drawn by clients and made payable to third parties will not meet
18 the definition of custody if forwarded to the third party within 3 business days of receipt and the
19 investment adviser maintains a ledger or other listing of all securities or funds held or obtained,
20 including the following information:

21 (i) Issuer;

22 (ii) Type of security and series;

23 (iii) Date of issue;

24 (iv) For debt instruments, the denomination, interest rate, and maturity date;

25 (v) Certificate number, including alphabetical prefix or suffix;

26 (vi) Name in which registered;

27 (vii) Date given to the adviser;

28 (viii) Date sent to client or sender;

29 (ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender;

30 and

31 (x) Mail confirmation number, if applicable, or confirmation by client or sender of the
32 fund’s or security’s return.

33 (3) “Independent certified public accountant” means a certified public accountant that meets
34 the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X 17 C.F.R. 210.2-
35 01(b) and (c).

36 (4) “Independent party” means a person that:

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1 (A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees,
2 expenses and capital withdrawals from the pooled investment;

3 (B) does not control and is not controlled by and is not under common control with the
4 investment adviser;

5 (C) does not have, and has not had within the past 2 years, a material business
6 relationship with the investment adviser; and

7 (D) shall not negotiate or agree to have material business relations or commonly
8 controlled relations with an investment adviser for a period of 2 years after serving as the person
9 engaged in an independent party agreement.

10 (5) “Independent representative” means a person who:

11 (A) acts as agent for an advisory client, including in the case of a pooled investment vehicle,
12 for limited partners or a limited partnership, members of a limited liability company, or other beneficial
13 owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best
14 interest of the advisory client or the limited partners, members, or other beneficial owners;

15 (B) does not control, is not controlled by, and is not under common control with
16 investment adviser; and

17 (C) does not have, and has not had within the past 2 years, a material business
18 relationship with the investment adviser.

19 (6) “Qualified custodian” means the following:

20 (A) A bank or savings association that has deposits insured by the Federal Deposit
21 Insurance Corporation under the Federal Deposit Insurance Act;

22 (B) A trust company;

23 (C) A broker-dealer registered in this jurisdiction and with the SEC holding the client
24 assets in customer accounts;

25 (D) A registered futures commission merchant registered under section 4f(a) of the
26 Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to
27 clients’ funds and security futures, or other securities incidental to transactions in contracts for the
28 purchase or sale of a commodity for future delivery and options thereon; and

29 (E) A foreign financial institution that customarily holds financial assets for its
30 customers, provided that the foreign financial institution keeps the advisory clients’ assets in
31 customer accounts segregated from its proprietary assets.

32 (7) “Related person” means any person, directly or indirectly, controlling or controlled by the
33 investment adviser, or any person that is under common control with the investment adviser.

34 421-B:5-503 Evidentiary Burden.

35 (a) Civil. In a civil action or administrative proceeding under this chapter, a person claiming an
36 exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

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1 (b) Criminal. In a criminal proceeding under this chapter, a person claiming an exemption,
2 exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

3 421-B:5-504 Filing of Sales and Advertising Literature.

4 (a) Filing requirement. Except as otherwise provided in subsection (b), an order issued under
5 this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement,
6 sales literature, or other advertising record relating to a security or investment advice, addressed or
7 intended for distribution to prospective investors, including clients or prospective clients of a person
8 registered or required to be registered as an investment adviser under this chapter.

9 (b) Secretary of state's discretionary information requests. The secretary of state may require at
10 any reasonable time and in any reasonable manner from any person or issuer subject to this title,
11 statements; reports, including reports audited by independent public accountants and sales reports;
12 answers to questionnaires; and other information and evidence thereof, in whatever reasonable form
13 the secretary of state designates, and at such reasonable intervals as the secretary of state may
14 choose, or from time to time.

15 (c) Excluded communications. This section does not apply to sales and advertising literature
16 specified in subsection (a), or statements, reports or any other information referenced in subsection
17 (b), which relate to a federal covered security, a federal covered investment adviser, or a security or
18 transaction exempted by RSA 421-B:2-201, RSA 421-B:2-202, or RSA 421-B:2-203 except as required
19 pursuant to RSA 421-B:2-201(7).

20 421-B:5-505 Misleading Filings. It is unlawful for a person to make or cause to be made, in a
21 record that is used in an action or proceeding or filed under this chapter, a statement that, at the
22 time and in the light of the circumstances under which it is made, is false or misleading in a material
23 respect, or, in connection with the statement, to omit to state a material fact necessary to make the
24 statement made, in the light of the circumstances under which it was made, not false or misleading.

25 421-B:5-506 Misrepresentations Concerning Registration or Exemption. The filing of an
26 application for registration, a registration statement, a notice filing under this chapter, the
27 registration of a person, the notice filing by a person, or the registration of a security under this
28 chapter does not constitute a finding by the secretary of state that a record filed under this chapter is
29 true, complete, and not misleading. The filing or registration or the availability of an exemption,
30 exception, preemption, or exclusion for a security or a transaction does not mean that the secretary
31 of state has passed upon the merits or qualifications of, or recommended or given approval to, a
32 person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser,
33 customer, client, or prospective customer or client a representation inconsistent with this section.

34 421-B:5-507 Qualified Immunity. A broker-dealer, agent, investment adviser, federal covered
35 investment adviser, or investment adviser representative is not liable to another broker-dealer,
36 agent, investment adviser, federal covered investment adviser, or investment adviser representative

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1 for defamation relating to a statement that is contained in a record required by the secretary of
2 state, or designee of the secretary of state, the Securities and Exchange Commission, or a self-
3 regulatory organization, unless the person knew, or should have known at the time that the
4 statement was made, that it was false in a material respect or the person acted in reckless disregard
5 of the statement's truth or falsity.

6 421-B:5-508 Criminal Penalties.

7 (a) Any person who willfully violates any provisions of RSA 421-B:5-501(a) or RSA 421-B:5-
8 502(a) or a cease and desist order or injunction issued pursuant to RSA 421-B:6-603 or RSA 421-B:6-
9 604, or who violates RSA 421-B:5-505 knowing that the statement was false or misleading in any
10 material respect, shall be guilty of a class B felony. Each of the acts specified shall constitute a
11 separate offense and a prosecution or conviction for any one of such offenses shall not bar
12 prosecution or conviction for any other offense.

13 (b) Any person who willfully violates RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-
14 403(a), RSA 421-B:3-301(a), or RSA 421-B:5-506 shall be guilty of a misdemeanor. Each of the acts
15 specified shall constitute a separate offense and a prosecution or conviction for any one of such
16 offenses shall not bar prosecution or conviction for any other offense. For any subsequent offense,
17 any person shall be guilty of a class B felony.

18 (c) Nothing in this chapter limits the power of the state to punish any person for any conduct
19 which constitutes a crime by statute.

20 421-B:5-509 Civil Liability.

21 (a) Securities Litigation Uniform Standards Act. Enforcement of civil liability under this section
22 is subject to the Securities Litigation Uniform Standards Act of 1998.

23 (b) Liability of seller to purchaser. A person is liable to the purchaser if the person sells a
24 security in violation of RSA 421-B:3-301 or, by means of an untrue statement of a material fact or an
25 omission to state a material fact necessary in order to make the statement made, in light of the
26 circumstances under which it is made, not misleading, the purchaser not knowing the untruth or
27 omission and the seller not sustaining the burden of proof that the seller did not know and, in the
28 exercise of reasonable care, could not have known of the untruth or omission. An action under this
29 subsection is governed by the following:

30 (1) The purchaser may maintain an action to recover the consideration paid for the security,
31 less the amount of any income received on the security, and interest at the legal rate of interest from
32 the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the
33 tender of the security, or for actual damages as provided in subsection (b)(3).

34 (2) The tender referred to in subsection (b)(1) may be made any time before entry of
35 judgment. Tender requires only notice in a record of ownership of the security and willingness to

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1 exchange the security for the amount specified. A purchaser that no longer owns the security may
2 recover actual damages as provided in subsection (3).

3 (3) Actual damages in an action arising under subsection (b) are the amount that would be
4 recoverable upon a tender less the value of the security when the purchaser disposed of it, and
5 interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys'
6 fees determined by the court.

7 (c) Liability of purchaser to seller. A person is liable to the seller if the person buys a security by
8 means of an untrue statement of a material fact or omission to state a material fact necessary in
9 order to make the statement made, in light of the circumstances under which it is made, not
10 misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the
11 burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not
12 have known of the untruth or omission. An action under subsection (c) is governed by the following:

13 (1) The seller may maintain an action to recover the security, and any income received on
14 the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the
15 purchase price, or for actual damages as provided in subsection (c) 3).

16 (2) The tender referred to in subsection (c)(1) may be made any time before entry of
17 judgment. Tender requires only notice in a record of the present ability to pay the amount tendered
18 and willingness to take delivery of the security for the amount specified. If the purchaser no longer
19 owns the security, the seller may recover actual damages as provided in subsection (c)(3).

20 (3) Actual damages in an action arising under subsection (c) are the difference between the
21 price at which the security was sold and the value the security would have had at the time of the sale
22 in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest
23 from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

24 (d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or
25 agent that sells or buys a security in violation of RSA 421-B:4-401(a), RSA 421-B:4-402(a), or RSA
26 421-B:5-506 is liable to the customer. The customer, if a purchaser, may maintain an action for
27 recovery of actual damages as specified in subsections (b)(1) through (c)(3), or, if a seller, for a
28 remedy as specified in subsections (c)(1) through (c)(3).

29 (e) Liability of unregistered investment adviser and investment adviser representative. A
30 person acting as an investment adviser or investment adviser representative that provides
31 investment advice for compensation in violation of RSA 421-B:4-403(a), RSA 421-B:4-404(a), or
32 RSA 421-B:5-506 is liable to the client. The client may maintain an action to recover the
33 consideration paid for the advice, interest at the legal rate of interest from the date of payment,
34 costs, and reasonable attorneys' fees determined by the court.

35 (f) Liability for investment advice. A person that receives directly or indirectly any
36 consideration for providing investment advice to another person and that employs a device, scheme,

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1 or artifice to defraud the other person or engages in an act, practice, or course of business that
2 operates or would operate as a fraud or deceit on the other person, is liable to the other person. An
3 action under subsection (f) is governed by the following:

4 (1) The person defrauded may maintain an action to recover the consideration paid for
5 the advice and the amount of any actual damages caused by the fraudulent conduct, interest at
6 the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable
7 attorneys' fees determined by the court, less the amount of any income received as a result of the
8 fraudulent conduct.

9 (2) This subsection does not apply to a broker-dealer or its agents if the investment advice
10 provided is solely incidental to transacting business as a broker-dealer and no special compensation
11 is received for the investment advice.

12 (g) Joint and several liability. The following persons are liable jointly and severally with and to
13 the same extent as persons liable under subsections (b) through (f):

14 (1) a person that directly or indirectly controls a person liable under subsections (b) through
15 (f), unless the controlling person sustains the burden of proof that the person did not know, and in
16 the exercise of reasonable care could not have known, of the existence of conduct by reason of which
17 the liability is alleged to exist.

18 (2) an individual who is a managing partner, executive officer, or director of a person liable
19 under subsections (b) through (f), including an individual having a similar status or performing
20 similar functions, unless the individual sustains the burden of proof that the individual did not know
21 and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of
22 which the liability is alleged to exist;

23 (3) an individual who is an employee of or associated with a person liable under subsections (b)
24 through (f) and who materially aids the conduct giving rise to the liability, unless the individual
25 sustains the burden of proof that the individual did not know and, in the exercise of reasonable care
26 could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

27 (4) a person that is a broker-dealer, agent, investment adviser, or investment adviser
28 representative that materially aids the conduct giving rise to the liability under subsections (b)
29 through (f), unless the person sustains the burden of proof that the person did not know and, in the
30 exercise of reasonable care could not have known, of the existence of conduct by reason of which
31 liability is alleged to exist.

32 (h) No civil cause of action. No civil cause of action may be based solely upon the failure of a broker-
33 dealer or agent to comply with the registration requirements of RSA 421-B:4-401(a) or RSA 421-B:4-
34 402(a), except a cause of action arising under subsection (d), RSA 421-B:6-603, or RSA 421-B:6-604.

35 (i) Right of contribution. A person liable under this section has a right of contribution as in
36 cases of contract against any other person liable under this section for the same conduct.

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1 (j) Survival of cause of action. A cause of action under this section survives the death of an
2 individual who might have been a plaintiff or defendant.

3 (k) Statute of limitations. A person may not obtain relief:

4 (1) under subsection (b) for violation of RSA 421-B:3-301, or under subsection (d) or (e),
5 unless the action is instituted within 2 years after the violation occurred; or

6 (2) under subsection (b), other than for violation of RSA 421-B:3-301, or under subsection (c)
7 or (f), unless the action is instituted within the earlier of 2 years after discovery of the facts
8 constituting the violation and 6 years after the violation.

9 (l) No enforcement of violative contract. A person that has made, or has engaged in the
10 performance of, a contract in violation of this chapter or a rule adopted or order issued under this
11 chapter, or that has acquired a purported right under the contract with knowledge of conduct by
12 reason of which its making or performance was in violation of this chapter, may not base an action
13 on the contract.

14 (m) No contractual waiver. A condition, stipulation, or provision binding a person purchasing or
15 selling a security or receiving investment advice to waive compliance with this chapter or a rule
16 adopted or order issued under this chapter is void.

17 (n) Survival of other rights or remedies. The rights and remedies provided by this chapter are in
18 addition to any other rights or remedies that may exist, but this chapter does not create a cause of
19 action not specified in this section or RSA 421-B:4-411(e).

20 421-B:5-510 Rescission Offers. A purchaser or seller of a security, or a recipient of investment
21 advice may not maintain an action under RSA 421-B:5-509 if:

22 (1) The purchaser or seller of a security, or recipient of investment advice receives in a
23 record, before the action is instituted:

24 (A) an offer stating the respect in which liability under RSA 421-B:5-509 may have
25 arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's
26 rights in connection with the offer, and any financial or other information necessary to correct all
27 material misrepresentations or omissions in the information that was required by this chapter to be
28 furnished to that person at the time of the purchase, sale, or investment advice;

29 (B) if the basis for relief under this section may have been a violation of RSA 421-B:5-
30 509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the
31 consideration paid, and interest at the legal rate of interest from the date of the purchase, less the
32 amount of any income received on the security, or, if the purchaser no longer owns the security, an
33 offer to pay the purchaser upon acceptance of the offer damages in an amount that would be
34 recoverable upon a tender, less the value of the security when the purchaser disposed of it, and
35 interest at the legal rate of interest from the date of the purchase in cash equal to the damages
36 computed in the manner provided in subsection (1);

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1 (C) if the basis for relief under this section may have been a violation of RSA 421-B:5-
2 509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase
3 price paid, less income received on the security by the purchaser and interest at the legal rate of
4 interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the
5 seller upon acceptance of the offer, in cash, damages in the amount of the difference between the
6 price at which the security was purchased and the value the security would have had at the time of
7 the purchase in the absence of the purchaser's conduct that may have caused liability and interest at
8 the legal rate of interest from the date of the sale;

9 (D) if the basis for relief under this section may have been a violation of RSA 421-B:5-
10 509(d); and if the customer is a purchaser, an offer to pay as specified in subsection (1)(B); or, if the
11 customer is a seller, an offer to tender or to pay as specified in subsection (1)(C);

12 (v) if the basis for relief under this section may have been a violation of RSA 421-B:5-
13 509(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal
14 rate of interest from the date of payment; or

15 (vi) if the basis for relief under this section may have been a violation of RSA 421-B:5-
16 509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual
17 damages that may have been caused by the conduct, and interest at the legal rate of interest from
18 the date of the violation causing the loss;

19 (2) the offer under subsection (1) states that it must be accepted by the purchaser or seller of
20 a security, or the recipient of investment advice within 30 days after the date of its receipt by the
21 purchaser, seller, or recipient of investment advice or any shorter period, of not less than 3 days, that
22 the secretary of state, by order, specifies;

23 (3) the offeror has the present ability to pay the amount offered (a firm financing
24 commitment from a reputable investor or other reputable financial source may be included in
25 present ability to pay the amount offered) or, if the purchaser of a security, has the present ability to
26 tender the security under subsection (1);

27 (4) the offer under subsection (1) is delivered to the purchaser or seller of a security, or the
28 recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or
29 recipient of investment advice;

30 (5) the purchaser or seller of a security, or the recipient of investment advice that accepts
31 the offer under subsection (1) in a record within the period specified under subsection (2) is paid in
32 accordance with the terms of the offer; and

33 (6) The offer under subsection (1) is required to be filed with the secretary of state 20 days
34 before the offering and conform in form and content as prescribed by order of the secretary of state.

Article 6

Administration and Judicial Review

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1 421-B:6-601 Administration of Chapter.

2 (a) Administration. The secretary of state shall administer this chapter. The secretary of state
3 may appoint deputy secretaries of state or designees who shall serve as director and who may be
4 classified or unclassified employees whose salary shall be that of or comparable to that of a deputy
5 secretary of state, to administer the provisions of this chapter. The secretary of state may also
6 appoint deputy directors who shall perform such duties as may be assigned by the secretary of state,
7 deputy secretary of state, or designee, or director, to administer the provisions of this chapter. The
8 secretary of state shall, to the greatest extent practical, physically and substantively consolidate the
9 activities and functions related to corporations, limited partnerships, and other business
10 organizations and entities administered by the department of state with the activities and functions
11 related to the registration of securities.

12 (b) Notwithstanding any other provision of law, the secretary of state shall have exclusive
13 authority and jurisdiction:

14 (1) To register securities.

15 (2) To license the following:

16 (A) Broker-dealers.

17 (B) Investment advisers.

18 (C) Agents.

19 (D) Investment adviser representatives.

20 (3) Together with the attorney general, to issue, amend, or rescind such orders as are
21 reasonably necessary to carry out the provisions of this chapter.

22 (4) To bring administrative actions to enforce the securities law.

23 (5) To investigate and impose penalties for violations of the securities laws, including:

24 (A) Revoking, suspending, or denying licenses and registrations.

25 (B) Fines.

26 (C) Rescission, restitution, or disgorgement.

27 (6) Together with the attorney general, to bring actions pursuant to RSA 421-B:6-603.

28 (7) To investigate conduct that would be an unfair or deceptive act or practice under RSA 358-A
29 and that is subject to the jurisdiction of the director of securities regulation pursuant to RSA 358-A:3, I.

30 (8) To issue letters of censure, caution, warning, or admonition pursuant to audits or
31 inspections under RSA 421-B:4-409(d), investigations under RSA 421-B:6-602, or hearings under
32 RSA 421-B:6-613.

33 (c) The exclusive authority and jurisdiction to issue licenses pursuant to RSA 421-B:6-601(b)(2)
34 shall not be read to limit the authority of the department of insurance to license sellers of products
35 where licensure is required both by RSA 421-B and Title XXXVII.

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1 (d) The secretary of state shall have all powers specifically granted or reasonably implied in
2 order to perform the substantive responsibilities imposed by this chapter.

3 (e) Unlawful use of records or information. It is unlawful for the secretary of state or officer,
4 employee, or designee of the secretary of state to use for personal benefit or the benefit of others records
5 or other information obtained by or filed with the secretary of state that are not public under
6 RSA 421-B:6-607(b). The secretary of state may disclose records or information in accordance with
7 RSA 91-A.

8 (f) No common law privilege or exemption created or diminished. Except for the privilege from
9 defamation in RSA 421-B:4-406(i), this chapter does not create or diminish any privilege or
10 exemption that exists at common law, by statute, rule, or otherwise.

11 (g) Investor education. The secretary of state may develop and implement investor education
12 initiatives to inform the public about investing in securities, with particular emphasis on the
13 prevention and detection of securities fraud. In developing and implementing these initiatives, the
14 secretary of state may collaborate with public and nonprofit organizations with an interest in
15 investor education. The secretary of state may accept grants or donations from a person that is not
16 affiliated with the securities industry or from a nonprofit organization, regardless of whether or not
17 the organization is affiliated with the securities industry, to develop and implement investor
18 education initiatives. This subsection does not authorize the secretary of state to require
19 participation or monetary contributions of a registrant in an investor education program.

20 (h) Investor education fund. All moneys collected as an administrative penalty under this
21 chapter and all moneys collected pursuant to RSA 421-B:6-614(a)(4), and (5), shall be credited to an
22 investor education fund to be maintained by the state treasurer. Funds in excess of \$725,000 at the
23 end of each fiscal year shall be credited to the general fund. The secretary of state, after deducting
24 administrative costs, shall use moneys credited to that fund to provide information to residents of
25 this state about investments in securities, to help investors and potential investors evaluate their
26 investment decisions, protect themselves from unfair, inequitable, or fraudulent offerings, choose
27 their broker-dealers, agents, or investment advisers more carefully, be alert for false or misleading
28 advertising or other harmful practices, and know their rights as investors. The state treasurer shall
29 pay the expenses of investor education out of the investor education fund consisting of the funds.
30 The investor education fund shall be nonlapsing and continually appropriated for the purpose of
31 paying the expenses of investor education, except that the fund shall at no time exceed \$725,000.

32 (i) The secretary of state shall collect all fees and charges required under this chapter and shall
33 pay them to the state treasurer to be deposited in the general fund as unrestricted revenue, except
34 as provided in RSA 421-B:6-601(h).

35 421-B:6-602 Investigations and Subpoenas.

36 (a) Authority to investigate. The secretary of state may:

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1 (1) conduct public or private investigations within or outside of this state that the secretary
2 of state considers necessary or appropriate to determine whether any person has violated, is
3 violating, or is about to violate this chapter or an order issued under this chapter, or to aid in the
4 enforcement of this chapter or in the adoption of forms under this chapter;

5 (2) require or permit a person to testify, file a statement, or produce a record, under oath or
6 otherwise as the secretary of state determines, as to all the facts and circumstances concerning a
7 matter to be investigated or about which an action or proceeding is to be commenced; and

8 (3) publish information concerning an action, proceeding, or an investigation under, or a
9 violation of, this chapter or an order issued under this chapter if the secretary of state determines it
10 is necessary or appropriate in the public interest and for the protection of investors.

11 (4) hold hearings, upon reasonable notice, in respect to any matter arising out of the
12 administration of this chapter;

13 (5) conduct investigations and hold hearings for the purpose of compiling information with a
14 view to recommending changes in this chapter to the legislature; and

15 (6) require a broker-dealer, agent, or issuer, subject to the limitations set forth in section 18
16 of the Securities Act of 1933, to report to the secretary of state all transactions as they pertain to any
17 security. Such reports shall be made within 10 days after demand therefor by the secretary of state
18 and shall be open for public inspection only upon a court order. The secretary of state shall not make
19 known, in any manner not provided by law, any information contained in such reports.

20 (b) Secretary of state's powers to investigate. For the purpose of an investigation under this
21 chapter, the secretary of state or a designated officer may administer oaths and affirmations,
22 subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of a statement,
23 and require the production of any records that the secretary of state considers relevant or material to
24 the investigation.

25 (c) Procedure and remedies for noncompliance. If a person fails to appear or refuses to testify,
26 file a statement, produce records, or otherwise fails to obey a subpoena as required by the secretary
27 of state under this chapter, the attorney general or the secretary of state may apply to the superior
28 court or a court of another state to enforce compliance. The court may:

29 (1) hold the person in contempt;

30 (2) order the person to appear before the attorney general or secretary of state;

31 (3) order the person to testify about the matter under investigation or in question;

32 (4) order the production of records;

33 (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or
34 the providing of investment advice;

35 (6) order a civil penalty of not less than \$2,500 for each violation; and

36 (7) grant any other necessary or appropriate relief.

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1 (d) Assistance to securities regulator of another state. At the request of the securities regulator
2 of another state or a foreign jurisdiction, the secretary of state may provide assistance if the
3 requesting regulator states that it is conducting an investigation to determine whether a person has
4 violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction
5 relating to securities matters which the requesting regulator administers or enforces. The secretary
6 of state may provide the assistance by using the authority to investigate and the powers conferred by
7 this section as the secretary of state determines is necessary or appropriate. The assistance may be
8 provided without regard to whether the facts stated in the request would also constitute a violation
9 of this chapter or other law of this state if occurring in this state. In deciding whether to provide the
10 assistance, the secretary of state may consider whether the requesting regulator is permitted and
11 has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the secretary
12 of state on securities matters when requested; whether compliance with the request would violate or
13 prejudice the public policy of this state; and the availability of resources and employees of the
14 secretary of state to carry out the request for assistance.

15 421-B:6-603 Civil Enforcement.

16 (a) Civil action instituted by attorney general or secretary of state. If it appears to the attorney
17 general or secretary of state that a person has engaged, is engaging, or is about to engage in an act,
18 practice, or course of business constituting a violation of this chapter or an order issued under this
19 chapter, or that a person has, is, or is about to engage in an act, practice, or course of business that
20 materially aids a violation of this chapter or an order issued under this chapter, the attorney general
21 or the secretary of state may maintain an action in the superior court to enjoin the act, practice, or
22 course of business and to enforce compliance with this chapter or an order issued under this chapter.
23 The action may be brought in the superior court of the county in which the defendant resides or has
24 his or her principal place of business, or, with the consent of the parties or if the defendant is a
25 nonresident and has no place of business within the state, in the superior court of Merrimack county.

26 (b) Relief available In an action under this section and upon a proper showing, the court may:

27 (1) grant or require a permanent or temporary injunction, restraining order, writ of
28 mandamus, or a declaratory judgment;

29 (2) issue an order for other appropriate or ancillary relief, to include:

30 (A)(i) an asset freeze, accounting, writ of attachment, writ of general or specific
31 execution, and an appointment of a receiver or conservator, that may be the secretary of state, for
32 the defendant or the defendant's assets.

33 (ii) Notwithstanding any law to the contrary, the court may grant, upon a proper
34 showing by the secretary of state, a writ of attachment for the state of New Hampshire for the
35 benefit of all aggrieved investors identified by the secretary of state which will have priority over any

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1 other attachment or lien granted in connection with a civil action brought by an aggrieved investor
2 asserting a claim based on the same act or omission.

3 (B) an order to the secretary of state to take charge and control of a defendant's
4 property, including investment accounts and accounts in a depository institution, rents, and profits;
5 to collect debts; and to acquire and dispose of property;

6 (C) the imposition of a civil penalty up to a maximum of \$5,000 for a single violation; an
7 order of rescission, restitution, or disgorgement directed to a person that has engaged in an act,
8 practice, or course of business constituting a violation of this chapter or the predecessor act or an
9 order issued under this chapter or the predecessor act; and

10 (D) an order for the payment of prejudgment and postjudgment interest; or

11 (3) granting other relief that the court considers appropriate.

12 (c) No bond requirement. The attorney general or the secretary of state may not be required to
13 post a bond.

14 (d) In a proceeding in superior court under this section where the state prevails, the secretary of
15 state and the attorney general shall be entitled to recover all costs and expenses of investigation, and
16 the court shall include the costs in its final judgment.

17 421-B:6-604 Administrative Enforcement.

18 (a) Issuance of an order or notice. If the secretary of state determines that a person has
19 engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a
20 violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to
21 materially aid an act, practice, or course of business constituting a violation of this chapter or an
22 order issued under this chapter, the secretary of state may:

23 (1) issue an order directing the person to cease and desist from engaging in the act, practice,
24 or course of business or to take other action necessary or appropriate to comply with this chapter; or

25 (2) issue an order under RSA 421-B:2-204.

26 (b) Summary process. An order under subsection (a) is effective on the date of issuance. Upon
27 issuance of the order, the secretary of state shall promptly serve each person subject to the order
28 with a copy of the order and a notice that the order has been entered. The order shall include a
29 statement of the reasons for the order and notice that, within 15 days after receipt of a request in a
30 record from the person, the matter will be scheduled for a hearing. If a person subject to the order
31 does not request a hearing and none is ordered by the secretary of state within 30 days after the date
32 of service of the order, the order becomes final as to that person. If a hearing is requested or ordered,
33 the secretary of state, after notice of and opportunity for hearing to each person subject to the order,
34 may modify or vacate the order or extend it until final determination. If the person to whom a cease
35 and desist order is issued fails to appear at the hearing after being duly notified, such person shall

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1 be deemed in default, and the proceeding may be determined against him or her upon consideration
2 of the cease and desist order, the allegations of which may be deemed to be true.

3 (c) Procedure for final order. If a hearing is requested or ordered pursuant to subsection (b), a
4 hearing shall be held pursuant to RSA 421-B:6-612. In accordance with RSA 421-B:6-612, the
5 secretary of state shall issue a written decision stating the action to be taken by the department and
6 may set forth findings of fact, conclusions of law, and disposition. The final order may make final,
7 vacate, or modify the order issued under subsection (a).

8 (d) Civil penalty. In a final order, the secretary of state may impose a civil penalty up to a
9 maximum of \$2,500 for a single violation. In addition, every such person who is subject to such civil
10 penalty, upon hearing, and in addition to any other penalty provided for by law, be subject to such
11 suspension, revocation, or denial of any registration or license, or be barred from registration or
12 licensure, including the forfeiture of any application fee.

13 (e) After notice and hearing, the secretary of state may enter an order of rescission, restitution,
14 or disgorgement directed to a person who has violated this chapter, or a rule or order under this
15 chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided
16 for under this chapter.

17 (f) The secretary of state may order any person who violates RSA 421-B:5-501, RSA 421-B:5-502,
18 RSA 421-B:3-301, RSA 421-B:3-302, RSA 421-B:5-505 or a cease and desist order issued under this
19 chapter, upon hearing, and in addition to any other penalty provided for by law, to make a written
20 offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the
21 security, equal to the consideration paid for the security together with interest at the legal rate, less
22 the amount of any income received by the purchaser on the security, or if the purchaser no longer
23 owns the security, an offer to pay an amount in cash equal to consideration paid for the security
24 together with interest at the legal rate, less the amount the purchaser received on disposition of the
25 security and less the amount of any income received by the purchaser on the security.

26 (g) Costs. In a final order, the secretary of state may charge the actual cost of an investigation
27 or proceeding for a violation of this chapter or an order issued under this chapter.

28 (h) Enforcement by court; further civil penalty. If a person fails to comply with an order under
29 this section, the attorney general or secretary of state may petition a court of competent jurisdiction
30 to enforce the order. The court may not require the attorney general or secretary of state to post a
31 bond. If the court finds, after service and opportunity for hearing, that the person is not in
32 compliance with the order, the court may adjudge the person in civil contempt of the order. The
33 court may impose a further civil penalty against the person for contempt in an amount not less than
34 \$5,000 for each violation, and may grant any other relief the court determines is just and proper in
35 the circumstances.

36 421-B:6-605 Orders, Interpretative Opinions, and Hearings.

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1 (a) Issuance and adoption of forms, orders, and rules. The secretary of state may:
2 by order, define terms, whether or not used in this chapter, when those definitions are not
3 inconsistent with this chapter.

4 (b) Findings and cooperation. All actions undertaken by the secretary of state pursuant to this
5 section shall be taken only when the secretary of state finds such action necessary or appropriate to
6 the public interest or for the protection of investors and consistent with the purposes fairly intended
7 by the policy and provisions of this title. In preparing forms, setting standards, and reviewing
8 offerings, the secretary of state may cooperate with the securities regulators of other states, self
9 regulatory organizations, and the Securities and Exchange Commission in order to implement the
10 policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the
11 form and content of registration statements, applications, reports, and requirements for issuers,
12 broker-dealers, and investment advisors, where practicable.

13 (c) Financial statements. Subject to section 15(h) of the Securities Exchange Act and Section
14 222 of the Investment Advisers Act of 1940, the secretary of state may require that a financial
15 statement filed under this chapter be prepared in accordance with generally accepted accounting
16 principles in the United States and comply with other requirements specified by rule or order under
17 this chapter. Subject to section 15(h) of the Securities Exchange Act and section 222 of the
18 Investment Advisers Act of 1940, a rule or order under this chapter may establish the form and
19 content of financial statements required under this chapter.

20 (d) Interpretative opinions. The secretary of state may provide interpretative opinions or may
21 issue determinations that the secretary of state will not institute an enforcement proceeding or
22 commence an action under this chapter against a specified person for engaging in a specified act,
23 practice, or course of business if the determination is consistent with the purposes intended by this
24 chapter. The secretary of state may assess a reasonable charge for interpretative opinions or
25 determinations that the secretary of state will not commence an action or institute an enforcement
26 proceeding under this chapter.

27 421-B:6-606 Administrative Files and Opinions.

28 (a) Public register of filings. The secretary of state shall maintain a register of all applications
29 for registration of securities; registration statements; notice filings, applications for registration of
30 broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings
31 by federal covered investment advisers that are or have been effective under this chapter or the
32 predecessor act; notices of claims of exemption from registration or notice filing requirements
33 contained in a record; orders issued under this chapter or the predecessor act; and interpretative
34 opinions or no-action determinations issued under this chapter.

35 (b) Public availability. The secretary of state shall make all forms, interpretative opinions, and
36 orders available to the public.

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1 (c) Copies of public records. Upon request, the secretary of state shall furnish to a person a copy of
2 a record that is a public record pursuant to RSA 91-A or a certification that the public record does not
3 exist. The secretary of state may prescribe a reasonable charge for furnishing the record. A copy of the
4 record certified or a certificate of its nonexistence by the secretary of state is prima facie evidence.

5 421-B:6-607 Public Records; Confidentiality.

6 (a) Presumption of public records. Except as otherwise provided in subsection (b), records
7 obtained by the secretary of state or filed under this chapter, including a record contained in or filed
8 with any registration statement, application, notice filing, or report, are public records and are
9 available for public examination.

10 (b) The information contained in or filed with any registration statement, application, or report
11 may be made available to the public in accordance with RSA 91-A. A person who files a record in
12 connection with a registration statement under RSA 421-B:3-301 and RSA 421-B:3-303 through
13 RSA 421-B:3-305 or a record under RSA 421-B:4-411(d) that contains trade secrets or confidential
14 information may request that the secretary of state treat such record as confidential or privileged
15 and subject to the exemptions from public disclosure under RSA 91-A.

16 421-B:6-608 Uniformity and Cooperation with Other Agencies.

17 (a) Interstate cooperation. The secretary of state and the secretary of state's staff shall
18 maintain close relations with the securities and corporate administrators of other states and shall
19 actively participate in the activities and affairs of the North American Security Administrators
20 Association and other organizations so far as it will, in the secretary of state's judgment, enhance the
21 purposes of the securities and corporate laws. The actual and necessary travel and related expenses
22 incurred in attending meetings of said association, their committees, subcommittees, hearings, and
23 other official activities, as well as the general expenses of participation in such associations, shall be
24 a charge on available funds and the appropriation of the office of the secretary of state.

25 (b) Statutory policy. This chapter shall be so construed as to effectuate its general purpose to
26 make uniform the laws of those states which enact it and to coordinate the interpretation of this
27 chapter with the related federal regulation.

28 421-B:6-609 Judicial Review. Final orders issued by the secretary of state under this chapter
29 are subject to judicial review in accordance with RSA 541.

30 421-B:6-610 Jurisdiction.

31 (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-
32 402(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,
33 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
34 made in this state, or the offer to purchase or the purchase is made and accepted in this state.

35 (b) Purchases and offers to purchase. RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-
36 403(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-

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1 510 apply to a person that purchases or offers to purchase a security if the offer to purchase or the
2 purchase is made in this state, or the offer to sell or the sale is made and accepted in this state.

3 (c) Offers in this state. For the purpose of this section, an offer to sell or to purchase a security
4 is made in this state, whether or not either party is then present in this state, if the offer:

5 (1) originates from this state; or

6 (2) is directed by the offeror to a place in this state and received at the place to which it
7 is directed.

8 (d) Acceptances in this state. For the purpose of this section, an offer to purchase or to sell is
9 accepted in this state, whether or not either party is then present in this state, if the acceptance:

10 (1) is communicated to the offeror in this state and the offeree reasonably believes the
11 offeror to be present in this state and the acceptance is received at the place in this state to which it
12 is directed; and

13 (2) has not previously been communicated to the offeror, orally or in a record, outside this state.

14 (e) Publications, radio, television, or electronic communication. An offer to sell or to purchase is
15 not made in this state when a publisher circulates or there is circulated on the publisher's behalf in
16 this state a bona fide newspaper or other publication of general, regular, and paid circulation that is
17 not published in this state, or that is published in this state but has had more than two-thirds of its
18 circulation outside this state during the previous 12 months, or when a radio or television program or
19 other electronic communication originating outside this state is received in this state. A radio,
20 television program, or other electronic communication is considered as having originated in this state if
21 either the broadcast studio or the originating source of transmission is located in this state, unless:

22 (1) the program or communication is syndicated and distributed from outside this state for
23 redistribution to the general public in this state;

24 (2) the program or communication is supplied by a radio, television, or other electronic
25 network with the electronic signal originating from outside this state for redistribution to the
26 general public in this state;

27 (3) the program or communication is an electronic communication that originates outside
28 this state and is captured for redistribution to the general public in this state by a community
29 antenna or cable, radio, cable television, or other electronic system; or

30 (4) the program or communication consists of an electronic communication that originates in
31 this state, but which is not intended for distribution to the general public in this state.

32 (f) Investment advice and misrepresentations. RSA 421-B:4-403(a), RSA 421-B:4-404(a),
33 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
34 an act, practice, or course of business instrumental in effecting prohibited or actionable conduct is
35 engaged in this state, whether or not either party is then present in this state.

36 421-B:6-611 Service of Process.

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1 (a) Signed consent to service of process. A consent to service of process required by this chapter
2 must be signed and filed in the form required by the secretary of state. A consent appointing the
3 secretary of state the person's agent for service of process in a noncriminal action or proceeding
4 against the person, or the person's successor, or personal representative under this chapter or an
5 order issued by the secretary of state under this chapter after the consent is filed, has the same force
6 and validity as if the service were made personally on the person filing the consent. A person that
7 has filed a consent complying with this subsection in connection with a previous application for
8 registration or notice filing need not file an additional consent.

9 (b) Conduct constituting appointment of agent for service. If a person, including a nonresident
10 of this state, engages in an act, practice, or course of business prohibited or made actionable by this
11 chapter or an order issued by the secretary of state under this chapter and the person has not filed a
12 consent to service of process under subsection (a), that act, practice, or course of business constitutes
13 the appointment of the secretary of state as the person's agent for service of process in a noncriminal
14 action or proceeding against the person, the person's successor, or personal representative.

15 (c) Procedure for service of process. Service under subsection (a) or (b) may be made by
16 providing a copy of the process to the office of the secretary of state, but it is not effective unless:

17 (1) the plaintiff, which may be the secretary of state, promptly sends notice of the service
18 and a copy of the process, return receipt requested, to the defendant or respondent at the address set
19 forth in the consent to service of process or, if a consent to service of process has not been filed, at the
20 last known address, or takes other reasonable steps to give notice; and

21 (2) the plaintiff files an affidavit of compliance with this subsection in the action or
22 proceeding on or before the return day of the process, if any, or within the time that the court, or the
23 secretary of state, in a proceeding before the secretary of state, allows.

24 (d) Use in administrative proceedings. Service as provided in subsection (c) may be used in a
25 proceeding before the secretary of state or by the secretary of state in a civil action in which the
26 secretary of state is the moving party.

27 (e) Provision of opportunity to defend. If the process is served under subsection (c), the court, or
28 the secretary of state in a proceeding before the secretary of state, shall order continuances as are
29 necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

30 421-B:6-612 Severability Clause. If any provision of this chapter or its application to any person
31 or circumstances is held invalid, the invalidity does not affect other provisions or applications of this
32 chapter that can be given effect without the invalid provision or application, and to this end the
33 provisions of this chapter are severable.

34 421-B:6-613 Hearing Procedures.

35 (a) Notwithstanding any other law to the contrary, all adjudicatory proceedings pursuant to this
36 chapter shall be conducted by the secretary of state or by a presiding officer appointed by the

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1 secretary of state. All hearings conducted pursuant to this chapter shall be governed by the
2 provisions of this section and the provisions of RSA 541-A shall not apply to this chapter.

3 (b) A document shall be considered filed when it is actually received at the department's office in
4 Concord, New Hampshire, and conforms to the requirements of this chapter.

5 (c) For the purposes of this section:

6 (1) All complaints, petitions, motions, responses, and replies shall be signed by the
7 proponent of the document or, if the party appears by a representative, by the representative.

8 (2) License, registration, and exemption applications shall be signed only by the applicant or
9 properly authorized designee.

10 (3) The signature on a document filed with the department shall constitute a certification that:

11 (A) The signer has read the document and is authorized to file it;

12 (B) There are good grounds to support the representations made therein; and

13 (C) The document has not been filed for purposes of delay or harassment.

14 (4) A willful violation of subsection (c), shall, to the extent consistent with the policy of the
15 statutes administered by the secretary of state, be a basis for entering an order adverse to the party
16 committing the violation.

17 (d) Within a reasonable time after receipt of a complaint:

18 (1) The department staff or a presiding officer shall review the complaint to determine
19 whether any basis exists for administrative action.

20 (2) If the complaint is insufficient or no basis exists which warrants administrative action,
21 the complaint shall be dismissed and no hearing shall be scheduled on such complaint.

22 (3) If the staff determines that sufficient basis exists which warrants administrative action,
23 the staff shall petition the secretary of state for relief.

24 (4) On any complaint, the staff shall temporarily defer any action and refer the subject matter
25 of the complaint to the appropriate agency if a more complete investigation is necessary. The results of
26 the investigation shall be used to determine the necessity of conducting a hearing by the department.

27 (e) Within a reasonable time after receipt of a petition:

28 (1) The secretary of state may issue an order either denying or granting the petition or
29 granting in part and denying in part. If any part of the petition is granted, the respondent shall be
30 informed, as part of the hearing notice, of the respondent's right to a hearing.

31 (2) A petition may include a request for summary action prior to a hearing.

32 (3) The staff may, sua sponte, petition for relief whenever it has reasonable grounds to
33 believe that a violation of law has occurred, is occurring, or is about to occur.

34 (f) Notices of hearings shall:

35 (1) Be prepared and forwarded in a manner which affords interested persons sufficient
36 opportunity to prepare for and deal with the issues to be considered and decided upon at the hearing.

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1 (2) Given in writing and addressed to the address of record of the person being called in for
2 the hearing. The notice shall be prepared on an official form of the department and shall be sent in a
3 sealed envelope through the United States mail, personal services, or by Federal Express or other
4 similar delivery service.

5 (g) A notice of hearing shall include:

6 (1) The time, date, and location of the hearing.

7 (2) The statute which has allegedly been violated and a statement of the legal authority
8 under which the hearing is to be held.

9 (3) An explicit description of the alleged violation or a copy of the complaint or petition for
10 relief or both the copy of complaint and petition for relief.

11 (h) Each hearing shall be set for a date as soon as practicable after the complaint has been
12 received and reviewed. The hearing shall be scheduled to allow sufficient and reasonable time for
13 the preparation of the case by both the department and interested parties.

14 (i) A request for continuance of a hearing shall be made in writing and received by the
15 department, absent exigent circumstances, at least 5 working days prior to the hearing. Exigent
16 circumstances include:

17 (1) Absence from the jurisdiction;

18 (2) Serious illness;

19 (3) Hospitalization;

20 (4) Death of a family member.

21 (j) The written request or motion for continuance shall contain the following:

22 (1) The specific reason or reasons for the request; and

23 (2) Optional dates and times when all interested parties shall be available.

24 (k) Each presiding officer may, at any stage of the hearing process, withdraw from a case if the
25 presiding officer has or has had a personal or business relationship with any party, witness, or
26 representative that may hinder such presiding officer from being able to arrive at an impartial
27 decision on the issue or issues, or for any other reason that may interfere with the presiding officer's
28 ability to remain impartial.

29 (l) Parties shall have the right to:

30 (1) Appear pro se or be represented by an attorney.

31 (2) Cross-examine witnesses; and

32 (3) Present evidence and witnesses on their own behalf.

33 (m) Except as provided as follows, administrative hearings shall be open to the public:

34 (1) The presiding officer may, on the presiding officer's own motion or at the request of a
35 party, rule that the public be excluded from a hearing if necessary, pursuant to RSA 91-A:3, II, to
36 protect the interests and rights of the parties to the hearing.

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1 (2) In matters involving sensitive issues, a presiding officer may consult with the office of
2 the attorney general for a ruling on the privacy issue.

3 (3) Members of the press shall be admitted to the hearing whenever the public is permitted.
4 If the press is present at a hearing, the presiding officer shall brief them, off the record, in the
5 presence of all parties, as to the nature and purpose of the hearing.

6 (4) In the event a party objects to the attendance of persons not involved in the hearing, the
7 presiding officer shall ascertain the reason for such objection and determine whether the reason
8 given justifies closing the hearing to such persons.

9 (n) Subject to the laws governing the department of state, and within the general scope of his
10 powers, each presiding officer shall have the authority to:

11 (1) Schedule and hold hearings.

12 (2) Administer oaths and affirmations.

13 (3) Issue subpoenas on behalf of the state.

14 (4) Determine the order of proof in any proceeding.

15 (5) Receive relevant evidence and rule on offers of proof in hearings.

16 (6) Take judicial notice of any facts which are of common knowledge and general notoriety.

17 (7) Take, or cause to be taken, depositions.

18 (8) Regulate and control the course of an administrative hearing.

19 (9) Hold conferences for the settlement or simplification of issues, or for obtaining
20 stipulations as to issues of fact or proof by consent of the parties.

21 (10) Dispose of procedural requests, including adjournments or continuances at the request
22 of the parties or on the presiding officer's own motion.

23 (11) Interview and examine witnesses and parties as the case may require.

24 (12) Direct parties to appear at hearings.

25 (13) Consider and evaluate the facts and evidence on the record in making findings of fact
26 and conclusions of law and dispositions.

27 (14) Determine credibility or weight of evidence in making findings of fact and conclusions
28 of law.

29 (15) Render oral and written decisions, reports, or recommendations as authorized by statute.

30 (16) Take any action in a proceeding necessary to conduct and complete the case, consistent
31 with applicable statutes, and precedents.

32 (o) During any proceeding, the secretary of state shall, upon motion or upon his own motion, direct
33 all parties to attend an informal conference to aid in the disposition of the proceeding. Such conferences:

34 (1) May be recorded unless all parties wish to discuss possible settlements off the record.
35 Such recordings shall be part of the record.

36 (2) Shall be held, in addition to settlement possibilities, to consider:

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- 1 (A) Possible simplification of the issues.
- 2 (B) Possible amendments to the pleadings.
- 3 (C) Possible admissions of fact, admissions of documents, or other stipulations which
4 might avoid unnecessary proof.
- 5 (D) The identification and possible limitations on the number of witnesses.
- 6 (E) Possible changes to the method of proceeding or hearing schedule which would
7 otherwise be applicable.
- 8 (F) The distribution of written testimony, if any, and exhibits to the parties.
- 9 (G) Possible consolidation of the examination of witnesses by the parties.
- 10 (H) Any other matters which might contribute to the prompt, orderly, and fair conduct of
11 the proceeding.
- 12 (p) A prehearing conference or other informal conference shall be conducted in person or, with
13 the consent of the parties, shall be conducted by means of electronic communications.
- 14 (q) The presiding officer shall cause the administrative hearing to be electronically recorded.
15 Such recording shall be made available, upon written request by a party and upon a fee sufficient to
16 reimburse the full cost of providing the tape, or a true and accurate copy of such tape or tapes. A
17 party may request, in writing, a transcript of the hearing but shall first pay the full costs for such
18 transcription as determined by the secretary of state.
- 19 (r) In the event there is a clear dispute of facts between the parties in which credibility of
20 testimony will determine the outcome of the hearing, the presiding officer on his own motion or that
21 of a party, may sequester witnesses until they are called to testify.
- 22 (s) In any administrative hearing in which administrative action affecting the rights or
23 privileges of any party may be taken, an oath or affirmation shall be administered by the presiding
24 officer to each witness prior to receiving testimony, provided, however, that if a witness asserts an
25 objection to the taking of an oath for religious or other related reasons, an affirmation shall be
26 administered. Once a witness has been sworn at any hearing, it shall not be necessary to swear the
27 witness again for subsequent testimony on the same day and in the same case. The record of the
28 proceeding shall indicate that a person was recalled to testify and reminded that such person was
29 still under oath or affirmation.
- 30 (t) Motions shall be in written form unless presented at the hearing. Written motions shall be
31 included in the record of the proceeding and filed together with the case file. Oral motions shall be
32 recorded in full in any transcript of the proceeding or, at the discretion of the presiding officer, noted
33 in the minutes of the proceeding and submitted in written form within a reasonable time. A
34 presiding officer may rule upon a motion when made or may defer decision until a later time in the
35 hearing, or until after the conclusion of the hearing.

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1 (u) Administrative hearings shall not be bound by common law or statutory rules of evidence,
2 nor by technical or formal rules of procedure. All relevant, material, and reliable evidence shall be
3 admissible. Such evidence may include, but shall not be limited to, depositions, affidavits, official
4 documents, and testimony of witnesses. Provided, however, the presiding officer may, in the
5 presiding officer’s discretion, exclude any irrelevant, immaterial, unreliable, or unduly cumulative or
6 repetitious evidence. Applicable statutory and constitutional provisions and immunities requiring
7 exclusion of evidence in civil proceedings shall be recognized, provided, however, that nothing
8 contained herein shall prohibit a party from waiving such party’s privilege or immunity.

9 (v) Within a reasonable time after the hearing, the presiding officer shall issue a written
10 decision stating the action to be taken by the department and may set forth findings of fact,
11 conclusions of law, and disposition. All decisions shall be reached upon the basis of a preponderance
12 of the evidence. The decision of the presiding officer shall be construed as the decision of the
13 secretary of state.

14 (w) Any party to whom notice has been forwarded pursuant to and in accordance with this
15 section who fails to appear shall have a default judgment rendered against him.

16 (x) The presiding officer may take judicial notice.

17 (y) Where the interests of justice will be better served without prejudice to the substantial rights
18 of any party, a presiding officer may sever one case from another or may consolidate 2 or more cases,
19 preserving to all parties the right of appeal from the single or several decisions rendered.

20 (z) Once a hearing notice has been issued commencing an adjudicatory proceeding, no party shall
21 communicate with the presiding officer or the secretary of state concerning the merits of the case except
22 upon notice to all parties nor shall any party cause another person to make such communications.

23 (aa) Within 30 days after a final decision, any party may file a motion for reconsideration which
24 shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the
25 terms “reconsideration” and “rehearing.” A motion for reconsideration shall:

26 (1) Identify each error of law, error of reasoning, or erroneous conclusion contained in the
27 final order which the moving party wishes the secretary of state to reconsider.

28 (2) Concisely state the correct factual finding, correct reasoning, and correct conclusion
29 being advocated.

30 (3) Include any memorandum of law the petitioner wishes to submit.

31 (bb) Within 30 days after a final decision, the presiding officer may reconsider, revise or reverse
32 any final action on the presiding officer’s own motion. If reconsideration is based upon the existing
33 record, prior notice shall not be given to the parties. If the presiding officer believes further
34 information or argument should be considered, the parties shall be provided with an appropriate
35 notice and opportunity to be heard before any revision is made in the previous action.

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1 (cc) The filing of a motion for reconsideration shall not operate as a stay of any order or decision,
2 but a motion for stay may be combined with a motion for reconsideration.

3 421-B:6-614 Fees.

4 (a) Initial fees and fees for amendments shall be as follows:

5 (1) Non-refundable registration fee for offers and
6 sales of each class of open end mutual funds
7 required to register under RSA 421-B:301 \$ 1,000

8 (2) Registration fee prior to offers or sales of securities in this state
9 2/10 of one percent
10 of the offering
11 value of the
12 securities offered
13 in the registration
14 statement, provided
15 said fee shall not
16 be more than
17 \$1,050, plus a
18 \$200 non-refundable
19 examination fee

20 (3) Fee prior to offers and sales of securities in
21 initial public offerings in this state under
22 the Securities Act of 1933, \$ 1,000
23 15 U.S.C. section 77r(b)(1)(A)

24 (4) Non-refundable fee prior to offers or sales of:

25 (A) Covered securities of other investment
26 companies under section 18(b)(2) of the
27 Securities Act of 1933 \$ 500

28 (B) Non-issuer transactions under section
29 18(b)(4)(A) of the Securities Act of
30 1933-- a one-time filing fee \$ 500

31 (5) Fee for a notice filing under RSA 421-B:3-302(c) \$ 500

32 (6) A copying and printing charge may be assessed
33 per page for each document

34 (7) Non-refundable initial notice filing fee prior \$ 1,000
35 to offers or sales of each class of an open
36 end mutual fund under section 18(b)(2) of the

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1 Securities Act of 1933

- 2 (8) Initial notice filing fee prior to offers or
3 sales of covered securities under sections
4 18(b)(4)(C) and 18(b)(3) of the Securities Act
5 of 1933

6 2/10 of one percent of the offering
7 value of the
8 securities offered
9 in the registration
10 statement, provided
11 said fee shall not
12 be more than
13 \$1,050, plus a
14 \$200 non-refundable
15 initial notice fee

16 (b) Renewal fees shall be as follows:

- 17 (1) Annual notice filing fee for offers or sales of
18 covered securities under sections 18(b)(4)(C)
19 and 18(b)(3) of the Securities Act of 1933

20 2/10 of one percent of the offering
21 value of the
22 securities offered
23 in the registration
24 statement, provided
25 that the fee shall not
26 be more than
27 \$ 1,050

- 28 (2) Annual non-refundable notice filing fee for
29 offers and sales of each class of an issuer of
30 open end mutual funds which are covered
31 securities under section 18(b)(2) of the
32 Securities Act of 1933, due on or before May 1
33 of each year

\$ 1,000

- 34 (3) Annual non-refundable registration fee for each
35 class of an issuer of open end mutual funds,
36 due on or before May 1 of each year, if

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1 sales report shall pay a penalty of \$25 for each day of delinquency; provided, however, that, for
2 good cause shown, the secretary of state may abate all or a portion of the delinquency penalty.
3 Subdivision (d)(1) shall not apply to federal covered securities pursuant to section 18(b)(2) of
4 18(b)(4)(D) of the Securities Act of 1933 15 U.S.C. section 77r(b)(2) or 77r(b)(4)(D).

5 (2) Any person who fails to timely file the notice required by RSA 421-B:3-302(c) shall pay a
6 penalty of \$500 if the notice filing is delinquent by no more than 90 days or a penalty of \$1,000 if the
7 notice filing is delinquent by more than 90 days; provided, however, that if the filing is delinquent by
8 more than one year, the person failing to timely file the required notice may be subject to RSA 421-B:6-
9 603, RSA 421-B:6-604 and RSA 421-B:5-508 for that failure.

10 Article 7

11 Application of Chapter

12 421-B:7-701 Application of Act to Existing Proceeding and Existing Rights and Duties.

13 (a) Applicability of predecessor act to pending proceedings and existing rights. The predecessor
14 act exclusively governs all actions or proceedings that are pending on the effective date of this
15 chapter or may be instituted on the basis of conduct occurring before the effective date of this
16 chapter, but a civil action may not be maintained to enforce any liability under the predecessor act
17 unless instituted within any period of limitation that applied when the cause of action accrued or
18 within 5 years after the effective date of this chapter, whichever is earlier.

19 (b) Continued effectiveness under predecessor act. All effective registrations under the
20 predecessor chapter, all administrative orders relating to the registrations, rules, statements of
21 policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed
22 on the registrations under the predecessor act remain in effect while they would have remained in
23 effect if this chapter had not been enacted. They are considered to have been filed, issued, or
24 imposed under this chapter, but are exclusively governed by the predecessor act.

25 (c) Applicability of predecessor act to offers or sales. The predecessor act exclusively applies to
26 an offer or sale made within one year after the effective date of this chapter pursuant to an offering
27 made in good faith before the effective date of this act on the basis of an exemption available under
28 the predecessor act.

29 273:2 Cross Reference; Informational Filing Required. Amend RSA 5-B:4 to read as follows:

30 5-B:4 Informational Filing Required; Fee. Pooled risk management programs established for
31 the benefit of political subdivisions shall make an informational filing, as defined in RSA 5-B:2, II,
32 with the department and shall pay an annual filing fee of \$150. The department may make requests
33 for additional information necessary to exercise regulatory or enforcement authority pursuant to, but
34 not limited to, the hearings procedures under ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613** over any pooled
35 risk management program formed or affirmed in accordance with this chapter. Pooled workers'
36 compensation and unemployment compensation programs which are regulated by and which report

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1 to the department of labor and the department of employment security, under RSA 281-A and
2 RSA 282-A, respectively, shall be exempt from the requirements of this section as long as their
3 operations and reports conform to the laws and rules adopted by those departments.

4 273:3 Cross Reference; Authority of the Secretary of State. Amend RSA 5-B:4-a, VI to read as
5 follows:

6 VI. Whenever it appears to the secretary of state that any person has engaged or is about to
7 engage in any act or practice constituting a violation of this chapter or any rule or order under this
8 chapter the secretary of state shall have the power to issue and cause to be served upon such person
9 an order requiring the person to cease and desist from violations of this chapter. The order shall be
10 calculated to give reasonable notice of the rights of the person to request a hearing on the order and
11 shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with
12 ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613**.

13 273:4 Cross Reference; Investor Education Fund. Amend RSA 6:12, I(b)(53) to read as follows:

14 (53) Moneys ~~[received under RSA 421-B:26, I, II and III, which shall be]~~ **that are** credited to
15 the investor education fund ~~[established in RSA 421-B:26, IV]~~ **pursuant to RSA 421-B:6-601(h)**.

16 273:5 Cross Reference; Incorporators. Amend RSA 293-A:2.01 to read as follows:

17 293-A:2.01 Incorporators. One or more persons may act as the incorporator or incorporators of
18 a corporation by delivering articles of incorporation ~~[and the certificate required by RSA 421-B:11,~~
19 ~~H(a)-a]~~ to the secretary of state for filing.

20 273:6 Cross Reference; Articles of Domestication. Amend RSA 293-A:9.22(c) to read as follows:

21 (c) The articles of domestication with articles of incorporation ~~[and the certificate required by~~
22 ~~RSA 421-B:11, H(a)]~~ shall be delivered to the secretary of state for filing, and shall take effect at the
23 effective time provided in RSA 293-A:1.23.

24 273:7 Cross Reference; Articles of Merger or Share Exchange. Amend RSA 293-A:11.06(a)(3) to
25 read as follows:

26 (3) if the articles of incorporation of the survivor of a merger are amended, the amendments
27 to the survivor's articles of incorporation, or if a new corporation is created as a result of a merger,
28 the articles of incorporation of the new corporation ~~[and the certificate required by RSA 421-B:11,~~
29 ~~H(a)]~~;

30 273:8 Cross Reference; Procedure for and Effect of Administrative Dissolution. Amend RSA 293-
31 A:14.21(f) to read as follows:

32 (f) In connection with the issuance of a notice of dissolution by the secretary of state under
33 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
34 business days after the issuance of the notice of dissolution. All hearings shall be conducted in
35 accordance with ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613**. If the person whom the notice is issued fails to

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1 appear for the hearing, then such person shall be deemed in default, and the dissolution shall
2 become final.

3 273:9 Cross Reference; Late Reinstatement. Amend RSA 293-A:14.22-a(g) to read as follows:

4 (g) Except for provisions and requirements set forth in this section, late reinstatement hearings
5 shall be subject to ~~[RSA 421-B:26-a]~~ ***RSA 421-B:6-613***.

6 273:10 Cross Reference; Inspection of Records by Shareholders. Amend RSA 293-A:16.02(e) to
7 read as follows:

8 (e) For purposes of RSA 293-A:16.02(d), if a shareholder makes a written demand on a
9 corporation for an alphabetical list of the names and addresses of its shareholders who are entitled
10 to notice of a shareholders' meeting for the purpose of communicating with other shareholders
11 relating to an item of business listed in the notice, and the corporation refuses to allow inspection
12 and copying of the list, the shareholder may petition the secretary of state to issue an order requiring
13 the corporation to allow the shareholder to inspect and copy the list of shareholders pursuant to the
14 provisions of ~~[RSA 421-B:26-a]~~ ***RSA 421-B:6-613***. The secretary of state, or his or her designee,
15 shall confirm that (i) the petitioner is a shareholder of the corporation, (ii) the corporation has given
16 a notice of shareholder meeting to its shareholders, and (iii) the shareholder made a written demand
17 to inspect and copy the shareholder list for the purpose of communicating with the shareholders
18 regarding an item of business set forth in the notice. If the secretary of state confirms such
19 information, he or she shall schedule a hearing no later than 10 business days after making such
20 confirmation. The secretary of state shall promptly give the petitioner and the corporation notice of
21 the hearing. At such hearing, the presiding officer shall determine whether the petitioner has made
22 the demand for the inspection and copying of the shareholder list for a proper purpose and in good
23 faith and in accordance with RSA 293-A:16.02(d) and, if so, he or she shall order the corporation to
24 comply with the law. If the corporation fails to attend the hearing, the corporation shall be deemed to
25 be in default, and the presiding officer may issue an order requiring it to allow the petitioner to
26 inspect and copy the shareholder list. Such order in the case of default shall be deemed final and
27 may be enforced by the secretary of state pursuant to RSA 293-A:16.02(f).

28 273:11 Cross Reference; Certificate of Formation; General Requirements. Amend RSA 304-C:31,
29 I to read as follows:

30 I. In order to form a domestic limited liability company, one or more authorized persons
31 shall deliver a certificate of formation ~~[and the certificate required by RSA 421-B:11, II(a)]~~ to the
32 secretary of state for filing.

33 273:12 Cross Reference; Late Reinstatements. Amend RSA 304-C:145, VII to read as follows:

34 VII. Except for provisions and requirements set forth in this section, late reinstatement
35 hearings shall be subject to ~~[RSA 421-B:26-a]~~ ***RSA 421-B:6-613***.

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1 273:13 Cross Reference; Statutory Conversions of Other Business Entities to Limited Liability
2 Companies. Amend RSA 304-C:149, IV to read as follows:

3 IV. A converting business entity making a statutory conversion under this section shall file
4 with the secretary of state:

5 (a) A certificate of statutory conversion to a limited liability company; **and**

6 (b) A certificate of formation that complies with the requirements of RSA 304-C:31[~~;~~ **and**

7 ~~(c) The certificate required by RSA 421-B:11, II].~~

8 273:14 Cross Reference; Requirement of Registration by a Foreign Limited Liability Companies.
9 Amend the introductory paragraph of RSA 304-C:175 to read as follows:

10 Before doing business in New Hampshire, a foreign limited liability company shall register with
11 the secretary of state. In order to register, a foreign limited liability company shall pay the fee
12 required by RSA 304-C:191, II(h) and shall file [~~the certificate required by RSA 421-B:11, II(a) and~~
13 an application for registration as a foreign limited liability company, setting forth:

14 273:15 Cross Reference; Membership. Amend RSA 403-F:9, IV to read as follows:

15 IV. A membership interest in a mutual insurance holding company shall not constitute a
16 security, as defined [~~by RSA 421-B:2]~~ **in RSA 421-B:1-102(53)**.

17 273:16 Cross Reference; Filing with Secretary of State. Amend RSA 405:65 to read as follows:

18 405:65 Filing with Secretary of State. An insurer transferring its domicile to this state shall file
19 the following documents with the secretary of state, together with applicable filing fees:

20 I. Restated articles of incorporation or equivalent, as amended pursuant to RSA 405:62; **and**

21 II. Executed order of the commissioner approving the redomestication[~~;~~ **and**

22 ~~III. The statement set forth in RSA 421-B:11, II].~~

23 273:17 Cross Reference; Definition; Variable Contract. Amend RSA 408:27 to read as follows:

24 408:27 Definition. A “variable contract” shall mean any life insurance policy or annuity contract
25 issued by an insurance company which provides that the dollar amount of benefits or other
26 contractual payments thereunder may vary according to the investment experience of any separate
27 account or accounts maintained by the insurance company in which amounts received in connection
28 with such policies or contracts have been placed. Variable contracts shall not be deemed subject to
29 [~~RSA 421]~~ **RSA 421-B**.

30 273:18 Cross Reference; Definition; Funding Agreement. Amend RSA 408-E:2, I to read as
31 follows:

32 I. “Funding agreement” means an agreement issued by a life insurance company, not based
33 on mortality or morbidity, providing for the accumulation of funds by the insurer for the purpose of
34 making one or more payments to the holder, where the initial premium paid is \$1,000,000 or more.
35 Except as provided in this chapter, a "funding agreement" does not constitute life insurance or an

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1 annuity and does not constitute a security[;] as defined by ~~[RSA 421-B:2, XX]~~ *in RSA 421-B:1-*
2 *102(53)*.

3 273:19 Cross Reference; Authorization for Interception of Telecommunications or Oral
4 Communications. Amend RSA 570-A:7 to read as follows:

5 570-A:7 Authorization for Interception of Telecommunications or Oral Communications. The
6 attorney general, deputy attorney general, or a county attorney, upon the written approval of the
7 attorney general or deputy attorney general, may apply to a judge of competent jurisdiction for an
8 order authorizing or approving the interception of telecommunications or oral communications, and
9 such judge may grant, in conformity with RSA 570-A:9, an order authorizing or approving the
10 interception of telecommunications or oral communications by investigative or law enforcement
11 officers having responsibility for the investigation of the offenses as to which the application is made,
12 when such interception may provide, or has provided, evidence of the commission of organized crime,
13 as defined in RSA 570-A:1, XI, or evidence of the commission of the offenses of homicide, kidnapping,
14 gambling, theft as defined in RSA 637, corrupt practices as defined in RSA 640, child pornography
15 under RSA 649-A, computer pornography and child exploitation under RSA 649-B, criminal conduct
16 in violation of the securities law, as defined in ~~[RSA 421-B:3, 421-B:4, 421-B:5, 421-B:19, and 421-~~
17 ~~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-***
18 ***506, and RSA 421-B-5-508***, criminal conduct in violation of the security takeover disclosure laws, as
19 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,
20 arson as defined in RSA 634:1, hindering apprehension or prosecution as defined in RSA 642:3,
21 tampering with witnesses and informants as defined in RSA 641:5, aggravated felonious sexual
22 assault as defined in RSA 632-A:2, felonious sexual assault as defined in RSA 632-A:3, escape as
23 defined in RSA 642:6, bail jumping as defined in RSA 642:8, insurance fraud as defined in
24 RSA 638:20, dealing in narcotic drugs, marijuana, or other dangerous drugs, hazardous waste
25 violations under RSA 147-A:4, I, or any conspiracy to commit any of the foregoing offenses.

26 273:20 Cross Reference; Loan of Securities. Amend RSA 387:24-b, VI to read as follows:

27 VI. Every brokerage firm receiving a loan of securities under this section shall be registered,
28 and every agent soliciting such a loan of securities shall be licensed, with the ~~[securities division of~~
29 ~~the New Hampshire insurance department]~~ ***bureau of securities regulation of the secretary of***
30 ***state*** pursuant to ~~[RSA 421]~~ ***RSA 421-B***.

31 273:21 Cross Reference; Loan of Securities. Amend RSA 394-B:23, VI to read as follows:

32 VI. Every brokerage firm receiving a loan of securities under this section shall be registered,
33 and every agent soliciting such a loan of securities shall be licensed, with the ~~[securities division of~~
34 ~~the New Hampshire insurance department]~~ ***bureau of securities regulation of the secretary of***
35 ***state*** pursuant to ~~[RSA 421]~~ ***RSA 421-B***.

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1 273:22 Repeal. RSA 304-B:50, III, relative to application for registration of foreign limited
2 liability partnerships, is repealed.

3 273:23 Filing; Service and Copying Fees. Amend RSA 293-A:1.22(a) to read as follows:

4 (a) The secretary of state shall collect the following fees for:

- 5 (1) Articles of incorporation [~~\$50~~] **\$100**
6 (2) Amendment of articles of incorporation \$35
7 (3) Restatement of articles of incorporation with amendment of articles \$35
8 (4) Articles or certificate of merger or articles of share exchange \$35
9 (5) Articles of domestication \$35
10 (6) Articles of charter surrender \$35
11 (7) Articles of domestication and conversion \$35
12 (8) Articles of entity conversion \$35
13 (9) Statement of Abandonment of a Domestication \$35
14 (9A) Statement of Abandonment of a Merger or Share Exchange \$35
15 (10) Articles of dissolution \$35
16 (11) Articles of revocation of dissolution \$35
17 (12) Application for reinstatement following administrative dissolution \$135
18 (13) Application for certificate of authority [~~\$50~~] **\$100**
19 (14) Application for amended certificate of authority \$35
20 (15) Application for certificate of withdrawal \$35
21 (16) Articles of correction \$35
22 (17) Late filing \$50
23 (18) Late reinstatement fee \$500
24 (19) Restatement of articles of incorporation without amendment \$35

25 273:24 Filing; Service and Copying Fees. Amend RSA 304-B:64, I to read as follows:

26 I. For a certificate of limited partnership or registration as a foreign limited partnership,
27 [~~\$50~~] **\$100**.

28 273:25 Filing; Service and Copying Fees. Amend RSA 304-C:191, II to read as follows:

29 II. The following fees shall be paid to and collected by the secretary of state for deposit in the
30 general fund of the state of New Hampshire:

31 (a) Upon the receipt for filing of an application for reservation of name or a notice of transfer of
32 reservation under RSA 304-C:27, a fee in the amount of \$15.

33 (b) Upon the receipt for filing of a statement under RSA 304-C:36, II, a fee in the amount of \$15;
34 upon the receipt for filing of a statement under RSA 304-C:36, V, a fee in the amount of \$15.

35 (c) Upon the receipt for filing of a certificate of formation under RSA 304-C:31, a fee in the
36 amount of [~~\$50~~] **\$100**.

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1 (d) Upon the receipt for filing of a certificate of amendment under RSA 304-C:34, a certificate of
2 merger under RSA 304-C:158, a certificate of statutory conversion under RSA 304-C:149, or a
3 restated certificate of formation under RSA 304-C:35, a fee in the amount of \$35.

4 (e) Upon the receipt for filing of a certificate of cancellation of a domestic limited liability
5 company under RSA 304-C:142, a fee in the amount of \$35.

6 (f) Upon receipt for filing of an annual report under RSA 304-C:194, a fee in the amount of \$100;
7 for failure or refusal to file an annual report or pay the filing fee on or before April 1 of any year, an
8 additional late filing fee in the amount of \$50; upon receipt for filing of an application for
9 reinstatement under RSA 304-C:138, I, a fee of \$135; and upon receipt for filing of an application for
10 late reinstatement under RSA 304-C:145, I a fee of \$500.

11 (g) For certifying copies of any paper on file as provided for by this act, a fee in the amount of \$1
12 per page and \$5 for the certificate.

13 (h) Upon the receipt for filing of an application for registration as a foreign limited liability
14 company under RSA 304-C:175, a fee in the amount of [~~\$50~~] **\$100**; upon the receipt for filing of a
15 certificate of cancellation under RSA 304-C:179, a fee in the amount of \$35; and upon receipt for
16 filing of an amendment to an application under RSA 304-C:178, a fee in the amount of \$35.

17 (i) Upon the receipt for filing of a statement under RSA 304-C:177, V, a fee in the amount of \$15,
18 and upon the receipt for filing of a statement under RSA 304-C:177, VI, a fee in the amount of \$15.

19 (j) For issuing any certificate of the secretary of state, including a certificate of good standing,
20 other than a certification of a copy under subparagraph II(g), a fee in the amount of \$5, except that
21 for issuing any certificate of the secretary of state that recites all of a limited liability company's
22 filings with the secretary of state, a fee of \$10 shall be paid for each such certificate.

23 (k) For receiving, filing or indexing any certificate, affidavit, or agreement or any other paper
24 provided for by this act, for which no different fee is specifically prescribed, a fee in the amount of
25 \$15.

26 273:26 Filing; Service and Copying Fees. Amend RSA 304-A:51, II(a)-(i) to read as follows:

27 (a) Registration of limited liability partnership under RSA 304-A:44, I [~~\$50~~] **\$100**

28 (b) Annual fee under RSA 304-A:47 \$100

29 (c) Late filing fee under RSA 304-A:47, III \$50

30 (d) Withdrawal of registered limited liability partnership under RSA 304-A:44, IV(a)(1) \$35

31 (e) Name reservation, notice of transfer of reservation, or notice of cancellation under RSA 304-
32 A:46, II \$15

33 (f) Notice of change under RSA 304-A:48 \$35

34 (g) Notice of change of name or address of registered agent or registered office under RSA 304-
35 A:49, II \$15

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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
4 273:27 Contingency. If SB 188 of the 2015 legislative session becomes law, then sections 21 and
5 22 of this act shall not take effect. If SB 188 of the 2015 legislative session does not become law,
6 then sections 21 and 22 of this act shall take effect on January 1, 2016.

7 273:28 Effective Date. This act shall take effect January 1, 2016.

8

9 Approved: July 27, 2015

10 Effective Date: January 1, 2016