

CHAPTER 172
SB 85 - FINAL VERSION

03/29/2017 1046s

2017 SESSION

17-0854
08/04

SENATE BILL **85**

AN ACT amending the Uniform Securities Act.

SPONSORS: Sen. Soucy, Dist 18; Sen. Bradley, Dist 3; Sen. Innis, Dist 24; Rep. Hunt, Ches. 11; Rep. Butler, Carr. 7; Rep. Williams, Hills. 4

COMMITTEE: Commerce

ANALYSIS

This bill makes various changes to the Uniform Securities Act.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT amending the Uniform Securities Act.

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

1 172:1 Definitions; Federal Covered Investment Adviser. Amend RSA 421-B:1-102 (13) to read
2 as follows:

3 (13) "Federal covered investment adviser" means a person registered ***with the***
4 ***United States Securities and Exchange Commission*** under the Investment Advisers Act of
5 1940.

6 172:2 Definitions; Investment Contract. Amend RSA 421-B:1-102 (29)(A)(i) to read as follows:

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

9 172:3 Definitions; Profits. Amend RSA 421-B:1-102 (29)(C)(ii) to read as follows:

10 (ii) "Profits" shall include the promise to pay money, deliver securities, or
11 deliver ~~[kind]~~ ***in-kind*** goods;

12 172:4 Definitions; Offer to Purchase. Amend RSA 421-B:1-102 (35) to read as follows:

13 (35) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an
14 offer to sell, a security or interest in a security for value. The term does not include a tender offer
15 that is subject to ***section 14(d)*** the Securities Exchange Act of 1934, 15 U.S.C. section 78n(d).

16 172:5 Exempt Transactions. Amend RSA 421-B:2-202 (11) to read as follows:

17 (11) A nonissuer sale of notes or bonds secured by a mortgage to no more than 5
18 ~~[persons]~~ ***purchasers as determined in accordance with RSA 421-B:2-202-A(1)***, in total, in all
19 jurisdictions combined;

20 172:6 Exempt Transactions. Amend RSA 421-B:2-202 (23) to read as follows:

21 (23) A nonissuer transaction in a outstanding security by or through a broker dealer
22 registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a
23 foreign jurisdiction designated by ***this*** subsection ~~[(23)]~~ or by order issued under this chapter by the
24 secretary of state; has been subject to continuous reporting requirements in the foreign jurisdiction
25 for not less than 180 days before the transaction; and the security is listed on the foreign
26 jurisdiction's securities exchange that has been designated by ***this*** subsection ~~[(23)]~~ or by order
27 issued under this chapter by the secretary of state, or is a security of the same issuer that is of
28 senior or substantially equal rank to the listed security or is a warrant or right to purchase or
29 subscribe to any of the foregoing. For purposes of ***this*** subsection ~~[(23)]~~, Canada, together with its
30 provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc.,

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is a designated securities exchange. After an administrative hearing in compliance with RSA 421-B:6-605, the secretary of state, by order issued under this chapter, may revoke the designation of a securities exchange under *this* subsection [(23)], if the secretary of state finds that revocation is necessary or appropriate in the public interest and for the protection of investors; or

172:7 Implementing Provisions. Amend the introductory paragraph of RSA 421-B:2-202-A(1) to read as follows:

(1) Counting of purchasers. The following principles shall be used to calculate the number of purchasers to whom sales of the issuer's securities are made pursuant to RSA 421-B:2-202(1) and RSA 421-B:2-202(11) *and* (14):

172:8 Implementing Provisions. Amend RSA 421-B:2-202-A(1)(B) to read as follows:

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

172:9 Notice Filing. Amend the introductory paragraph of RSA 421-B:3-302(a) to read as follows:

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

172:10 Notice Filing. Amend RSA 421-B:3-302(a)(1) to read as follows:

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

(B) for notice filings for federal covered securities described in section 18(b)(4)(A) and section 18(b)(4)(D) of the Securities Act of 1933, the name of a registered broker-dealer who will effect transactions in this state;

172:11 Notice Filing. Amend RSA 421-B:3-302(c) and (d) to read as follows:

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

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late filing fee, under RSA 421-B:6-614.

(d) Stop Orders. Except with respect to a federal security described in ~~[section 181(b)(1)]~~ **section 18(b)(1)** of the Securities Act of 1933, 15 U.S.C. section 77r(b)(1), if the secretary of state finds that there is a failure to comply with a notice or fee requirement of this section, including any late filing fee requirements, the secretary of state may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the secretary of state. Nothing in this chapter shall prevent the secretary of state from investigating and issuing a stop order suspending the offer and sale of a federal covered security for violation of RSA 421-B:5-501.

172:12 New Paragraph; Registration Abandoned. Amend RSA 421-B:3-305 by inserting after paragraph (j) the following new paragraph:

(k) The secretary of state may deem abandoned and withdrawn any registration statement submitted pursuant to this chapter if any registrant fails to respond in writing within 90 days to a written request from the secretary of state requesting a response.

172:13 Agent Registration Requirements and Exemptions. Amend RSA 421-B:4-402(b)(4) to read as follows:

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

172:14 New Paragraph; Abandoned Applications for Registration. Amend RSA 421-B:4-406 by inserting after paragraph (l) the following new paragraph:

(m) The secretary of state may deem abandoned and withdrawn any application for registration made pursuant to this chapter if any applicant fails to respond in writing within 90 days to a written request from the secretary of state requesting a response.

172:15 Licensure; Exam Requirements. Amend RSA 421-B:4-412(e)(3)(A) to read as follows:

(A) Any individual who was registered or licensed as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, ~~[2016]~~ **2000** shall not be required to satisfy the examination requirements for investment adviser registration in this state, except that the secretary of state may require additional examinations for any individual found to have violated any state or federal securities law.

172:16 Fees. Amend RSA 421-B:6-614(d)(1) to read as follows:

(d)(1) Any person who offers or sells securities in New Hampshire under (A) RSA 421-B:3-303 or RSA 421-B:3-304, where less than the maximum filing fee has been paid in this state, or (B) a notice filing under section 18(b) of the Securities Act of 1933 where less than the maximum

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1 filing fee has been paid in this state shall file a sales report with the secretary of state. The sales
2 report shall be filed one year from (1) the effective date of the registration or exemption or (2) the
3 date the notice filing under section 18(b) of the Securities Act of 1933 was made with the secretary
4 of state, and a final sales report shall be filed within 60 days of the termination of the offering. The
5 sales report shall indicate the termination date, the total number and amount of sales in this state,
6 and the total number and amount of sales in all jurisdictions. Any person who fails to file a sales
7 report shall pay a penalty of \$25 for each day of delinquency; provided, however, that, for good
8 cause shown, the secretary of state may abate all or a portion of the delinquency penalty.
9 Subdivision (d)(1) shall not apply to federal covered securities pursuant to section 18(b)(2) ~~of~~ **or**
10 ~~[18(b)(4)(D)]~~ **18(b)(4)(F)** of the Securities Act of 1933 15 U.S.C. section 77r(b)(2) or ~~[77r(b)(4)(D)]~~.

172:17 Effective Date. This act shall take effect upon its passage.

Approved: June 28, 2017
Effective Date: June 28, 2017