

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

IN RE:)	
Order Re Applicability of N.H.)	INTERPRETATIVE
RSA 421-B:2-202-A(3))	ORDER
)	
)	INT16-002
)	

WHEREAS, on July 27, 2015, Governor Margaret Wood Hassan signed into law a revised New Hampshire Uniform Securities Act (“the Act”); and

WHEREAS, the Act became effective on January 1, 2016 as N.H. Rev. Stat. Ann. 421-B, the New Hampshire Securities Act; and

WHEREAS, N.H. RSA 421-B:2-202-A(3), which requires that in connection with an offer and sale of exempt securities or in an exempt transaction, other than in connection with an offer and sale of federal covered securities, additional disclosures shall be made in offering documents, or an application for registration or a filing for exemption from registration shall be denied, or further conditions for an exemption may be imposed by the secretary of state, if any partner, officer, director, or a person having a similar status or performing a similar function has engaged in certain bad conduct; and

WHEREAS, the Bureau of Securities Regulation (“the Bureau”) has been contacted by several legal practitioners expressing concern regarding the seeming applicability of this so-called “bad actor” provision to any exemption under the Act and in particular objected to applying N.H. RSA 421-B:2-202-A(3) to self-executing exemptions from the securities registration requirements, for which no filing with the Bureau is required; and

WHEREAS, applying the bad actor provision to all securities exemptions under N.H. RSA 421-B:2-201 and 2-202 would appear to be inconsistent with practice of other jurisdictions and was not contemplated by the Uniform Securities Act of 2002 promulgated

by the Uniform Law Commission and upon which the New Hampshire Securities Act is based; and

WHEREAS, the prior bad actor provision (found at N.H. RSA 421-B:17-a, I) did not apply to self-executing exemptions from the securities registration requirements; and

WHEREAS, the Bureau concludes that it was not the intent that the bad actor provision of the Act be applied to self-executing exemptions; and

WHEREAS, Section 5-501 of the Act continues to prohibit fraudulent and deceitful activities in connection with the offer, sale, or purchase of a security, whether such activities are engaged in directly or indirectly, including making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; and

WHEREAS, Section 6-601 of the Act grants the Secretary of State all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed; and

WHEREAS, Section 6-605 of the Act grants the Secretary of State the authority to provide interpretative opinions; and

WHEREAS, finding this interpretation necessary and appropriate to the public interest and consistent with the purposes fairly intended by the policy and provisions of the Act.

THEREFORE, it is hereby Ordered that:

1. N.H. RSA 421-B:2-202-A(3) will not be enforced with regard to issuers of securities and any partner, officer, director of any such issuer, or a person having a similar status or performing a similar function, if the offer and sale is subject to an exemption under N.H. RSA 421-B:2-201 and N.H. RSA 421-B:2-202 that does not require a filing with the secretary of state.
2. This order in no way excuses an offeror or seller from compliance with all applicable provisions of Regulation D for any offering subject to Regulation D, including the "bad actor" provisions of Regulation D found at Rule 230.506, or the obligation under N.H. RSA 421-B:5-501 to refrain from making an untrue statement of material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading.

3. This order shall become effective upon execution by the Secretary of State's designee.

WILLIAM GARDNER
SECRETARY OF STATE
By His Designee,

A handwritten signature in cursive script, appearing to read "Barry J. Glennon", written over a horizontal line.

Barry Glennon
Director of Bureau of Securities Regulation

Dated: February 11, 2016