

The State of New Hampshire



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Department of State

Bureau of Securities Regulation
December 20, 1994

Johannes P. Burlin
Bryan Cave
One Metropolitan Square
211 North Broadway, Ste 3600
St. Louis MO 63102-2750

Re: No Action Position on Certificates of Deposit

Dear Mr. Burlin,

Reference is made to your letter dated December 2, 1994 wherein you requested that the Bureau take the position that Certificates of Deposit ("CD's") 1) are not securities within the meaning of NH RSA 421-B; or 2) are exempt under NH RSA 421-B:17, I(a) as guaranteed by an agency of the U.S. Government; or 3) are exempt under NH RSA 421-B:17, I(d) as securities of state banks and state savings banks organized and supervised under the laws of New Hampshire.

The Bureau takes the position that CD's are securities within the meaning of NH RSA 421-B:2. The position taken in Marine Bank v. Weaver, 455 U.S. 551 (1982), that banking is a heavily regulated industry and that the CD's are insured by the FDIC are in fact the basis for two exemptions from registration provided by NH RSA 421-B:17. Since the Uniform Securities Act ("the Act") provides for exemptions on these bases, the CD's are clearly intended to be securities under the Act.

The CD's are not entitled to exemption from registration pursuant to NH RSA 421-B:17, I(a) as guaranteed by an agency of the U.S. Government because they are not guaranteed in all cases and under all circumstances. If an investor exceeds \$100,000 investment in a CD, or if an investor purchases a \$50,000 CD and a \$35,000 CD and a \$20,000 CD, for instance, the investor's entire investment in the same issuer's CD's would not be insured.

Johannes P. Burlin
December 20, 1994
page 2

The CD's are not entitled to exemption from registration pursuant to NH RSA 421-B:17, I(d) as securities of state banks and state savings banks organized and supervised under the laws of New Hampshire, as you state in your letter, because the issuers are banks which are not organized under the laws of New Hampshire and are not even qualified to do business in New Hampshire as required by part of that exemption.

Very truly yours,

Mary L. Jurta, CPA
Senior Auditor

/rls