

# THE STATE OF NEW HAMPSHIRE BUREAU OF SECURITIES REGULATION

IN THE MATTER OF: ) INTERPRETIVE ORDER  
 )  
INTERPRETATION OF )  
RSA 421-B:31(IV) )

## PROCEDURAL BACKGROUND

By letter dated April 25, 1996, Laura Siegel of Davis Polk & Wardwell requested interpretation of RSA 421-B:31(IV) as it relates to unit investment trusts. Several issues were presented, including some that would require legislative changes to be implemented. This order addresses only the penalty provisions of RSA 421-B:31(IV).

## DISCUSSION

RSA 421-B:31(IV) imposes a penalty of 1/10 of 1% of the offering value of a registered securities issue for several types of violations. RSA 421-B:31(IV)(b) imposes the penalty if more securities were sold than were registered in New Hampshire. RSA 421-B:31(IV)(c) imposes the penalty if the registration application is amended to increase the amount registered in New Hampshire.

It is clear that RSA 421-B:(IV)(c) would apply when less than the maximum amount of securities were registered and it appears that there is market for more than the amount registered. In that case, the registrant may pay the registration fee for the additional amount and pay the penalty of 1/10 of 1% of the total offering value. Thus, there is no sale of unregistered securities so long as the increase has been registered prior to the sale of securities in excess of the amount registered.

The problem arises in the situation where there is a so-called over sale. In that case, RSA 421-B:31(VI)(b) imposes the above noted penalty for selling over the

amount registered. It is important to note that the section does not assess that penalty for the sale of unregistered securities. Normally, the Bureau would consider those sales to be unregistered and impose the penalty provided for unregistered sales.

Thus, it appears that these over sales may be treated in a different manner than the typical unregistered sale of securities. In this case, the usual formalities have been met by the registrant and the appropriate documentation has been provided. Sub-section (c) appears to reflect this difference by allowing the registrant to retroactively increase the amount of the offering. Thus, there would no longer be a question of the sale of unregistered securities as the amount has been retroactively corrected.

### **ORDER**

For the reasons noted above, it is hereby ordered that:

1. In the event that a registrant sells securities in excess of the amount registered in New Hampshire, the penalty provision of RSA 421-B:31(IV)(b) is imposed in all cases.

2. In the event that a registrant sells securities in excess of the amount registered in New Hampshire, the registrant may elect to pay, in addition to all other appropriate fees, including additional registration fees, the penalty fee to increase the amount of the registration pursuant to RSA 421-B:31(IV)(c).

3. If the registrant elects to pay the penalty pursuant to RSA 421-B:31(IV)(c) as well as any incremental registration fees:

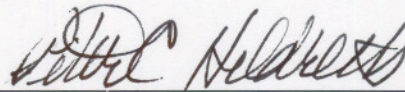
(a) The increase in the amount of securities registered is increased to the level of the additional registration;

(b) Such increase is retroactive to the original registration date;

- (c) Any sales made in excess of the original sales amount and up to the newly registered amount are deemed to be registered sales;
- (d) Other than the penalty imposed pursuant to RSA 421-B:31(IV)(b) for the original over sale, no enforcement action will be taken by the Bureau because of the underlying sale of securities in excess of the amount originally registered but not in excess of the amended registration amount.
- (e) Provided, however, that nothing herein shall be construed to permit the sale of securities in excess of the amount registered.

4. This order is effective May 20, 1996.

SO ORDERED,  
WILLIAM M. GARDNER  
SECRETARY OF STATE  
By His Designee



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Peter C. Hildreth  
Director of Securities Regulation

Date: May 20, 1996