

**THE STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION**

In the Matter of Interpretation of
RSA 421-B:2, IX
BSR-P 93-005

ORDER

Background Discussion

Recent examinations of broker-dealer registered representatives has raised the issue of registered representatives who, in addition to clearly broker-dealer activities, provide investment advisory activities. While RSA 421-B:2, IX excludes, in certain circumstances, broker-dealers from the definition of investment advisor, it appears necessary to delineate those investment advisory activities that may be provided by registered representatives who can give investment advice under the exclusion of RSA 421-B:2, IX and those activities that require licensure as an investment advisor.

RSA 421-B:2, IX defines investment advisor and states that the term investment advisor does not mean "[a] broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them".

Thus, a registered representative who only gives investment advice as part of his broker-dealer activities without addition compensation for the advice does not have to be licensed as an investment advisor. In the usual case envisioned by the statute, a registered representative whose only contact with the client is through the name and office of a broker-dealer is not required to be licensed provided no separate fee is paid for the advice.

On the other hand, a registered representative who conducts investment advisory activities separate from the broker-dealer activities may not rely on the exclusion in RSA 421-B:2, IX. Examples of activities that do not fall under the exclusion are: (a) a registered representative runs financial planning seminars under their own name or a trade name other than that of the broker-dealer; (b) a registered representative who advertises advisory services under a name other than the broker-dealer; (c) a representative who charges a separate fee or receives any type of compensation for the investment advice; (d) a registered representative who gives investment advice under a name other than that of the broker-dealer. In any of these cases, the registered representative must be licensed as an investment advisor. The separate licensing is required because the investment advise is no longer incidental to the broker-dealer function. This is true even if there is no direct compensation for the investment advice.

INTERPRETIVE ORDER

1. The exemption from licensing as an investment adviser, pursuant to RSA 421-B:2, IX, is only available for activities directly related to the registered representative's broker-dealer activities. A registered representative of a broker-dealer is not required to be licensed as an investment advisor if:

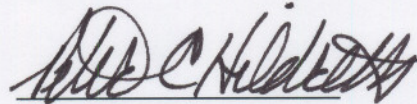
- (a) the only investment advisory activities performed are as a representative of the broker-dealer; and

- (b) the registered representative does not operate under any other business name or entity; and
- (c) the investment advisory activities are directly related to the broker-dealer activities, and
- (d) the registered representative receives no special compensation for the investment advisory activities.

2. Nothing in this order shall be construed to hold harmless or in any way absolve any person who has acted as an investment adviser without licensing as an investment adviser in reliance upon the exclusion contained in RSA 421-B:2, IX.

November 16, 1993

Date

A handwritten signature in dark ink, appearing to read "Peter C. Hildreth", written over a horizontal line.

Peter C. Hildreth

Director of Securities