

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

IN THE MATTER OF:

Concord Food Co-op, Inc.

) ORDER ON PETITION FOR
) EXEMPTION PURSUANT TO
) RSA 421-B:6,VII-a
)
)

ORDER

WHEREAS, the Secretary of State has the authority pursuant to RSA 421-B:6,VII-a to issue an order exempting otherwise non-exempt sales of securities from the issuer-dealer and issuer-dealer agent licensing requirements of RSA 421-B:6 if the Secretary of State determines (a) that all or substantially all of the proposed sales of securities fall within one or more of the exemptions set forth in RSA 421-B:17 or RSA 421-B:6 and (b) that granting the exemption will be consistent with the purposes fairly intended by the policy and provisions of the New Hampshire Uniform Securities Act; and

WHEREAS, Concord Food Co-op, Inc, a voluntary corporation organized under RSA 292, has requested an order pursuant to RSA 421-B:6,VII-a that Concord Food Co-op, Inc. is exempt from the issuer-dealer and issuer-dealer agent licensing requirements of RSA 421-B:6 and has filed certain documents in support of the request; and

WHEREAS, the Class A and Class B common share certificates issued by Concord Food Co-op, Inc. and required to be purchased by members of the Concord Food Co-op, Inc. are securities pursuant to RSA 421-B:2,XX;

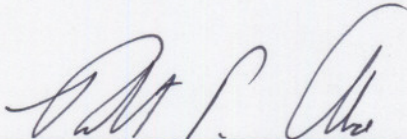
THEREFORE, finding that the securities of Concord Food Co-op, Inc. are exempt from the securities registration requirements of RSA 421-B:11 pursuant to RSA 421-B:17,I(m) and that exempting Concord Food Co-op, Inc. from the issuer-dealer and issuer-dealer agent licensing requirements of RSA 421-B:6 is consistent with the purposes fairly intended by the policy and provisions of the New Hampshire Uniform Securities Act, based upon the factual representations contained in the documents incorporated by reference herein,

It is hereby ORDERED that:

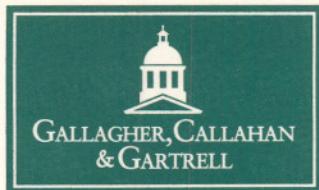
1. Pursuant to RSA 421-B:6, VII-a, Concord Food Co-op, Inc. will be exempt from the issuer-dealer and issuer-dealer agent licensing requirements of RSA 421-B:6 as it offers and sells its securities to members of the Concord Food Co-op, Inc.
2. This order is contingent upon the facts set forth in the documentation provided by Concord Food Co-op, Inc. Any substantive deviation from the facts in the documents or any substantive change in the securities or in the offer or sale of the securities shall cause this order to be null and void ab initio.

SIGNED,
WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:

Dated: Oct 11 01



ROBERT P. AMBROSE
DEPUTY SECRETARY OF STATE
STATE OF NEW HAMPSHIRE



CHRISTOPHER C. GALLAGHER
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ROBERT E. KIRBY
1961-1996

September 17, 2001

Peter C. Hildreth, Director
New Hampshire Bureau of
Securities Regulation
State House, Room 204
Concord, New Hampshire 03301-4989

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NEW HAMPSHIRE
SECRETARY OF STATE

RE: Concord Food Co-op, Inc.
Request for Exemption from Issuer-Dealer and Agent Licensing Requirements,
RSA 421-B: 6, VII-a

Dear Mr. Hildreth:

This is written on behalf of Concord Food Co-op, Inc., a non-profit corporation organized under New Hampshire RSA Chapter 292 (the "Co-op"). The Co-op was established in 1982 to provide "wholesome and nutritious food and staple supplies" to its members and the general public. The Co-op presently operates through a leased store location on South Main Street in Concord, New Hampshire. Membership in the Co-op is premised on making a refundable equity contribution, the amount of which is set by majority vote of the membership. The equity contribution currently required is \$25. Last fall, the membership voted to raise the required equity contribution to \$100 in order to increase the Co-op's working capital and to support a potential increase in store size. In order to effectuate its new capital plan, as further described below, the Co-op has revised its Articles of Agreement to provide for the issuance of one \$25 voting and up to three \$25 non-voting member shares to each Co-op member. A copy of the Articles of Agreement of the Co-op as amended is attached as Exhibit I; the Bylaws of the Co-op are attached as Exhibit II hereto. The purpose of this filing is to obtain an order from your office pursuant to the authority granted to the Secretary of State in RSA 421-B:6, VII-a to the effect that the Co-op is not required to obtain an issuer-dealer and accompanying agent licenses in order for the Co-op to implement its revised membership program.

Background

The Co-op was incorporated in July 1982 under the name "State Street Food Co-op". Since its incorporation, the Co-op has made membership available to the general

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public based on the payment of a specified equity contribution, thereby providing the Co-op with (i) necessary funds to support its business operations, and (ii) sufficient membership support for the Co-op's services. Membership in the Co-op primarily entitles such person to vote on all matters brought before the Co-op membership at its annual or semi-annual meetings, and a "cash register discount" in an amount of 2% for each purchase made at the Co-op store. The Co-op has been functioning at its current premises located on South Main Street in Concord for several years. The Board of the Co-op has determined that it is in the best interests of the Co-op's members and the public to provide its products and services from larger premises – however, the Co-op is undercapitalized and is in need of increased capital funds to support any expansion plans. In order to accomplish this goal, the Co-op's Board of Directors recommended last year that the membership approve an increase in the equity contribution from \$25 to \$100. The Co-op membership approved the recommended increase at the regularly held member meeting in the fall of 2000. The Co-op membership also adopted a low-income membership category available on request to any member unable to pay the proposed \$100 equity contribution to ensure that no member be excluded because of financial hardship. A low income member must make a \$25 equity contribution but can, on such member's own initiative, waive some or all of the additional \$75 equity requirement.

The Articles of Agreement of the Co-op were recently amended to provide for a capital structure in which membership interests in the corporation are evidenced by shares of capital stock. Except as noted below, all members are required to purchase one "Class A" (voting) common share certificate and three "Class B" (non-voting) common share certificates. Each certificate is in the amount of \$25.00. The membership certificates represent a contribution to the capital of the Co-op and will be evidenced by book-entries on the Co-op's records only. No dividends have been or will be paid on outstanding membership certificates; the certificates may not be sold or transferred except upon a member's resignation from the Co-op, at which time the member may ask for the return of his or her equity contribution.

Consistent with historical practice, applications for membership in the Co-op are available at the sole store location. The potential new member is given a new member packet which contains the Co-op's mission statement, general information about the Co-op, a copy of the Articles of Agreement and the Bylaws of the Co-op and a brochure entitled "Information About Member Equity For New Members" (attached as Exhibit III). Membership is effective upon purchase of the required share(s) and is evidenced by a membership card. Low-income memberships are available on a self-certifying basis as approved by the Co-op membership. Any member who seeks a low-income membership

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must file a statement certifying that he or she can only afford to buy the \$25 voting share (or the voting share and only one or two of the \$25 non-voting shares) and providing a simple explanation of financial inability (e.g., student, senior, single parent, temporary financial hardship). Low income members must file an annual recertification that they remain unable to make the full equity contribution. See Exhibit III.

The Board of Directors of the Co-op, through its President and senior officers, will administer the membership certificate program. As described herein, no “public offering” of membership certificates will be made; provided however, that information with respect to membership and the share certificate program will be available at the Co-op store premises and by request.

Legal Argument

RSA 421-B:6, VII-a grants the Director of the Bureau of Securities Regulation, as designee of the Secretary of State, the authority to issue orders exempting otherwise “non-exempt sales of securities” from the issuer-dealer and issuer-dealer agent licensing requirements of 421-B:6 if the Secretary of State determines that (A) all or substantially all of the proposed sales fall within one or more of the exemptions set forth in, among other things, RSA 421-B:17 and/or 6, and (B) the granting of the exemption will be consistent with the purposes fairly intended by the policies and provisions of the New Hampshire Uniform Securities Act (“Act”).

As stated, the Co-op is organized as an RSA Chapter 292 “Voluntary” or non-profit corporation. For purposes of this filing, it is **assumed** that the membership interests in the Co-op are securities under the Act. The “securities” issued by the Co-op are found within the type of securities exempted from the registration provisions of the Act pursuant to RSA 421-B:17, I(m) as “any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes . . .”; see also RSA 421-B:17, II(j) providing that the offer and sale of securities by a cooperative association is an exempt transaction under the Act when purchase of such securities is necessary or incidental to establishing membership in such association. We note that while the operation of the Co-op resembles that of a cooperative association, which is entitled as such to an exemption from the issuer-dealer and agent requirements pursuant to RSA 421-B:6, VII as securities issued pursuant to 421-B:17, II(j), securities issued by a RSA 292 non-profit corporation under RSA 421-B:17, I(m) are not expressly exempt from such licensing provisions pursuant to such provision. Therefore, the Co-op seeks relief

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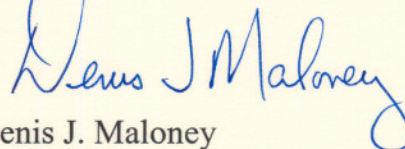
from the licensing provisions of RSA 421-B:6 pursuant to the new statutory provision, RSA 421-B:6, VII-a.

On behalf of the Co-op, we submit that granting an exemption from the issuer-dealer and agent licensing requirements to the Co-op in order to implement its revised membership program is consistent with the purposes of the Act in enabling this non-profit corporation to establish its relationship with its members and to increase its capital fund for the benefit of its members and the general public. We submit that the purposes served by the issuer-dealer and agent licensing requirements and the application and background check requirements incident thereto are not required or applicable in the subject case because of the long standing nature of the Co-op's relationships with its members, the fact that no commissions or salary incentives are paid to the members of the Board of Directors or other persons for their participation in the membership program, no incentives are paid to any employees within the Co-op for their services in this regard, and that a member's capital contributions will be returned in full upon termination of membership in the Co-op.

For the reasons set forth above, we respectfully request that the Secretary of State, through the Director, issue an order confirming that the Concord Food Co-op, Inc. may issue membership certificates to members of the public without licensing as an issuer-dealer or agent under the New Hampshire Uniform Securities Act.

Please feel free to contact me should you desire further information or background support in this regard.

Very truly yours,



Denis J. Maloney

DJM/ldt

Enclosures

cc: Anne Renner, President
Concord Food Co-op, Inc.