

⊖

(

()

AV

CHAPTER 149

HB 1393 – FINAL VERSION

03Mar2010... 0529h

05/12/10 2020s

05/12/10 2060s

02Jun2010... 2259cofc

02Jun2010... 2359eba

2010 SESSION

10-2543

08/04

HOUSE BILL **1393**

AN ACT relative to the treatment of New Hampshire investment trusts, and relative to pooled risk management programs.

SPONSORS: Rep. DeJoie, Merr 11

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill:

- I. Makes various changes to the laws regarding New Hampshire investment trusts.
- II. Enables the secretary of state to investigate and bring actions against pooled risk management programs.
- III. Requires the secretary of state to employ an actuary and report on the limitation of reserves in pooled risk management programs and the limitation on administrative expenses as a percentage of claims of pooled risk management programs.
- IV. Repeals a provision permitting the department of state to make requests for additional information from pooled risk management programs making informational filings for a 2-year period.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03Mar2010... 0529h

05/12/10 2020s

05/12/10 2060s

02Jun2010... 2259cofc

02Jun2010... 2359eba

10-2543

08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to the treatment of New Hampshire investment trusts, and relative to pooled risk management programs.

Be it Enacted by the Senate and House of Representatives in General Court convened:

149:1 Definitions. RSA 293-B:2 is repealed and reenacted to read as follows:

293-B:2 Definitions. As used in this chapter, unless the context otherwise requires:

I. "Bank" means bank as such term is defined in RSA 384-B:1, I and shall also include any national banking association authorized to conduct business in this state.

II. "Beneficial owner" means any owner of a beneficial interest in a New Hampshire investment trust, the fact of ownership to be determined and evidenced (whether by means of registration, the issuance of certificates, or otherwise) in conformity to the applicable provisions of the governing instrument of the New Hampshire investment trust.

III. "Foreign investment trust" means an investment trust formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

III.(a) "Governing instrument" means any instrument (whether referred to as a trust agreement, declaration of trust, or otherwise) which creates a New Hampshire investment trust or provides for the governance of the affairs of the New Hampshire investment trust and the conduct of its investment activities. A governing instrument:

(1) May provide that a person shall become a beneficial owner or a trustee if such person (or, in the case of a beneficial owner, a representative authorized by such person orally, in writing, or by other

action such as payment for a beneficial interest) complies with the conditions for becoming a beneficial owner or a trustee set forth in the governing instrument or any other writing and, in the case of a beneficial owner, acquires a beneficial interest;

(2) May consist of one or more agreements, instruments, or other writings and may include or incorporate bylaws containing provisions relating to the business of the New Hampshire investment trust, the conduct of its affairs, and its rights or powers or the rights or powers of its trustees, beneficial owners, agents, or employees; and

(3) May contain any provision that is not inconsistent with law or with the information contained in the certificate of trust.

(b) A New Hampshire investment trust is not required to execute its governing instrument. A New Hampshire investment trust is bound by its governing instrument whether or not it executes the governing instrument. A beneficial owner or a trustee is bound by the governing instrument whether or not such beneficial owner or trustee executes the governing instrument.

IV. "New Hampshire investment trust" means a "qualified investment company" as defined in RSA 77-A:1, XXI.

V. "Independent trustee" means, solely with respect to a New Hampshire investment trust that is registered as an investment company under the Investment Company Act of 1940, as amended (15 U.S.C. section 80a-1 et seq.), or any successor statute thereto, any trustee who is not an "interested person" of the New Hampshire investment trust; provided that the receipt of compensation for service as an independent trustee of the New Hampshire investment trust and also for service as an independent trustee of one or more other investment companies managed by a single investment adviser, or an affiliated person of such investment adviser, shall not affect the status of a trustee as an independent trustee under this chapter. An independent trustee as defined hereunder shall be deemed to be independent and disinterested for all purposes. For purposes of this definition, the terms "affiliated person" and "interested person" have the meanings set forth in the Investment Company Act of 1940, as amended (15 U.S.C. section 80a-1 et seq.) or any rule adopted thereunder.

VI. "Other investment entity" means an out-of-state investment entity which meets the definition of a "qualified investment company" as defined in RSA 77-A:1, XXI, with the exception that such other investment entity need not submit certification to the commissioner.

VII. "Person" means a natural person, partnership, limited partnership, limited liability company, trust, statutory trust, estate, association, corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

VIII. "Trustee" means the person or persons appointed as a trustee in accordance with the governing instrument of a New Hampshire investment trust to manage the business, investment activity, and affairs of such New Hampshire investment trust, and may include the beneficial owners or any of them.

149:2 Contributions by Beneficial Owners. RSA 293-B:4 through RSA 293-B:23 are repealed and

reenacted to read as follows:

293-B:4 Contributions by Beneficial Owners.

I. A contribution of a beneficial owner to the New Hampshire investment trust may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services; provided however, that a person may become a beneficial owner of a New Hampshire investment trust and may receive a beneficial interest in a New Hampshire investment trust without making a contribution or being obligated to make a contribution to the New Hampshire investment trust.

II. Except as provided in the governing instrument of the New Hampshire investment trust, a beneficial owner is obligated to the New Hampshire investment trust to perform any promise to contribute cash or property or to perform services, even if the beneficial owner is unable to perform because of death, disability, or any other reason. If a beneficial owner does not make the required contribution of property or services, the beneficial owner is obligated at the option of the New Hampshire investment trust to contribute cash equal to that portion of the agreed value (as stated in the records of the New Hampshire investment trust) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the New Hampshire investment trust may have against such beneficial owner under the governing instrument of applicable law.

III. A governing instrument of a New Hampshire investment trust may provide that the interest of any beneficial owner who fails to make any contribution that the beneficial owner is obligated to make shall be subject to specific penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting beneficial owner's proportionate interest in the New Hampshire investment trust, subordinating the beneficial interest to that of nondefaulting beneficial owners, a forced sale of the beneficial interest, forfeiture of the beneficial interest, the lending by other beneficial owners of the amount necessary to meet the beneficiary's commitment, a fixing of the value of the defaulting beneficial owner's beneficial interest by appraisal or by formula and redemption or sale of the beneficial interest at such value, or any other penalty or consequence.

293-B:5 Liability of Beneficial Owners and Trustees.

I. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, the beneficial owners shall be entitled to the same limitation of personal liability extended to stockholders of business corporations.

II. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, a trustee, when acting in such capacity, shall not be personally liable to any person for any act, omission, or obligation of the New Hampshire investment trust or any trustee thereof, other than any liabilities to the New Hampshire investment trust or a beneficial owner which arise under the terms of the governing instrument of the New Hampshire investment trust.

III. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, an officer, employee, manager, or other person acting pursuant to RSA 293-B:8, II(i), when acting in such capacity, shall not be personally liable to any person other than the New

Hampshire investment trust or a beneficial owner for any act, omission, or obligation of the New Hampshire investment trust or any trustee thereof.

293-B:6 Legal Proceedings.

I. A New Hampshire investment trust may sue and be sued, and service of process upon one of the trustees shall be sufficient. In furtherance of the foregoing, a New Hampshire investment trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly authorized agents of such trustees, in the performance of their respective duties under the governing instrument of the New Hampshire investment trust, and for any damages to persons or property resulting from the negligence of such trustees or agents acting in the performance of such respective duties. The property of a New Hampshire investment trust shall be subject to attachment and execution as if it were a corporation, in accordance with the relevant provisions of New Hampshire law.

II. Notwithstanding paragraph I, if the governing instrument of a New Hampshire investment trust which is a registered investment company under the Investment Company Act of 1940, as amended (15 U.S.C. section 80a-1 et seq.), or which is otherwise excluded from the definition of investment company pursuant to section 3(c)(1), 3(c)(3), 3(c)(7) or 3(c)(11) of the Investment Company Act of 1940, as amended (15 U.S.C. section 80a-1 et seq.), creates one or more series as provided in RSA 293-B:8, II(d), and if separate and distinct records are maintained for any such series and the assets associated with any such series are held in such separate and distinct records (directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records separately from the other assets of the New Hampshire investment trust, or any other series thereof, and if the governing instrument so provides, and notice of the limitation on liabilities of a series as referenced in this sentence is set forth in the certificate of trust of the New Hampshire investment trust, then the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the New Hampshire investment trust generally or any other series thereof, and, unless otherwise provided in the governing instrument of the New Hampshire investment trust, none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the New Hampshire investment trust generally or any other series thereof shall be enforceable against the assets of such series.

III. A trustee of a New Hampshire investment trust may be served with process in the manner prescribed in paragraph IV of this section in all civil actions or proceedings brought in this state involving or relating to the activities of the New Hampshire investment trust or a violation by a trustee of a duty to the New Hampshire investment trust, or any beneficial owner, whether or not the trustee is a trustee at the time suit is commenced. Every resident or nonresident of this state who accepts election or appointment or serves as a trustee of a New Hampshire investment trust shall, by such acceptance or service, be deemed thereby to have consented to the appointment of the New Hampshire trustee or registered agent of such New Hampshire investment trust required by RSA 293-B:9 as such person's agent upon whom service of process may be made as provided in this paragraph. Such acceptance or service shall signify the consent of such trustee that any process when so served shall be of the same legal force and validity as if served upon such trustee within this state and such appointment of such New Hampshire trustee or registered agent shall be irrevocable.

IV. Service of process shall be effected by serving the New Hampshire trustee or registered agent of such New Hampshire investment trust required by RSA 293-B:9 with one copy of such process in the manner provided by law for service of writs of summons. In addition, the clerk of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to the defendant at the defendant's address last known to and furnished by the party desiring to make such service.

V. In any action in which any such trustee has been served with process as hereinafter provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the clerk of the court as provided in paragraph IV of this section; provided however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such trustee reasonable opportunity to defend the action.

VI. In the governing instrument of the New Hampshire investment trust or other writing, a trustee or beneficial owner or other person may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of this state, or the exclusivity of arbitration in a specified jurisdiction or this state, and to be served with legal process in the manner prescribed in such governing instrument of the New Hampshire investment trust or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in this state, a beneficial owner who is not a trustee may not waive its right to maintain a legal action or proceeding in the courts of this state with respect to matters relating to the organization or internal affairs of a New Hampshire investment trust.

VII. Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

VIII. The New Hampshire supreme court may make all necessary rules respecting the form of process, the manner of issuance and return thereof, and such other rules which may be necessary to implement this section and are not inconsistent with this section. The courts of this state shall have jurisdiction over New Hampshire investment trusts to the same extent as they have jurisdiction over common law trusts formed under the laws of this state.

293-B:7 Rights of Beneficial Owners in Trust Property.

I. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, a beneficial owner shall have an undivided beneficial interest in the property of the New Hampshire investment trust or, if applicable, in accordance with the provisions of RSA 293-B:8, specified property of the New Hampshire investment trust, and shall share in the profits and losses of the New Hampshire investment trust in the proportion, expressed as a percentage, of the entire undivided beneficial interest in the New Hampshire investment trust owned by such beneficial owner or, if applicable, in accordance with the provisions of RSA 293-B:8, in the proportion, expressed as a percentage, of the entire undivided beneficial interest in the series or class of beneficial interests in the New Hampshire investment trust owned by such beneficial owner. The governing instrument of a New Hampshire investment trust may provide that the New Hampshire investment trust or the trustees, acting for and on behalf of the New Hampshire investment trust, shall be deemed to hold

beneficial ownership of any income earned on securities of the New Hampshire investment trust issued by any business entities formed, organized, or existing under the laws of any jurisdiction, including the laws of any foreign country.

II. No creditor of the beneficial owner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the New Hampshire investment trust.

III. A beneficial owner's beneficial interest in the New Hampshire investment trust is personal property notwithstanding the nature of the property of the New Hampshire investment trust. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, a beneficial owner has no interest in specific New Hampshire investment trust property.

IV. A beneficial owner's beneficial interest in the New Hampshire investment trust is freely transferable except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust.

V. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, at the time a beneficial owner becomes entitled to receive a distribution, the beneficial owner has the status of, and is entitled to all remedies available to, a creditor of the New Hampshire investment trust with respect to the distribution. A governing instrument may provide for the establishment of record dates with respect to allocations and distributions by a New Hampshire investment trust.

VI. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, legal title to the property of the New Hampshire investment trust or any part thereof may be held in the name of any trustee of the New Hampshire investment trust, in its capacity as such, with the same effect as if such property were held in the name of the New Hampshire investment trust.

VII. No creditor of the trustee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the New Hampshire investment trust with respect to any claim against, or obligation of, such trustee in its individual capacity and not related to the New Hampshire investment trust.

VIII. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, where the New Hampshire investment trust is a registered investment company under the Investment Company Act of 1940, as amended (15 U.S.C. section 80a-1 et seq.), any class, group or series of beneficial interests established by the governing instrument with respect to such New Hampshire investment trust shall be a class, group, or series preferred as to distribution of assets or payment of dividends over all other classes, groups, or series in respect to assets specifically allocated to the class, group or series as contemplated by section 18 (or any amendment or successor provision) of the Investment Company Act of 1940 (15 U.S.C. section 80a-18), as amended, and any regulations issued thereunder, provided that this section is not intended to affect in any respect the provisions of RSA 293-B:6, II.

IX. Unless otherwise provided in the governing instrument of a New Hampshire investment trust or another agreement, a beneficial owner shall have no preemptive right to subscribe to any additional

issue of beneficial interests or another interest in a New Hampshire investment trust.

293-B:8 Management of a New Hampshire Investment Trust.

I. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, the business and affairs of a New Hampshire investment trust shall be managed by or under the direction of its trustees. To the extent provided in the governing instrument of a New Hampshire investment trust, any person, including a beneficial owner, shall be entitled to direct the trustees or other persons in the management of a New Hampshire investment trust, including without limitation the investment of securities, real estate, mortgages, and other assets of the New Hampshire investment trust. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, neither the power to give direction to a trustee or other persons nor the exercise thereof by any person, including a beneficial owner, shall cause such person to be a trustee or be subject to any duties or liabilities.

II. A governing instrument may contain any provision relating to the management of the business or investment affairs of the New Hampshire investment trust, and the rights, duties, and obligations of the trustees, beneficial owners, and other persons, which is not contrary to any provision or requirement of this chapter and, without limitation:

- (a) May provide that a person shall become a beneficial owner and shall become bound by the governing instrument if such person, or a representative authorized by such person orally, in writing, or by other action such as payment for a beneficial interest, complies with the conditions for becoming a beneficial owner set forth in the governing instrument or any other writing and acquires a beneficial interest;
- (b) May consist of one or more agreements, instruments, or other writings and may include or incorporate bylaws containing provisions relating to the business or investment activities of the New Hampshire investment trust, the conduct of its affairs, and its rights or powers or the rights or powers of its trustees, beneficial owners, agents, or employees;
- (c) May provide for classes, groups, or series of trustees or beneficial owners, or classes, groups, or series of beneficial interests, having such relative rights, powers, and duties as the governing instrument may provide, and may make provision for the future creation in the manner provided in the governing instrument of additional classes, groups, or series of trustees, beneficial owners or beneficial interests, having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior or subordinate to existing classes, groups, or series of trustees, beneficial owners, or beneficial interests;
- (d) May establish or provide for the establishment of designated series of trustees, beneficial owners or beneficial interests having separate rights, powers, or duties with respect to specified property or obligations of the New Hampshire investment trust or specified profits and specified losses associated with specified property or obligations, and to the extent provided in the governing instrument, any such series may have a separate investment objective;
- (e) May provide for the taking of any action, including the amendment of the governing instrument; the accomplishment of a merger, conversion, or consolidation; the appointment of one or more trustees; the sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the assets

of the New Hampshire investment trust or the assets of any series; or the dissolution of the New Hampshire investment trust, or may provide for the taking of any action to create under the provisions of the governing instrument a class, group, or series of beneficial interests that was not previously outstanding, in any such case without the vote or approval of any particular trustee, beneficial owner, or other person with an interest in the New Hampshire investment trust or class, group or series of trustees, beneficial owners, or other persons with an interest in the New Hampshire investment trust;

(f) May grant to or withhold from all or certain trustees, beneficial owners, or other persons with an interest in the New Hampshire investment trust or a specified class, group, or series of trustees, beneficial owners, or other persons with an interest in the New Hampshire investment trust the right to vote, separately or with any or all other classes, groups, or series of the trustees, beneficial owners, or other persons with an interest in the New Hampshire investment trust, on any matter, such voting being on a per capita, number, financial interest, class, group, series, or any other basis;

(g) May, if and to the extent that voting rights are granted under the governing instrument, set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on; waiver of any such notice; action by consent without a meeting; the establishment of record dates, quorum requirements, voting in person, by proxy or in any other manner; or any other matter with respect to the exercise of any such right to vote;

(h) May provide for the present or future creation of more than one New Hampshire investment trust, including the creation of a future New Hampshire investment trust to which all or any part of the assets, liabilities, profits, or losses of any existing New Hampshire investment trust will be transferred, and for the conversion of beneficial interests in an existing New Hampshire investment trust, or series thereof, into beneficial interests in the separate New Hampshire investment trust, or series thereof;

(i) May provide for the appointment, election, or engagement, either as agents or independent contractors of the New Hampshire investment trust or as delegates of the trustees, of officers, employees, managers, or other persons who may manage the business and affairs of the New Hampshire investment trust and may have such titles and such relative rights, powers, and duties as the governing instrument shall provide. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, the trustees shall choose and supervise such officers, managers, employees, and other persons;

(j) May provide rights to any person, including a person who is not a party to the governing instrument of the New Hampshire investment trust, to the extent set forth therein; or

(k) May provide for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the governing instrument of the New Hampshire investment trust or the satisfaction of conditions, and to the extent the governing instrument of the New Hampshire investment trust provides for the manner in which it may be amended such governing instrument may be amended only in that manner or as otherwise permitted by law, provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended.

III.(a) Unless otherwise provided in the governing instrument of a New Hampshire investment trust,

meetings of beneficial owners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting. Unless otherwise provided in the governing instrument of a New Hampshire investment trust, on any matter that is to be voted on by the beneficial owners:

(1) The beneficial owners may take such action without a meeting, without a prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the beneficial owners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all interests in the New Hampshire investment trust entitled to vote thereon were present and voted; and

(2) The beneficial owners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission, or as otherwise permitted by applicable law.

(b) Unless otherwise provided in a governing instrument of a New Hampshire investment trust, a consent transmitted by electronic transmission by a beneficial owner or by a person or persons authorized to act for a beneficial owner shall be deemed to be written and signed for purposes of this paragraph. For purposes of this paragraph, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed, by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated or other process.

IV.(a) Unless otherwise provided in the governing instrument of a New Hampshire investment trust, meetings of trustees may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting. Unless otherwise provided in the governing instrument of a New Hampshire investment trust, on any matter that is to be voted on by the trustees:

(1) The trustees may take such action without a meeting, without a prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the trustees having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all trustees entitled to vote thereon were present and voted; and

(2) The trustee may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission, or as otherwise permitted by applicable law.

(b) Unless otherwise provided in a governing instrument of a New Hampshire investment trust, a consent transmitted by electronic transmission by a trustee or by a person or persons authorized to act for a trustee shall be deemed to be written and signed for purposes of this paragraph. For purposes of this paragraph, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated or other process.

V. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, a beneficial owner, trustee, officer, employee, or manager may lend money to,

borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with a New Hampshire investment trust and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a beneficial owner, trustee, officer, employee, or manager.

VI. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, a trustee of a New Hampshire investment trust has the power and authority to delegate to one or more other persons the trustee's rights and powers to manage and control the business and affairs of the New Hampshire investment trust, including to delegate to agents, officers, and employees of the trustee or the New Hampshire investment trust, and to delegate by management agreement or other agreement with, or otherwise to, other persons. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, such delegation by a trustee of a New Hampshire investment trust shall not cause the trustee to cease to be a trustee of the New Hampshire investment trust or cause the person to whom any such rights and powers have been delegated to be a trustee of the New Hampshire investment trust.

VII. The governing instrument of a New Hampshire investment trust may provide that:

(a) A beneficial owner who fails to perform in accordance with, or to comply with the terms and conditions of, the governing instrument shall be subject to specified penalties or specified consequences;

(b) At the time or upon the happening of events specified in the governing instrument, a beneficial owner shall be subject to specified penalties or specified consequences; and

(c) The specified penalties or specified consequences under subparagraphs (a) and (b) may include and take the form of any penalty or consequence set forth in RSA 293-B:4, III.

VIII. A trustee, beneficial owner or an officer, employee, manager or other person designated in accordance with subparagraph II(i) of this section shall be fully protected in relying in good faith upon the records of the New Hampshire investment trust and upon information, opinions, reports, or statements presented by another trustee, beneficial owner, or officer, employee, manager, or other person designated in accordance with subparagraph II(i) of this section, or by any other person as to matters the trustee, beneficial owner, or officer, employee, manager, or other person designated in accordance with subparagraph II(i) of this section reasonably believes are within such other person's professional or expert competence, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the New Hampshire investment trust, or the value and amount of assets or reserves or contracts, agreements, or other undertakings that would be sufficient to pay claims and obligations of the New Hampshire investment trust or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to beneficial owners or creditors might properly be paid.

293-B:9 Trustee in State.

I. Every New Hampshire investment trust shall at all times have at least one trustee which may either be a natural person or a bank, and in the case of a natural person shall be a person who is a resident of this state. As long as this requirement is satisfied, any additional trustee need not be a bank or natural

person who is a resident of this state.

II. Notwithstanding the provisions of paragraph I, if a New Hampshire investment trust is or becomes a registered investment company under the Investment Company Act of 1940, (15 U.S.C. section 80a-1 et seq.), as amended, such New Hampshire investment trust shall not be required to have a trustee who is a resident of this state or a bank if and for so long as such New Hampshire investment trust shall be in compliance with paragraph III.

III. Each New Hampshire investment trust shall have and maintain in this state:

(a) A registered office, which may but need not be a place of business in this state; and

(b) A registered agent for service of process on the New Hampshire investment trust, which agent may be either an individual resident of this state or a business entity authorized to do business in this state.

IV. A New Hampshire investment trust may change the location of its registered office in this state to any other place in this state, or may change the registered agent to any other individual resident of this state or business entity having its principal place of business in this state, by delivering for filing an amendment to its certificate of trust to the secretary of state in accordance with the applicable provisions of this chapter. If a New Hampshire investment trust which is an investment company registered as aforesaid maintains a registered office and registered agent in this state as herein provided, then the reference in RSA 293-B:12, I(b) to the "name and the business address of each of the trustees" shall be deemed a reference to the name and the business address of the registered agent and registered office maintained under this section, and the certificate of trust filed under RSA 293-B:12 shall reflect such information in lieu of the information otherwise required by RSA 293-B:12, I(b).

V. Service of process upon a registered agent maintained by a New Hampshire investment trust pursuant to paragraph III of this section shall be as effective as if served upon one of the trustees of the New Hampshire investment trust pursuant to RSA 293-B:6.

VI. A trustee or registered agent of a New Hampshire investment trust whose address, as set forth in a certificate of trust pursuant to RSA 293-B:12, I(b), has changed may change such address in the certificates of trust of all New Hampshire investment trusts for which such trustee or registered agent is appointed to another address in the state by paying a fee as set forth in RSA 293-B:15 and filing with the secretary of state a certificate, executed by such trustee or registered agent, setting forth the address of such trustee or registered agent before it was changed, and further certifying as to the new address of such trustee or registered agent for each of the New Hampshire investment trusts for which it is trustee or registered agent. Upon the filing of such certificate, the secretary of state shall furnish to the trustee or registered agent a certified copy of the same under the secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law, the address of such trustee or registered agent in this state for each of the New Hampshire investment trusts for which it is trustee or registered agent shall be located at the new address of the trustee or registered agent thereof as given in the certificate. A trustee or registered agent of a New Hampshire investment trust whose name, as set forth in a certificate of trust pursuant to RSA 293-B:12, I(b), has changed may change such name in the certificates of trust of all New Hampshire investment trusts for which such trustee or

registered agent is appointed to its new name by paying a fee as set forth in RSA 293-B:15 and filing with the secretary of state a certificate, executed by such trustee or registered agent, setting forth the name of such trustee or registered agent before it was changed and further certifying as to the new name of such trustee or registered agent for each of the New Hampshire investment trusts for which it is a trustee or registered agent. Upon the filing of such certificate and payment of such fee, the secretary of state shall furnish to the trustee or registered agent a certified copy of the certificate under the secretary's hand and seal of office. A change of name of any person acting as a trustee or registered agent of a New Hampshire investment trust as a result of a merger or consolidation of the trustee or registered agent with another person who succeeds to its assets and liabilities by operation of law shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of trust of each New Hampshire investment trust affected thereby, and no further action with respect thereto to amend its certificate of trust under RSA 293-B:12 shall be required. Any trustee or registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each New Hampshire investment trust affected thereby.

293-B:10 Existence of New Hampshire Investment Trust.

I. A New Hampshire investment trust shall exist as a separate legal entity.

II. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, the New Hampshire investment trust shall have perpetual existence, and a New Hampshire investment trust may not be terminated or revoked by a beneficial owner or other person except in accordance with the terms of its governing instrument.

III. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, the death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner shall not result in the termination or dissolution of a New Hampshire investment trust.

IV. In the event that a New Hampshire investment trust does not have perpetual existence, a New Hampshire investment trust is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument. Notwithstanding the happening of events specified in the governing instrument, the New Hampshire investment trust shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation as provided in RSA 293-B:12, the New Hampshire investment trust is continued, effective as of the happening of such event, pursuant to the affirmative vote or written consent of all remaining beneficial owners of the New Hampshire investment trust and any other person whose approval is required under the governing instrument to revoke a dissolution pursuant to this section, provided, however, if the dissolution was caused by a vote or written consent, the dissolution shall not be revoked unless each beneficial owner and other person or his or her respective personal representatives who voted in favor of, or consented to, the dissolution has voted or consented in writing to continue the New Hampshire investment trust.

V. Upon dissolution of a New Hampshire investment trust and until the filing of a certificate of cancellation as provided in RSA 293-B:12, the persons who, under the governing instrument of the New Hampshire investment trust, are responsible for winding up the New Hampshire investment trust's affairs may, in the name of and for and on behalf of the New Hampshire investment trust,

prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the New Hampshire investment trust business, dispose of and convey the New Hampshire investment trust property, discharge or make reasonable provision for the New Hampshire investment trust liabilities, and distribute to the beneficial owners any remaining assets of the New Hampshire investment trust.

VI. A New Hampshire investment trust which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the New Hampshire investment trust and all claims and obligations which are known to the New Hampshire investment trust but for which the identity of the claimant is unknown and claims and obligations that have not been made known to the New Hampshire investment trust or that have not arisen but that, based on the facts known to the New Hampshire investment trust, are likely to arise or to become known to the New Hampshire investment trust within 10 years after the date of dissolution. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the governing instrument of a New Hampshire investment trust, any remaining assets shall be distributed to the beneficial owners. Any person, including any trustee, who under the governing instrument of the New Hampshire investment trust is responsible for winding up a New Hampshire investment trust's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved New Hampshire investment trust by reason of such person's actions in winding up the New Hampshire investment trust.

VII. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, a series established in accordance with RSA 293-B:6, II may be dissolved and its affairs wound up without causing the dissolution of the New Hampshire investment trust or any other series thereof. Unless otherwise provided in the governing instrument of the New Hampshire investment trust, the dissolution, winding up, liquidation, or termination of the New Hampshire investment trust or any series thereof shall not affect the limitation of liability with respect to a series established in accordance with RSA 293-B:6, II. A series established in accordance with RSA 293-B:6, II is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument of the New Hampshire investment trust. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, the death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner of such series shall not result in the termination, or dissolution of such series and such series may not be terminated or revoked by a beneficial owner of such series or other person except in accordance with the terms of the governing instrument of the New Hampshire investment trust.

VIII. Upon dissolution of a series of a New Hampshire investment trust, the persons who under the governing instrument of the New Hampshire investment trust are responsible for winding up such series' affairs may, in the name of the New Hampshire investment trust and for and on behalf of the New Hampshire investment trust and such series, take all actions with respect to the series as are permitted under paragraph V of this section and shall provide for the claims and obligations of the series and distribute the assets of the series as provided under paragraph VI of this section. Any person, including any trustee, who under the governing instrument is responsible for winding up such series' affairs who has complied with paragraph VI of this section shall not be personally liable to the

claimants of the dissolved series by reason of such person's actions in winding up the series.

293-B:11 Applicability of Trust Law. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust or in this chapter, the laws of this state pertaining to trusts are hereby made applicable to New Hampshire investment trusts.

293-B:12 Certificate of Trust; Amendment; Cancellation; Restatement; Correction.

I. One original and one exact copy of a certificate of trust for a New Hampshire investment trust shall be executed and shall be delivered for filing to the secretary of state. The certificate of trust shall set forth:

- (a) The name of the New Hampshire investment trust;
- (b) The name and the business address of each of the trustees;
- (c) The name and the business address of the registered agent for service of process;
- (d) The future effective date or time, which shall be a date or time certain, of effectiveness of the certificate if it is not to be effective upon the filing of the certificate; and
- (e) Any other information the trustees determine to include.

II. A New Hampshire investment trust is formed at the time of the filing of the initial certificate of trust with the secretary of state or at any later date or time specified in the certificate of trust if, in either case, there has been substantial compliance with the requirements of this section. A New Hampshire investment trust formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the New Hampshire investment trust's certificate of trust.

III. A certificate of trust may be amended by delivering for filing one original and one exact copy of a certificate of amendment to the secretary of state. The certificate of amendment shall set forth:

- (a) The name of the New Hampshire investment trust;
- (b) The amendment to the certificate; and
- (c) The future effective date or time, which shall be a date or time certain, of effectiveness of the certificate if it is not to be effective upon the filing of the certificate.

IV. Except to the extent otherwise provided in the certificate of trust or in the governing instrument of a New Hampshire investment trust, a certificate of trust may be amended at any time for any purpose as the trustees may determine. A trustee who becomes aware that any statement in a certificate of trust was false when made or that any matter described has changed, making the certificate false in any material respect, shall promptly file a certificate of amendment.

V.(a) A certificate of trust may be restated by integrating into a single instrument all of the provisions of the certificate of trust which are then in effect and operative as a result of there having been theretofore filed one or more certificates of amendment pursuant to paragraph III, and the certificate

of trust may be amended or further amended by the filing of a restated certificate of trust. The restated certificate of trust shall be specifically designated as such in its heading and shall set forth:

- (1) The present name of the New Hampshire investment trust, and if it has been changed, the name under which the New Hampshire investment trust was originally formed;
- (2) The date of filing of the original certificate of trust with the secretary of state;
- (3) The information required to be included pursuant to subparagraph (a) of this section; and
- (d) Any other information the trustees determine to include therein.

(b) A certificate of trust may be restated at any time for any purpose as the trustees may determine. A trustee who becomes aware that any statement in a restated certificate of trust was false when made or that any matter described has changed making the restated certificate false in any material respect shall promptly file a certificate of amendment or a restated certificate of trust.

VI. A certificate of trust shall be cancelled upon the completion of winding up of the New Hampshire investment trust and its termination, or shall be deemed to be cancelled upon the filing of a certificate of merger or consolidation if the New Hampshire investment trust is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the filing of a certificate of conversion to a non-New Hampshire other business entity. One original and one exact copy of a certificate of cancellation and a statement from the department of revenue administration that all taxes due from or accrued by the New Hampshire investment trust through the effective date of cancellation have been either assessed and paid or adequately provided for in a manner acceptable to the department of revenue administration shall be delivered for filing to the secretary of state and shall set forth:

- (a) The name of the New Hampshire investment trust;
- (b) The date of filing of its certificate of trust;
- (c) The future effective date or time, which shall be a date or time certain, of cancellation if it is not to be effective upon the filing of the certificate; and
- (d) Any other information the trustees determine to include.

VII. Whenever any certificate authorized to be filed with the secretary of state under this chapter has been so filed and is an inaccurate record of the action therein referred to or was defectively or erroneously executed, such certificate may be corrected by filing with the secretary of state a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this chapter. In lieu of filing a certificate of correction, the certificate may be corrected by filing with the secretary of state a corrected certificate which shall be executed and filed in accordance with this chapter. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire certificate in corrected form. The corrected certificate shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the

corrections, and as to those persons the corrected certificate shall be effective from the filing date.

VIII. If any certificate filed in accordance with this chapter provides for a future effective date or time and if the transaction is terminated or amended to change the future effective date or time prior to the future effective date or time, the certificate shall be terminated or amended by the filing, prior to the future effective date or time set forth in such original certificate, of a certificate of termination or amendment of the original certificate, executed and filed in accordance with this chapter, which shall identify the original certificate which has been terminated or amended and shall state that the original certificate has been terminated or amended.

293-B:13 Execution.

I. Each certificate required by this chapter to be delivered for filing to the secretary of state shall be executed in one original and one exact copy in the following manner:

(a) A certificate of trust shall be signed by all of the trustees;

(b) A certificate of amendment, a certificate of correction, a corrected certificate, a certificate of termination or amendment, and a restated certificate of trust shall be signed by at least one of the trustees;

(c) A certificate of cancellation shall be signed by all of the trustees or as otherwise provided in the governing instrument of the New Hampshire investment trust; and

(d) If a New Hampshire investment trust is filing a certificate of merger or consolidation, certificate of conversion, certificate of New Hampshire investment trust domestication, certificate of transfer, certificate of transfer and continuance, or certificate of termination or amendment to any such certificate, than the certificate of merger or consolidation, certificate of conversion, certificate of New Hampshire investment trust domestication, certificate of transfer, certificate of transfer and continuance, or certificate of termination or amendment to any such certificate shall be signed by all of the trustees or as otherwise provided in the governing instrument of the New Hampshire investment trust, or, if the certificate of merger or consolidation, certificate of conversion, certificate of New Hampshire investment trust domestication, certificate of transfer, certificate of transfer and continuance, or certificate of termination or amendment to any such certificate is being filed by another investment entity, than the certificate of merger or consolidation, certificate of conversion, certificate of New Hampshire investment trust domestication, certificate of transfer, certificate of transfer and continuance, or certificate of termination or amendment to any such certificate shall be signed by a person authorized to execute such instrument on behalf of such other investment entity.

II. Unless otherwise provided in the governing instrument of a New Hampshire investment trust, any person may sign any certificate or amendment thereof or enter into a governing instrument or amendment thereof by any agent, including any attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a governing instrument or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed with the secretary of state, but if in writing, must be retained by the New Hampshire investment trust or a trustee or other person authorized to manage the business and affairs of the New Hampshire investment trust.

III. The execution of a certificate by a trustee constitutes an oath or affirmation, under the penalties of perjury that, to the best of the trustee's knowledge and belief, the facts stated in the certificate are true.

IV. Documents filed electronically need not be accompanied by an exact or conformed copy, but shall be accompanied by the correct filing fee required by this chapter.

293-B:14 Filing.

I. One original and one exact copy of any certificate authorized to be filed with the secretary of state under this chapter shall be delivered to the secretary of state. Documents filed electronically need not be accompanied by an exact or conformed copy. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) Certify that the certificate has been filed in the secretary of state's office by endorsing upon the original certificate the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) File and index the endorsed certificate; and

(c) Return the exact copy or acknowledged copy, similarly endorsed, to the person who filed it or his or her representative.

II. Upon the filing of a certificate of trust with the secretary of state, or upon the future effective date or time of a certificate of trust as provided for therein, the certificate of trust shall be effective. Upon the filing of a certificate of amendment, certificate of correction, corrected certificate, or restated certificate in the office of the secretary of state, or upon the future effective date or time of a certificate of amendment or restated certificate as provided for therein, the certificate of trust shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation or a certificate of merger or consolidation which acts as a certificate of cancellation or a certificate of transfer or a certificate of conversion to a non-New Hampshire entity with the secretary of state, or upon the future effective date or time of a certificate of cancellation or a certificate of merger or consolidation which acts as a certificate of cancellation or a certificate of transfer or a certificate of conversion to a non-New Hampshire entity, as provided for therein, the certificate of trust shall be cancelled. Upon the filing of a certificate of termination or amendment, the original certificate identified in the certificate of termination or amendment shall be terminated or amended, as the case may be.

III. A fee as set forth in RSA 293-B:15, I shall be paid at the time of the filing of a certificate of trust, a certificate of amendment, a certificate of correction, a corrected certificate, a certificate of termination or amendment, a certificate of cancellation, a certificate of merger or consolidation, a certificate of conversion, a certificate of transfer, a certificate of transfer and continuance, a certificate of New Hampshire investment trust domestication, or a restated certificate.

IV. The fact that a certificate of trust is on file with the secretary of state is notice that the entity formed in connection with the filing of the certificate of trust is a New Hampshire investment trust formed under the laws of this state and is notice of all other facts set forth therein which are required to be set forth in a certificate of trust by RSA 293-B:12, I and is notice of the limitation on liability of a series of a New Hampshire investment trust which is permitted to be set forth in a certificate of trust by RSA 293-B:6, II.

293-B:15 Fees.

I. No documents required to be filed under this chapter shall be effective until the applicable fee required by this paragraph is paid. The secretary of state shall charge and collect the following fees:

- (a) A fee of \$100 for filing a certificate of trust.
- (b) A fee of \$70 for:
 - (1) Filing a certificate of amendment;
 - (2) Filing a certificate of cancellation;
 - (3) Filing a certificate of merger or consolidation;
 - (4) Filing a certificate of correction;
 - (5) Filing a corrected certificate;
 - (6) Filing a certificate of conversion;
 - (7) Filing a certificate of New Hampshire investment trust domestication;
 - (8) Filing a certificate of transfer;
 - (9) Filing a certificate of transfer and continuance;
 - (10) Filing a certificate of termination or amendment; or
 - (11) Filing a restated certificate.
- (c) A fee of \$30 for:
 - (1) Filing an application for reservation of name;
 - (2) Filing an application for renewal of reservation;
 - (3) Filing a notice of cancellation of reservation; or
 - (4) Filing a notice of cancellation of reservation.

II. In addition to the fee provided in subparagraph I(a), the secretary of state shall charge and collect a registration fee of \$100 from each New Hampshire investment trust at the time of filing a certificate of trust.

III. For the privilege of maintaining its certificate of trust in good standing and continuing to exercise its authority to transact the business of a New Hampshire investment trust in this state, the secretary of state shall charge and collect a fee of \$400 from each New Hampshire investment trust established under this chapter, payable on or before April 1 of each year. Each New Hampshire investment trust that fails or refuses to pay the fees required for any year on or before April 1 shall be subject to an

additional fee of \$100.

IV. The certificate of trust of a New Hampshire investment trust may be revoked pursuant to RSA 293-A:14,21 by the secretary of state if the New Hampshire investment trust fails to comply with any provision of this chapter applicable to it.

V. Upon the receipt for filing of a certificate under RSA 293-B:9, VI, the secretary of state shall charge and collect a fee of \$100.

VI. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) \$2 a page for copying; and
- (b) \$10 for the certificate.

VII. The secretary of state may collect fees for certain services, including but not limited to:

- (a) Expedited service or filing requests.
- (b) Direct access to corporations data.
- (c) Computer tapes.
- (d) Microfiche.
- (e) Customized lists and reports.
- (f) Corporate information via telephone-based systems or facsimile machine.
- (g) Other information services.
- (h) Electronic copies of data and/or images.

VIII. The secretary of state may establish and collect such fees for the special services listed in paragraph VII as determined from time to time by the secretary of state.

IX. Except as provided by this section, all other fees for the secretary of state shall be as provided for in RSA 293-A:1.22.

293-B:16 Collection of Fees; Administration.

I. The secretary of state shall collect all fees required under this chapter and shall pay them to the treasurer to be deposited in the general fund as unrestricted revenue, except as provided in paragraph II.

II. The state treasurer shall pay the expense of administering this chapter out of any money in the treasury not otherwise appropriated until the fees collected pursuant to RSA 293-B:15, I, have been received. Thereafter, the expenses of administering this chapter shall be paid out of the fees collected under RSA 293-B:15, I, and the treasurer shall reimburse the treasury for the previous expenses paid.

The governor is authorized to draw a warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

293-B:17 Use of Names Regulated.

I.(a) A New Hampshire investment trust name shall not contain language stating or implying that the New Hampshire investment trust is organized for a purpose other than that permitted by RSA 293-B:3 and its certificate of trust.

(b) Except as authorized by subparagraphs (c) and (d), a New Hampshire investment trust name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(3) The fictitious name of another foreign corporation authorized to transact business in this state.

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(c) A New Hampshire investment trust may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in subparagraph (b), as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(1) The holder or holders of the name as described in subparagraph (b) gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying corporation; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(2) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying corporation; or

(3) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A New Hampshire investment trust may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user New Hampshire investment trust:

- (1) Has merged with the other entity;
 - (2) Has been formed by reorganization of the other entity; or
 - (3) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (e) This chapter does not control the use of fictitious names.
- (f) Nothing in this section shall prohibit the owner or owners of a trade name registered under RSA 349 from forming a New Hampshire investment trust under the same name as the trade name.

II. The exclusive right to the use of a name may be reserved by:

- (a) Any person intending to form a New Hampshire investment trust and to adopt that name; and
- (b) Any New Hampshire investment trust registered in this state which proposes to change its name.

III. The reservation of a specified name shall be made by filing with the secretary of state an application, executed by the applicant, which may either be a signed or conformed copy, specifying the name to be reserved and the name and address of the applicant. If the secretary of state finds that the name is available for use by a New Hampshire investment trust, the name shall be reserved for the exclusive use of the applicant for a period of 120 days. The same applicant may not reserve the same name until a period of 60 days has passed since the expiration of that applicant's prior reservation. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, which may be either a signed or conformed copy, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the secretary of state a notice of cancellation, executed by the applicant or transferee, which may be either a signed or conformed copy, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

IV. A fee as set forth in RSA 293-B:15, I(c) shall be paid at the time of the initial reservation of any name, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

293-B:18 Merger and Consolidation.

I. Pursuant to an agreement of merger or consolidation, a New Hampshire investment trust may merge or consolidate with or into one or more New Hampshire investment trusts or other investment entities formed or organized or existing under the laws of any other state or the United States or any foreign country or other foreign jurisdiction, with such New Hampshire investment trust or other investment entity as the agreement shall provide being the surviving or resulting New Hampshire investment trust or other investment entity. Unless otherwise provided in the governing instrument of a New Hampshire investment trust, a merger or consolidation shall be approved by each New Hampshire investment trust which is to merge or consolidate by all of the trustees and the beneficial owners of such New Hampshire investment trust. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a New Hampshire investment trust or other investment entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting New Hampshire investment

trust or other investment entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interest in, a New Hampshire investment trust or other investment entity which is not the surviving or resulting New Hampshire investment trust or other investment entity in the merger or consolidation or may be cancelled. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

II. If a New Hampshire investment trust is merging or consolidating under this section, the New Hampshire investment trust or other investment entity surviving or resulting in or from the merger or consolidation shall deliver one original and one exact copy of a certificate of merger or consolidation to the secretary of state. The certificate of merger or consolidation shall state:

- (a) The name and jurisdiction of formation or organization of each of the New Hampshire investment trusts or other investment entities which is to merge or consolidate;
- (b) That an agreement of merger or consolidation has been approved and executed by each of the New Hampshire investment trusts or other investment entities which is to merge or consolidate;
- (c) The name of the surviving or resulting New Hampshire investment trust or other investment entity;
- (d) In the case of a merger in which a New Hampshire investment trust is the surviving entity, such amendments, if any, to the certificate of trust of the surviving New Hampshire investment trust to change its name as are desired to be effected by the merger;
- (e) The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;
- (f) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or resulting New Hampshire investment trust or other investment entity, and shall state the address thereof;
- (g) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting New Hampshire investment trust or other investment entity, on request and without cost, to any beneficial owner of any New Hampshire investment trust or any person holding an interest in any other investment entity which is to merge or consolidate; and
- (h) If the surviving or resulting entity is not a New Hampshire investment trust, a statement that such surviving or resulting other investment entity agrees that it may be served with process in the state of New Hampshire in any action, suit, or proceeding for the enforcement of any obligation of any New Hampshire investment trust which is to merge or consolidate, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit, or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state. In the event of service under this subparagraph upon the secretary of state, the plaintiff in any such action, suit, or proceeding shall furnish the secretary of state with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the secretary of state, and the secretary of state shall notify such surviving or resulting other investment entity thereof at all such addresses

furnished by the plaintiff by letter, certified mail, return receipt requested. Such letter shall enclose a copy of the process and any other papers served upon the secretary of state. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of state that service is being made pursuant to this subparagraph, and to pay the secretary of state the sum of \$50 for use of the state of New Hampshire, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The secretary of state shall maintain an alphabetical record of any such process setting forth the names of the plaintiff and defendant, the title, docket number, and nature of the proceedings in which process has been served upon him or her, the return date thereof, and the day and hour when the service was made. The secretary of state shall not be required to retain such information for a period longer than 5 years from his or her receipt of the service of process.

III. Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which was effective prior to the effective date of this chapter shall not affect the validity or effectiveness of any such merger or consolidation.

IV. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the secretary of state of a certificate of merger or consolidation.

V. A certificate of merger or consolidation shall act as a certificate of cancellation for a New Hampshire investment trust which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with subparagraph II(d) of this section shall be deemed to be an amendment to the certificate of trust of the New Hampshire investment trust, and the New Hampshire investment trust shall not be required to take any further action to amend its certificate of trust under RSA 293-B:12 with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

VI.(a) Notwithstanding anything to the contrary contained in the governing instrument of a New Hampshire investment trust, a governing instrument of a New Hampshire investment trust containing a specific reference to this paragraph may provide that an agreement of merger or consolidation approved in accordance with paragraph I may:

(1) Effect any amendment to the governing instrument of the New Hampshire investment trust; or

(2) Effect the adoption of a new governing instrument of the New Hampshire investment trust if it is the surviving or resulting New Hampshire investment trust in the merger or consolidation.

(b) Any amendment to the governing instrument of a New Hampshire investment trust or adoption of a new governing instrument of the New Hampshire investment trust made pursuant to this paragraph shall be effective at the effective time or date of the merger or consolidation. The provisions of this paragraph shall not be construed to limit the accomplishment of a merger or consolidation or of any of the matters referred to herein by any other means provided for in the governing instrument of a New

Hampshire investment trust or other agreement or as otherwise permitted by law, including that the governing instrument of any constituent New Hampshire investment trust to the merger or consolidation, including a New Hampshire investment trust formed for the purpose of consummating a merger or consolidation, shall be the governing instrument of the surviving or resulting New Hampshire investment trust.

VII. When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state of New Hampshire, all of the rights, privileges and powers of each of the New Hampshire investment trusts and other investment entities that have merged or consolidated, and all property, real, personal, and mixed, and all debts due to any of said New Hampshire investment trusts and other investment entities, as well as all other things and causes of action belonging to each of such New Hampshire investment trusts and other investment entities, shall have vested in the surviving or resulting New Hampshire investment trust or other investment entity, and shall thereafter be the property of the surviving or resulting New Hampshire investment trust or other investment entity as they were of each of the New Hampshire investment trusts and other investment entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state of New Hampshire, in any of such New Hampshire investment trusts and other investment entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said New Hampshire investment trusts and other investment entities shall be preserved unimpaired, and all debts, liabilities, and duties of each of the said New Hampshire investment trusts and other investment entities that have merged or consolidated shall thenceforth attach to the surviving or resulting New Hampshire investment trust or other investment entity, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it.

VIII. A governing instrument or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a beneficial interest or another interest in a New Hampshire investment trust shall be available for any class or group of beneficial owners or beneficial interests in connection with any amendment of a governing instrument, any merger or consolidation in which the New Hampshire investment trust is a constituent party to the merger or consolidation, or the sale of all or substantially all of the New Hampshire investment trust's assets. The New Hampshire courts shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

293-B:19 Derivative Actions.

I. A beneficial owner may bring an action in the right of a New Hampshire investment trust in the same state court of New Hampshire as derivative proceedings with respect to corporations under RSA 293-A:7.40 through RSA 293-A:7.47 to recover a judgment in its favor if trustees with authority to do so have refused to bring the action or if an effort to cause those trustees to bring the action is not likely to succeed.

II. In a derivative action, the plaintiff shall be a beneficial owner at the time of bringing the action:

- (a) At the time of the transaction of which he or she complains; or
- (b) His or her status as a beneficial owner had devolved upon him or her by operation of law or

pursuant to the terms of the governing instrument of the New Hampshire investment trust from a person who was a beneficial owner at the time of the transaction.

III. In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by the trustees, or the reasons for not making the effort.

IV. If a derivative action is successful, in whole or in part, or if anything is received by a New Hampshire investment trust as a result of a judgment, compromise, or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. If anything is so received by the plaintiff, the court shall make such award of plaintiff's expenses payable out of those proceeds and direct plaintiff to remit to the New Hampshire investment trust the remainder thereof, and if those proceeds are insufficient to reimburse plaintiff's reasonable expenses, the court may direct that any such award of plaintiff's expenses or a portion thereof be paid by the New Hampshire investment trust.

293-B:20 Indemnification.

I. Subject to such standards and restrictions, if any, as are set forth in the governing instrument of a New Hampshire investment trust, a New Hampshire investment trust shall have the power to indemnify and hold harmless any trustee or beneficial owner or other person from and against any and all claims and demands whatsoever.

II. The absence of a provision for indemnity in the governing instrument of a New Hampshire investment trust shall not be construed to deprive any trustee or beneficial owner or other person of any right to indemnity which is otherwise available to such person under the laws of this state.

293-B:21 Treasury Interests. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, a New Hampshire investment trust may acquire, by purchase, redemption, or otherwise, any beneficial interest in the New Hampshire investment trust held by a beneficial owner of the New Hampshire investment trust. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, any such interest so acquired by a New Hampshire investment trust shall be deemed canceled.

293-B:22 Access to and Confidentiality of Information; Records.

I. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, each beneficial owner of a New Hampshire investment trust has the right, subject to such reasonable standards, including standards governing what information and documents are to be furnished at what time and location and at whose expense, as may be established by the trustees, to obtain from the New Hampshire investment trust from time to time upon reasonable demand for any purpose reasonably related to the beneficial owner's interest as a beneficial owner of the New Hampshire investment trust:

(a) A copy of the governing instrument and certificate of trust and all amendments thereto, together with copies of any written powers of attorney pursuant to which the governing instrument and any certificate and any amendments thereto have been executed;

(b) A current list of the name and last known business, residence, or mailing address of each

beneficial owner and trustee;

(c) Information regarding the business and financial condition of the New Hampshire investment trust, provided that, notwithstanding any other provision of this chapter to the contrary, unless the governing instrument of a New Hampshire investment trust so expressly provides, information regarding the identity or trading positions of any securities or other assets held by the New Hampshire investment trust at any time or the investment strategy or proposed purchase or sale of any securities or other assets need not be disclosed to any beneficial owners who are also not trustees; and

(d) Other information regarding the affairs of the New Hampshire investment trust as is just and reasonable.

II. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, each trustee shall have the right to examine all the information described in paragraph I of this section for any purpose reasonably related to the trustee's position as a trustee.

III. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, the trustees of a New Hampshire investment trust shall have the right to keep confidential from the beneficial owners, for such period of time as the trustees deem reasonable, any information that the trustees reasonably believe to be in the nature of trade secrets or other information, the disclosure of which the trustees in good faith believe is not in the best interest of the New Hampshire investment trust or could damage the New Hampshire investment trust or its business or which the New Hampshire investment trust is required by law or by agreement with a third party to keep confidential.

IV. A New Hampshire investment trust may maintain its records in other than a written form if such form is capable of conversion into a written form within a reasonable time.

V. Any demand by a beneficial owner or trustee under this section shall be in writing and shall state the purpose of such demand.

293-B:23 Conversion of Other Business Entities to a New Hampshire Investment Trust.

I. Any other business entity, including, without limitation, a statutory trust, a limited partnership, or a limited liability partnership, formed or organized or existing under the laws of this state or any other state or the United States or any foreign country or other foreign jurisdiction may convert to a New Hampshire investment trust by complying with paragraph VII of this section and filing with the secretary of state in accordance with RSA 293-B:14:

(a) A certificate of conversion to New Hampshire investment trust that has been executed by the trustees in accordance with RSA 293-B:13; and

(b) A certificate of trust that complies with RSA 293-B:12 and has been executed by the trustees in accordance with RSA 293-B:13.

II. The certificate of conversion to New Hampshire investment trust shall state:

(a) The date on which and jurisdiction where the other business entity was first formed or organized

or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a New Hampshire investment trust;

(b) The name of the other business entity immediately prior to the filing of the certificate of conversion to New Hampshire investment trust;

(c) The name of the New Hampshire investment trust as set forth in its certificate of trust filed in accordance with paragraph I of this section; and

(d) The future effective date or time, which shall be a date or time certain, of the conversion to a New Hampshire investment trust if it is not to be effective upon the filing of the certificate of conversion to New Hampshire investment trust and the certificate of trust.

III. Upon the filing with the secretary of state of the certificate of conversion to New Hampshire investment trust and the certificate of trust or upon the future effective date or time of the certificate of conversion to New Hampshire investment trust and the certificate of trust, the other business entity shall be converted into a New Hampshire investment trust and the New Hampshire investment trust shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding RSA 293-B:12, II, the existence of the New Hampshire investment trust shall be deemed to have commenced on the date the other business entity commenced its existence in the jurisdiction in which the other business entity was first formed or organized or otherwise came into being.

IV. The conversion of any other business entity into a New Hampshire investment trust shall not be deemed to affect any obligations or liabilities of the other business entity incurred prior to its conversion to a New Hampshire investment trust, or the personal liability of any person incurred prior to such conversion.

V. When any conversion shall have become effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the other business entity that has converted, and all property, real, personal and mixed, and all debts due to such other business entity, as well as all other things and causes of action belonging to such other business entity, shall remain vested in the New Hampshire investment trust to which such other business entity has converted and shall be the property of such New Hampshire investment trust, and the title to any real property vested by deed or otherwise in such other business entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other business entity shall be preserved unimpaired, and all debts, liabilities, and duties of the other business entity that has converted shall remain attached to the New Hampshire investment trust to which such other business entity has converted, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it in its capacity as a New Hampshire investment trust. The rights, privileges, powers, and interests in property of the other business entity, as well as the debts, liabilities, and duties of the other business entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the New Hampshire investment trust to which such other business entity has converted for any purpose of the laws of this state, provided that this sentence shall not limit any of the foregoing provisions of this paragraph.

VI. Unless otherwise agreed, for all purposes of the laws of the state of New Hampshire, the converting other business entity shall not be required to wind up its affairs or pay its liabilities and

distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other business entity and shall constitute a continuation of the existence of the converting other business entity in the form of a New Hampshire investment trust. When the other business entity has been converted to a New Hampshire investment trust pursuant to this section, the New Hampshire investment trust shall, for all purposes of the laws of this state, be deemed to be the same entity as the converting other business entity.

VII. Prior to filing a certificate of conversion to New Hampshire investment trust with the secretary of state, the conversion shall be approved in the manner provided for by the document, instrument, agreement, or other writing, as the case may be, governing the internal affairs of the other business entity and the conduct of its business or by applicable law, as appropriate, and a governing instrument shall be approved by the same authorization required to approve the conversion.

VIII. This section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any other business entity to this state by any other means provided for in an agreement governing the internal affairs of the other business entity or as otherwise permitted by law, including by the amendment of an agreement governing the internal affairs of the other business entity.

IX. In connection with a conversion hereunder, rights or securities of or interests in the other business entity which is to be converted to a New Hampshire investment trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, such New Hampshire investment trust or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another New Hampshire investment trust or other business entity or may be cancelled.

293-B:24 Conversion of a New Hampshire Investment Trust.

I. Upon compliance with this section, a New Hampshire investment trust may convert to another business entity including, without limitation, a statutory trust, a limited partnership, or a limited liability partnership.

II. If the governing instrument of the New Hampshire investment trust specifies the manner of authorizing a conversion of the New Hampshire investment trust, the conversion shall be authorized as specified in the governing instrument. If the governing instrument of the New Hampshire investment trust does not specify the manner of authorizing a conversion of the New Hampshire investment trust and does not prohibit a conversion of the New Hampshire investment trust, the conversion shall be authorized in the same manner as is specified in the governing instrument for authorizing a merger or consolidation that involves the New Hampshire investment trust as a constituent party to the merger or consolidation. If the governing instrument of the New Hampshire investment trust does not specify the manner of authorizing a conversion of the New Hampshire investment trust or a merger or consolidation that involves the New Hampshire investment trust as a constituent party and does not prohibit a conversion of the New Hampshire investment trust, the conversion shall be authorized by the approval by all of the beneficial owners and all of the trustees.

III. Unless otherwise agreed, the conversion of a New Hampshire investment trust to another business entity pursuant to this section shall not require such New Hampshire investment trust to wind up its

affairs under RSA 293-B:10 or pay its liabilities and distribute its assets under RSA 293-B:10.

IV. In connection with a conversion of a New Hampshire investment trust to an other business entity pursuant to this section, rights or securities of, or interests in, the New Hampshire investment trust which is to be converted may be exchanged for or converted into cash, property, rights or securities of, or interests in, the other business entity into which the New Hampshire investment trust is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, any other business entity or may be cancelled.

V. If a New Hampshire investment trust shall convert in accordance with this section to an other business entity organized, formed, or created under the laws of a jurisdiction other than the state of New Hampshire, a certificate of conversion to a non-New Hampshire entity executed in accordance with RSA 293-B:13, shall be filed with the secretary of state in accordance with RSA 293-B:14. The certificate of conversion to a non-New Hampshire entity shall state:

- (a) The name of the New Hampshire investment trust and, if it has been changed, the name under which its certificate of trust was originally filed;
- (b) The date of filing of its original certificate of trust with the secretary of state;
- (c) The jurisdiction in which the other business entity, to which the New Hampshire investment trust shall be converted, is organized, formed, or created;
- (d) The future effective date or time, which shall be a date or time certain, of the conversion if it is not to be effective upon the filing of the certificate of conversion to a non-New Hampshire entity;
- (e) That the conversion has been approved in accordance with this section;
- (f) The agreement of the New Hampshire investment trust that it may be served with process in the state of New Hampshire in any action, suit, or proceeding for enforcement of any obligation of the New Hampshire investment trust arising while it was a New Hampshire investment trust of the state of New Hampshire, and that it irrevocably appoints the secretary of state as its agent to accept service of process in any such action, suit, or proceeding; and
- (g) The address to which a copy of the process referred to in subparagraph V(f) of this section shall be mailed to it by the secretary of state. In the event of service under this section upon the secretary of state, the secretary of state shall forthwith notify the New Hampshire investment trust that has converted out of this state thereof by letter, certified mail, return receipt requested, directed to the New Hampshire investment trust at the address specified in this paragraph and any other address furnished to the secretary of state by the plaintiff in such action, suit, or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the secretary of state. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of state that service is being made pursuant to this paragraph, and to pay to the secretary of state the sum of \$50 for the use of this state, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The secretary of state shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number, and nature of the proceeding in which process has been served upon the secretary of state, the return date thereof, and the day and hour when the service was made. The secretary of state

shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

VI. Upon the filing to the secretary of state of the certificate of conversion to a non-New Hampshire entity or upon the future effective date or time of the certificate of conversion to a non-New Hampshire entity and payment to the secretary of state of all fees prescribed in this chapter, the secretary of state shall certify that the New Hampshire investment trust has filed all documents and paid all fees required by this chapter, and thereupon the New Hampshire investment trust shall cease to exist as a New Hampshire investment trust. Such certificate of the secretary of state shall be prima facie evidence of the conversion by such New Hampshire investment trust out of the state of New Hampshire.

VII. The conversion of a New Hampshire investment trust out of the state of New Hampshire in accordance with this section and the resulting cessation of its existence as a New Hampshire investment trust pursuant to a certificate of conversion to a non-New Hampshire entity shall not be deemed to affect any obligations or liabilities of the New Hampshire investment trust incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the New Hampshire investment trust with respect to matters arising prior to such conversion.

VIII. When a New Hampshire investment trust has been converted to an other business entity pursuant to this section, the other business entity shall, for all purposes of the laws of the state of New Hampshire, be deemed to be the same entity as the New Hampshire investment trust. When any conversion becomes effective under this section, for all purposes of the laws of the state of New Hampshire, all of the rights, privileges, and powers of the New Hampshire investment trust that has converted, and all property, real, personal, and mixed, and all debts due to such New Hampshire investment trust, as well as all other things and causes of action belonging to such New Hampshire investment trust, shall remain vested in the other business entity to which such New Hampshire investment trust has converted and shall be the property of such other business entity, and the title to any real property vested by deed or otherwise in such New Hampshire investment trust shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such New Hampshire investment trust shall be preserved unimpaired, and all debts, liabilities, and duties of the New Hampshire investment trust that has converted shall remain attached to the other business entity to which such New Hampshire investment trust has converted, and may be enforced against it to the same extent as if said debts, liabilities, and duties had originally been incurred or contracted by it in its capacity as such other business entity. The rights, privileges, powers, and interests in property of the New Hampshire investment trust that has converted, as well as the debts, liabilities, and duties of such New Hampshire investment trust, shall not be deemed, as a consequence of the conversion, to have been transferred to the other business entity to which such New Hampshire investment trust has converted for any purpose of the laws of the state of New Hampshire, provided that this sentence shall not limit any of the foregoing provisions of this paragraph.

293-B:25 Domestication of Non-United States Entities.

I. As used in this section, "non-United States entity" means a foreign investment trust other than one formed under the laws of a state, or a corporation, a limited liability company, a business trust or

association, a statutory trust, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership), formed, incorporated, created, or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction other than any state.

II. Any non-United States entity may become domesticated as a New Hampshire investment trust by complying with paragraph VII of this section and filing with the secretary of state in accordance with RSA 293-B:14:

(a) A certificate of New Hampshire investment trust domestication that has been executed in accordance with RSA 293-B:13; and

(b) A certificate of trust that complies with RSA 293-B:12 and has been executed in accordance with RSA 293-B:13.

III. The certificate of New Hampshire investment trust domestication shall state:

(a) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created, or otherwise came into being;

(b) The name of the non-United States entity immediately prior to the filing of the certificate of New Hampshire investment trust domestication;

(c) The name of the New Hampshire investment trust as set forth in the certificate of trust filed in accordance with paragraph II of this section;

(d) The future effective date or time, which shall be a date or time certain, of the domestication as a New Hampshire investment trust if it is not to be effective upon the filing of the certificate of New Hampshire investment trust domestication and the certificate of trust; and

(e) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of New Hampshire investment trust domestication.

IV. Upon the filing with the secretary of state of the certificate of New Hampshire investment trust domestication and the certificate of trust or upon the future effective date or time of the certificate of New Hampshire investment trust domestication and the certificate of trust, the non-United States entity shall be domesticated as a New Hampshire investment trust in the state of New Hampshire and the New Hampshire investment trust shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding RSA 293-B:12, II, the existence of the New Hampshire investment trust shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created, or otherwise came into being.

V. The domestication of any non-United States entity as a New Hampshire investment trust shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a New Hampshire investment trust, or the personal liability of any person therefor.

VI. The filing of a certificate of New Hampshire investment trust domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the law of the state of New Hampshire, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a New Hampshire investment trust on that date.

VII. Prior to filing a certificate of New Hampshire investment trust domestication with the secretary of state, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-New Hampshire law, as appropriate, and a governing instrument shall be approved by the same authorization required to approve the domestication.

VIII. When any domestication shall have become effective under this section, for all purposes of the laws of the state of New Hampshire, all of the rights, privileges, and powers of the non-United States entity that has been domesticated, and all property, real, personal, and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the New Hampshire investment trust to which such non-United States entity has been domesticated and shall be the property of such New Hampshire investment trust, and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities, and duties of the non-United States entity that has been domesticated shall remain attached to the New Hampshire investment trust to which such non-United States entity has been domesticated, and may be enforced against it to the same extent as if said debts, liabilities, and duties had originally been incurred or contracted by it in its capacity as a New Hampshire investment trust. The rights, privileges, powers, and interests in property of the non-United States entity, as well as the debts, liabilities, and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the New Hampshire investment trust to which such non-United States entity has domesticated for any purpose of the laws of the state of New Hampshire, provided that this sentence shall not limit any of the foregoing provisions of this paragraph.

IX. When a non-United States entity has become domesticated as a New Hampshire investment trust pursuant to this section, the New Hampshire investment trust shall, for all purposes of the laws of the state of New Hampshire, be deemed to be the same entity as the domesticating non-United States entity. Unless otherwise agreed, for all purposes of the laws of the state of New Hampshire, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity and shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a New Hampshire investment trust. If, following domestication, a non-United States entity that has become domesticated as a New Hampshire investment trust continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the New Hampshire investment trust and such non-United States entity shall, for all purposes of the laws of the state of New Hampshire, constitute a single entity formed, incorporated, created, or otherwise having come into being, as applicable, and existing under the laws of the state of New Hampshire and the laws of such foreign country or other foreign jurisdiction.

X. In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a New Hampshire investment trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, such New Hampshire investment trust or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, an other New Hampshire investment trust or other entity or may be cancelled.

293-B:26 Transfer or Continuance of New Hampshire Investment Trusts.

I. Upon compliance with the provisions of this section, any New Hampshire investment trust may transfer to or domesticate in any jurisdiction, other than any state, and, in connection therewith, may elect to continue its existence as a New Hampshire investment trust in the state of New Hampshire.

II. If the governing instrument of a New Hampshire investment trust specifies the manner of authorizing a transfer or domestication or continuance described in paragraph I of this section, the transfer or domestication or continuance shall be authorized as specified in the governing instrument. If the governing instrument of a New Hampshire investment trust does not specify the manner of authorizing a transfer or domestication or continuance described in paragraph I of this section and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized in the same manner as is specified in the governing instrument for authorizing a merger or consolidation that involves the New Hampshire investment trust as a constituent party to the merger or consolidation. If the governing instrument of a New Hampshire investment trust does not specify the manner of authorizing a transfer or domestication or continuance described in paragraph I of this section or a merger or consolidation that involves the New Hampshire investment trust as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized by the approval by all of the beneficial owners and all of the trustees. If a transfer or domestication or continuance described in paragraph I of this section shall be approved as provided in this paragraph II, a certificate of transfer if the New Hampshire investment trust's existence as a New Hampshire investment trust is to cease in the state of New Hampshire, or a certificate of transfer and continuance if the New Hampshire investment trust's existence as a New Hampshire investment trust is to continue, executed in accordance with RSA 293-B:13, shall be filed with the secretary of state in accordance with RSA 293-B:14. The certificate of transfer or the certificate of transfer and continuance shall state:

- (a) The name of the New Hampshire investment trust and, if it has been changed, the name under which its certificate of trust was originally filed;
- (b) The date of the filing of its original certificate of trust with the secretary of state;
- (c) The jurisdiction to which the New Hampshire investment trust shall be transferred or in which it shall be domesticated;
- (d) The future effective date or time, which shall be a date or time certain, of the transfer or domestication to the jurisdiction specified in subparagraph II(c) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and continuance;
- (e) That the transfer or domestication or continuance of the New Hampshire investment trust has been approved in accordance with the provisions of this section;

(f) In the case of a certificate of transfer:

(1) That the existence of the New Hampshire investment trust shall cease in the state of New Hampshire when the certificate of transfer becomes effective; and

(2) The agreement of the New Hampshire investment trust that it may be served with process in the state of New Hampshire in any action, suit, or proceeding for enforcement of any obligation of the New Hampshire investment trust arising while it was a New Hampshire investment trust of the state of New Hampshire, and that it irrevocably appoints the secretary of state as its agent to accept service of process in any such action, suit, or proceeding;

(g) The address to which a copy of the process referred to in subparagraph II(f) of this section shall be mailed to it by the secretary of state. In the event of service under this section upon the secretary of state, the secretary of state shall forthwith notify the New Hampshire investment trust that has converted out of this state thereof by letter, certified mail, return receipt requested, directed to the New Hampshire investment trust at the address specified in this paragraph and any other address furnished to the secretary of state by the plaintiff in such action, suit, or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the secretary of state. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of state that service is being made pursuant to this paragraph, and to pay to the secretary of state the sum of \$50 for the use of this state, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The secretary of state shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number, and nature of the proceeding in which process has been served upon the secretary of state, the return date thereof, and the day and hour when the service was made. The secretary of state shall not be required to retain such information for a period longer than 5 years from receipt of the service of process; and

(h) In the case of a certificate of transfer and continuance, that the New Hampshire investment trust will continue to exist as a New Hampshire investment trust of the state of New Hampshire after the certificate of transfer and continuance becomes effective.

III. Upon the filing with the secretary of state of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the secretary of state of all fees prescribed in this chapter, the secretary of state shall certify that the New Hampshire investment trust has filed all documents and paid all fees required by this chapter, and thereupon the New Hampshire investment trust shall cease to exist in the state of New Hampshire. Such certificate of the secretary of state shall be prima facie evidence of the transfer or domestication by such New Hampshire investment trust out of the state of New Hampshire.

IV. The transfer or domestication of a New Hampshire investment trust out of the state of New Hampshire in accordance with this section and the resulting cessation of its existence as a New Hampshire investment trust of the state of New Hampshire pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the New Hampshire investment trust incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the New Hampshire investment trust with respect to matters arising prior to such transfer or

domestication. Unless otherwise agreed, the transfer or domestication of a New Hampshire investment trust out of the state of New Hampshire in accordance with this section shall not require such New Hampshire investment trust to wind up its affairs or pay its liabilities and distribute its assets.

V. If a New Hampshire investment trust files a certificate of transfer and continuance, after the time the certificate of transfer and continuance becomes effective, the New Hampshire investment trust shall continue to exist as a New Hampshire investment trust of the state of New Hampshire, and the laws of the state of New Hampshire, including the provisions of this chapter, shall apply to the New Hampshire investment trust, to the same extent as prior to such time. So long as a New Hampshire investment trust continues to exist as a New Hampshire investment trust of the state of New Hampshire following the filing of a certificate of transfer and continuance, the continuing New Hampshire investment trust and the other business entity formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the New Hampshire investment trust to, or its domestication in, a foreign country or other foreign jurisdiction shall, for all purposes of the laws of the state of New Hampshire, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the state of New Hampshire and the laws of such foreign country or other foreign jurisdiction.

VI. In connection with a transfer or domestication of a New Hampshire investment trust to or in another jurisdiction pursuant to paragraph I of this section, rights or securities of, or interests in, such New Hampshire investment trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, the other business entity in which the New Hampshire investment trust will exist in such other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, any other business entity or may be cancelled.

VII. When a New Hampshire investment trust has transferred or domesticated out of the state of New Hampshire pursuant to this section, the transferred or domesticated other business entity shall, for all purposes of the laws of the state of New Hampshire, be deemed to be the same entity as the New Hampshire investment trust. When any transfer or domestication of a New Hampshire investment trust out of the state of New Hampshire shall have become effective under this section, for all purposes of the laws of the state of New Hampshire, all of the rights, privileges, and powers of the New Hampshire investment trust that has transferred or domesticated, and all property, real, personal, and mixed, and all debts due to such New Hampshire investment trust, as well as all other things and causes of action belonging to such New Hampshire investment trust, shall remain vested in the transferred or domesticated other business entity and shall be the property of such transferred or domesticated other business entity, and the title to any real property vested by deed or otherwise in such New Hampshire investment trust shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such New Hampshire investment trust shall be preserved unimpaired, and all debts, liabilities, and duties of the New Hampshire investment trust that has transferred or domesticated shall remain attached to the transferred or domesticated other business entity, and may be enforced against it to the same extent as if said debts, liabilities, and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated other business entity. The rights, privileges, powers, and interests in property of the New Hampshire investment trust that has transferred or domesticated, as well as the debts, liabilities, and duties of such New Hampshire investment trust, shall not be deemed, as a consequence of the

transfer or domestication out of the state of New Hampshire, to have been transferred to the transferred or domesticated other business entity for any purpose of the laws of the state of New Hampshire, provided that this sentence shall not limit any of the foregoing provisions of this paragraph.

293-B:27 Applicability. To the extent that any provision of any other chapter of the New Hampshire Revised Statutes Annotated conflicts with any provision in this chapter, the provisions in this chapter shall be controlling, with respect to a New Hampshire investment trust or other investment entity.

293-B:28 Short Title. This chapter may be cited as the "New Hampshire Investment Trust Act."

293-B:29 Other Trusts Not Affected. This chapter shall not be interpreted to limit or to enlarge the power of trusts that are organized under any other law and shall apply only to a New Hampshire investment trust as defined in RSA 293-B:2, IV and an other investment entity as defined in RSA 293-B:2, VI.

293-B:30 Insurance Not Affected. This chapter shall not be interpreted to limit or to enlarge the power of any state-chartered or federally-chartered financial institution to engage in the business of insurance or in any activity requiring licensing under RSA 401 or RSA 405.

149:3 New Section; Pooled Risk Management Programs; Authority of Secretary of State. Amend RSA 5-B by inserting after section 4 the following new section:

5-B:4-a Authority of the Secretary of State; Investigations; Cease and Desist Orders; Penalties.

I. Notwithstanding any other provision of law, the secretary of state shall have exclusive authority and jurisdiction:

- (a) To bring administrative actions to enforce this chapter.
- (b) To investigate and impose penalties for violations of this chapter, including but not limited to:
 - (1) Fines.
 - (2) Rescission, restitution, or disgorgement.

II. The secretary of state shall have all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed by this chapter.

III. For the purpose of any investigation, hearing, or proceeding under this chapter, the secretary of state or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the secretary of state deems relevant or material to the inquiry.

IV. In the event that a person refuses to obey a subpoena issued to him or her or any order or determination the secretary of state is authorized to make, the superior court, upon application by the attorney general or secretary of state or any officer designated by the secretary of state, may issue to the person an order directing him or her to appear before the attorney general or secretary of state, or

the officer designated by him or her, to produce documentary evidence if so ordered or to give evidence relative to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt of court.

V. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under this chapter.

VI. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter the secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with RSA 421-B:26-a.

VII. The following fines and penalties may be imposed on any person who has violated this chapter.

(a) Any person who, either knowingly or negligently, violates any provision of this chapter or any rule or order thereunder, may, upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500. Each of the acts specified shall constitute a separate violation.

(b) After notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated this chapter, or rule or order under this chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under this chapter.

VIII. Decisions of the secretary of state may be appealed to the supreme court pursuant to RSA 541.

149:4 Standards of Organization and Operation. Amend RSA 5-B:5, I(b) to read as follows:

(b) Be governed by a board the majority of which is composed of elected or appointed public officials, officers, or employees. ***Board members shall not receive compensation but may be reimbursed for mileage and other reasonable expenses.***

149:5 New Subparagraph; Standards of Organization and Operation. Amend RSA 5-B:5, I by inserting after subparagraph (f) the following new subparagraph:

(g) Provide notice to all participants of and conduct 2 public hearings for the purpose of advising of potential rate increases, the reasons for projected rate increases, and to solicit comments from members regarding the return of surplus, at least 10 days prior to rate setting for each calendar year.

149:6 Limitations on Reserves and Administrative Expenses of Pooled Risk Management Programs. The secretary of state, in consultation with the insurance commissioner and by employing the services

of an actuary who has experience with pooled risk management programs and is a qualified member of the American Academy of Actuaries, shall, no later than January 1, 2011, submit a report to the speaker of the house of representatives, the president of the senate, the senate committee and house committee with jurisdiction over matters of commerce, and the governor, containing specific recommendations concerning the limitation of reserves in pooled risk management programs and the limitation on administrative expenses as a percentage of claims of pooled risk management programs. The secretary of state may use funds from the investor education fund established in RSA 421-B:21, II-c to pay for the services of the actuary.

149:7 Periodic Reporting. The secretary of state shall provide a report of ongoing investigations of any pooled risk management programs at least every 6 months to the senate committee and house committee with jurisdiction over matters of commerce.

149:8 Repeal. The following are repealed:

I. 2009, 128:4, relative to the 2011 amendment of the pooled risk management program informational filing fee.

II. 2009, 128:5, I, relative to the effective date of the amendment of pooled risk management program informational filing fee.

III. RSA 5-B:4-a, relative to pooled risk management programs and the secretary of state.

149:9 Effective Date.

I. Paragraph III of section 8 of this act shall take effect July 1, 2013.

II. The remainder of this act shall take effect upon its passage.

Approved: June 14, 2010

Effective Date: I. Paragraph III of section 8 shall take effect July 1, 2013.

II. Remainder shall take effect June 14, 2010