The State of New Hampshire

Mailing Address
State House Room 204
Concord, New Hampshire 03301-4989
Telephone (603) 271-1463
Facsimile (603) 271-7933

Location
State House Annex
25 Capitol St.
Concord, New Hampshire 03301

Department of State

Bureau of Securities Regulation

October 23, 2003

Dr. John Halstead
108 Round Hill Road
Wethersfield, CT 06109

RE: Interpretive/No Action Request
Investment Adviser Licensure Requirements for Investment Newsletters in New Hampshire

Dear Dr. Halstead:

Reference is made to the letter you faxed to this Bureau dated October 10, 2003 wherein you requested an opinion from the Bureau on whether an investment newsletter and/or its publisher are required to be registered or licensed in New Hampshire as an investment adviser. If in general a newsletter and/or its publisher are not required to be registered or licensed, you further requested an opinion as to whether the fact that the newsletter contained specific but impersonal securities recommendations and/or model portfolios would then require licensing or registration.

It is this Bureau's opinion that a "publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular, and paid circulation" is excluded from the definition of investment adviser and thus is not required to be licensed or registered as such. In addition, the mere act of making investment recommendations and/or using model portfolios will not necessarily subject the publishers to the investment adviser licensing provisions of New Hampshire law.

New Hampshire Revised Statutes Annotated (RSA) 421-B:2, IX defines an investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities, or other investments, or as to the advisability of investing in, purchasing or selling securities, or as to the advisability of making other investments, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities, or other investments. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a

business or who hold themselves out as providing the foregoing investment advisory services to others for compensation." However, excluded from this definition is a "publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular, and paid circulation." (RSA 421-B:2, IX(d). Thus, under our statute, if a newsletter is a bona fide publication whose purpose is not to promote specific investments but to offer disinterested commentary and analysis, licensing would not be required. Furthermore, the publication must be one of general and regular circulation and not one sent from time to time based on the timing of market activity to advise people regarding the purchase and sale of investments. (See Lowe v. SEC, 472 U.S. 181 (1985).)

Thus, in general, an investment newsletter will not be required to be licensed or registered under the New Hampshire securities law. The fact that specific recommendations are made will not alter the requirement, so long as such recommendations do not constitute personalized advice to investors. In addition, model portfolios may be used, again so long as the models do not represent any kind of personalized advice. Be advised, however, that if a newsletter is used to promote specific investments for compensation of any kind – direct or indirect – this analysis will not apply and the newsletter may be subject to further regulation, including licensing or registration.

This position is based on facts and representations contained in your letter, and different facts or conditions might require a different conclusion. This position cannot be used as a precedent for other situations with similar facts or conditions. The Bureau cannot and does not provide legal opinions, advice or conclusions to the public. This response merely expresses the Bureau's position on enforcement action and does not express a legal conclusion on the question presented.

Very truly yours,

Kevin B. Moquin
Attorney, Licensing and Examinations