

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

2025 Term

Docket No. 2024-0720

In the Appeal of ADVENT MEDICAL PRODUCTS, INC. and RANDALL
FINCKE

Rule 10 Appeal from an Administrative Agency

**BRIEF OF *AMICUS CURIAE* NORTH AMERICAN SECURITIES
ADMINISTRATORS ASSOCIATION, INC., IN SUPPORT OF
NEW HAMPSHIRE DEPARTMENT OF STATE,
BUREAU OF SECURITIES REGULATION**

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Formed in 1919, the North American Securities Administrators Association, Inc. (“NASAA”) is the non-profit association of state, provincial, and territorial securities regulators in the United States, Canada, and México. NASAA has 68 members, including the securities regulators in all 50 U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. Appellee, the New Hampshire Bureau of Securities Regulation (the “Bureau”), is a NASAA member.

The overriding mission of NASAA and its members is to protect investors, particularly retail investors, from fraud and abuse. NASAA’s members are responsible for administering state securities laws, including by: qualifying and registering broker-dealers, investment advisers, and their agents and representatives; conducting routine and for-cause examinations and audits of registrants; and enforcing the securities laws in criminal, civil, and administrative enforcement actions. NASAA supports its members in carrying out their investor protection and regulatory duties by, *inter alia*, promulgating model rules and statutes, facilitating examination sweeps and multijurisdictional enforcement actions, and commenting on legislative and rulemaking processes. NASAA also offers its legal analyses and policy perspectives to state and federal courts as *amicus curiae* in cases involving the interpretation of state and federal securities laws.

Like many states, New Hampshire has modeled its securities law on the Uniform Securities Act. NASAA’s members, including the Bureau, share a common interest in ensuring that state securities laws based on the Uniform Securities Act are interpreted correctly and consistently, and that investors are thereby protected from fraud and abuse. The need to protect

investors is particularly salient with regard to unregistered securities offerings, including promissory notes, which are consistently reported among the most common issues in NASAA members' investigations and enforcement actions. *See, e.g.*, NASAA 2025 Enforcement Report, 3, 5-6, 14 (Oct. 16, 2025), <https://bit.ly/4ouFVRb> (discussing the most common violations, products, and schemes involved in state investigations and enforcement actions in 2024); NASAA 2024 Enforcement Report, 3-6, 9 (Oct. 22, 2024), <https://bit.ly/4oG9vnK> (same, for 2023). While private securities offerings are not inherently fraudulent, information about private offerings is typically limited, liquidity is often constrained, and the lack of regulatory supervision can increase the risk of fraud. *See* Rachita Gullapalli, *Misconduct and Fraud in Unregistered Offerings: An Empirical Analysis of Select SEC Enforcement Actions*, SEC Division of Economic and Risk Analysis, 3-4, 7-8 (Aug. 2020), <https://bit.ly/3HB1kuz>. These issues not only pose material risks to investors, but they can also impact investor confidence and thereby inhibit the ability of legitimate companies to attract capital. It is therefore critical that state securities regulators like the Bureau retain broad authority to enforce compliance with the antifraud and registration provisions of state securities laws.

In this case, Appellants urge this Court to narrow the Bureau's antifraud authority based on inapposite legal authority, constrict the Bureau's jurisdiction based on an erroneous interpretation of the federal Commerce Clause, and effectively invalidate the plain text of the law on vagueness grounds. If this Court were to accept Appellants' arguments in this case, it would impair the Bureau's ability to protect investors and undermine uniformity among state securities laws. It could also undermine

investor protection in other states, as state courts interpreting their own securities laws regularly look to decisions from other jurisdictions for guidance on the interpretation of similar provisions. *See, e.g.*, Uniform Securities Act (2002), § 102, Official Comment No. 28 (“State courts interpreting the Uniform Securities Act definition of security have often looked to interpretations of the federal definition of security.”).

NASAA seeks to share its perspectives as *amicus curiae* to ensure that this Court has the necessary context to interpret and apply New Hampshire securities law properly, consistent with the purposes of the legislation. NASAA respectfully submits this *amicus* brief in accordance with New Hampshire Supreme Court Rule 30.

STATEMENT OF FACTS

NASAA adopts the Findings of Fact in the Bureau’s October 1, 2024 Findings, Rulings and Order (Appellants’ Appendix (“App.”), 395-426).¹

SUMMARY OF ARGUMENT

The New Hampshire Uniform Securities Act (“NHUSA”) embodies a comprehensive, uniform remedial and regulatory scheme designed to protect investors. The NHUSA pairs preventive measures like registration and disclosure with antifraud protections, both of which are central to the regulatory scheme. The NHUSA confers broad authority on the Bureau to conduct investigations and remedy violations. It also defines its jurisdictional reach broadly to enable the Bureau to protect New Hampshire

¹ For purposes of this brief, NASAA accepts the Bureau’s findings as true and takes no position as to the presentation or sufficiency of the evidence considered by the Bureau.

investors and the public at large from unscrupulous conduct by those within and outside of the state. As other courts have consistently held, these provisions should be construed broadly and flexibly to protect investors.

The Bureau correctly found that Appellants violated the NHUSA by touting Appellant Randall Fincke's ("Fincke") previous experience with two medical device companies but failing to tell investors that Fincke was found liable for securities fraud and for stealing trade secrets in lawsuits by those same companies. When Appellants affirmatively chose to tout Fincke's experience, the NHUSA required them to tell the whole truth. The U.S. Supreme Court's decision in *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257 (2024) cannot be applied to this case because, unlike in the present case, the *Macquarie* plaintiffs did not allege that the defendants made any statements that were rendered misleading by an alleged omission. Further, courts have continued to find half-truths like those at issue in this case to be fraudulent after *Macquarie*. Appellants' reliance on *In re Access Cardiosystems, Inc.*, 404 B.R. 593 (Bankr. D. Mass. 2009) is equally misplaced because that case does not appear to be one where misleading half-truths were alleged. Accordingly, the Court should not permit Appellants to generalize that decision beyond its facts, and should give it little weight in this case.

The Bureau appropriately exercised its broad jurisdiction under the NHUSA to protect investors. The territoriality provisions in the NHUSA make clear that the law applies so long as any step toward the completion of a sale occurs in New Hampshire. The Bureau's legitimate exercise of its jurisdiction does not violate the Commerce Clause. In fact, the U.S. Supreme Court in *Nat'l Pork Producers Council v. Ross*, 598 U.S. 371

(2023), squarely rejected the rule on which Appellants rely. The court also clarified that the Commerce Clause does not prohibit the extraterritorial application of state laws with a connection to the state. The Court should reject Appellants' invocation of the Commerce Clause in this case.

Finally, the NHUSA is not vague. Neither the antifraud provisions, the Bureau's methodology of counting Appellants' violations, nor the Bureau's exercise of discretion in imposing penalties and other remedies against Appellants can plausibly be considered "vague."

The Court should affirm the Bureau's ruling that Appellants violated the NHUSA and the remedies imposed for those violations.

ARGUMENT

I. The New Hampshire Uniform Securities Act embodies a comprehensive, uniform regulatory framework to protect investors.

Maintaining investor trust in the capital markets is essential to the ability of small and emerging businesses to raise capital, grow, and thrive. States and the federal government ensure trustworthy markets through comprehensive regulatory and remedial schemes like the New Hampshire Uniform Securities Act (the "NHUSA")² which protect investors from fraud and ensure transparency.

² Like most modern state securities laws, the NHUSA is modeled on the Uniform Securities Act, which was enacted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") in 1956, and later restructured and modernized in 2002. See RSA 421-B:1; RSA 421-B:1-101; Unif. Sec. Act (2002), Preface at 1. The Uniform Securities Act of 1956, as amended, is available at <https://bit.ly/3P4WSme>. The Uniform Securities Act of 2002, as amended, is available at <https://bit.ly/49ElhGy>.

These multifaceted regulatory frameworks pair preventive measures like registration and disclosure with broad antifraud protections.³ Registration requires issuers to disclose essential information about their businesses, finances, and the terms and risks of their offerings. *See* Unif. Sec. Act (1956), § 304; Unif. Sec. Act (2002), §§ 304, 305; RSA 421-B:3-304. While certain securities and securities transactions are exempted from registration requirements, *see* Unif. Sec. Act (1956), § 402; Unif. Sec. Act (2002), §§ 201, 202; RSA 421-B:17; RSA 421-B:2-201, 2-202, no security or securities transaction is exempt from the antifraud provisions of the securities laws. Thus, every person is prohibited from engaging in fraudulent or deceptive conduct in connection with securities transactions, which may involve either affirmative misrepresentations or omissions of material facts. *See* Unif. Sec. Act (1956), § 101; Unif. Sec. Act (2002), § 501; RSA 421-B:3; RSA 421-B:5-501.

Both *ex ante* registration and disclosure requirements and *ex post* antifraud enforcement measures are central to the comprehensive and uniform regulatory scheme codified in the NHUSA. Strong antifraud protections are crucial safeguards against deceptive practices that can harm investors and distort markets. The registration process fosters transparency by ensuring that all investors have access to critical information, regardless of their sophistication or connections. This, in turn, attracts capital by giving investors the confidence that markets are fair and well-regulated.

³ Equally important, but not at issue in this case, is the registration of the firms and individuals who are in the business of transacting in securities and providing investment advice. *See generally* RSA 421-B:4-401 to 4-412.

The NHUSA also confers broad enforcement powers on the Secretary of State, exercised through the Bureau. Those enforcement powers include the authority to conduct investigations inside or outside the state to determine if a violation has occurred, and to remedy violations by imposing cease and desist orders, fines, and other sanctions. *See* RSA 421-B:22, 23, 26; RSA 421-B:6-602, 6-603, 6-604. In administrative proceedings under the prior NHUSA, *see* RSA 421-B:7-701(a) (“The predecessor act exclusively governs all actions or proceedings that . . . may be instituted on the basis of conduct occurring before the effective date of this chapter.”), the Bureau may impose cease and desist orders and civil penalties against a person who “controls a person liable” under the NHUSA or who “materially aids” a violation of the statute. RSA 421-B:26, III-a. Likewise under the current NHUSA, the Bureau may impose cease and desist orders and civil penalties against a person who “materially aid[s]” a violation of the statute. RSA 421-B:6-604(a), (c), (d).⁴ The Bureau’s enforcement powers under the NHUSA are functionally equivalent to the corresponding provisions in the Uniform Securities Act. *See* Unif. Sec. Act (1956), §§ 407, 408; Unif. Sec. Act (2002), §§ 602-604.

Consistent with the remedial goals of state securities laws generally, the NHUSA defines its jurisdictional reach broadly. *See* RSA 421-B:30; RSA 421-B:6-610. These provisions were written to ensure that each state would have broad, concurrent jurisdiction over violations involving

⁴ The words “for a single violation” in RSA 421-B:6-604(d) serve to allow the Bureau to impose a penalty for each violation and to prevent multiple penalties for the same violation occurrence, not to limit who can be subject to a penalty. *Compare* RSA 421-B:6-604(d) (regarding civil penalties) *with* RSA 421-B:6-604(e) (regarding orders of rescission, restitution, or disgorgement).

interstate transactions because each state has an interest in both protecting investors within its borders and protecting the public as a whole from unscrupulous conduct by those within the state. *See Benjamin v. Cablevision Programming Invs.*, 499 N.E.2d 1309, 1315 (Ill. 1986). Thus, under RSA 421-B:30, the Bureau has jurisdiction to enforce the antifraud and registration provisions of the NHUSA against both in-state and out-of-state actors so long as the underlying transactions have a nexus to New Hampshire. Indeed, “[t]he law is now settled that a person may violate the law of a particular state without ever being within the state or performing each act necessary to violate the law within that state.” Unif. Sec. Act (2002), § 610, Official Comment No. 1.

In light of the purpose of the NHUSA to protect the public from fraud, its provisions should be construed flexibly, rather than technically, to afford investors broad protection. *See, e.g., Affiliated Ute Citizens of Utah v. U.S.*, 406 U.S. 128, 151 (1972); *Fed. Home Loan Bank of Seattle v. Credit Suisse Sec. (USA) LLC*, 449 P.3d 1019, 1021 (Wash. 2019) (“[B]ecause the purpose of the Securities Act is to protect the public, it is appropriate to construe the statute broadly in order to maximize the protection offered.”); *Van Dyke v. White*, 131 N.E.3d 511, 523 (Ill. 2019) (Illinois statute “should be given a liberal construction”). While the NHUSA as a whole should be construed broadly, exemptions should be construed narrowly so as not to undermine the core purpose of the statute.⁵

⁵ This Court should reject Appellants’ overbroad interpretation of the existing security holders exemption in RSA 421-B:17, II(p). *See* Advent Br., 48. Their interpretation of the exemption bears no rational connection to the text or purpose of the statute, *see* RSA 421-B:11, I (requiring registration of *securities*, not transactions), or to the facts of this case, *see* Advent Br., 48 (admitting that Appellants sold three securities to each investor in one transaction).

See, e.g., SEC v. Cavanagh, 445 F.3d 105, 115 (2d Cir. 2006) (“Registration exemptions are construed strictly to promote full disclosure of information for the protection of the investing public.”); *SEC v. Murphy*, 626 F.2d 688, 701 (9th Cir. 1980) (explaining that “exemptions from registration provisions are construed narrowly in order to further the purpose of the Act: ‘To provide full and fair disclosure of the character of the securities, . . . and to prevent frauds in the sale thereof . . .’” (ellipses original, internal citations omitted)); RSA 421-B:6-608(b) (“This chapter shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it and to coordinate the interpretation of this chapter with the related federal regulation.”); RSA 421-B:32 (same). Since the NHUSA is modeled on the Uniform Securities Act, the Court should construe the NHUSA to achieve consistency with similar laws in other states, and it should accord meaningful weight to the intent of the drafters as expressed in the official and draftsmen’s commentaries. *See Hodges v. Johnson*, 170 N.H. 470, 480 (2017) (explaining that “the intention of the drafters of a uniform act becomes the legislative intent upon enactment” and relying on official commentary to a different uniform act).

II. Appellants violated the NHUSA by failing to disclose material information that was necessary to make their affirmative statements not misleading.

The Bureau correctly found that Appellants violated the NHUSA by touting Fincke’s previous experience with two medical device companies but failing to tell investors that Fincke was found liable for securities fraud and for stealing trade secrets in lawsuits by those same companies. *See App.*, 419-20, 422. Under RSA 421-B:3, I(b) and RSA 421-B:5-501(a)(2),

it is “unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly . . . to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances in which they are made, not misleading.”⁶ These provisions are modeled on, and substantively identical to, related provisions in the federal securities laws. *See* Unif. Sec. Act (2002), § 501, Official Comment No. 1 (“Section 501, which was Section 101 in the 1956 Act, was modeled on Rule 10b-5 adopted under the Securities Exchange Act of 1934 [(“Exchange Act”)] and on Section 17(a) of the Securities Act of 1933.”).

Relying principally on two federal decisions – *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257 (2024) and *In re Access Cardiosystems, Inc.*, 404 B.R. 593 (Bankr. D. Mass. 2009) – Appellants contend that they were not obligated to disclose the lawsuits against Fincke. That is not correct. This Court should reject Appellants’ argument and affirm the Bureau’s ruling because Appellants misinterpret the NHUSA, rely on inapposite cases, and misapply the applicable legal standards.

⁶ This Court should reject Appellants’ argument that they cannot be liable for material omissions with respect to Investor #6. *See* Advent Br., 34 n.8. It is irrelevant whether the Appellants communicated directly with her. *See, e.g., SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1362 (9th Cir. 1993) (“We have said that the ‘in connection with’ requirement is met if the fraud alleged somehow touches upon or has some nexus with any securities transaction.” (internal quotations omitted)).

A. When Appellants affirmatively chose to tout Fincke's experience, the NHUSA required them to tell the whole truth.

Under the plain text of RSA 421-B:3, I(b) and RSA 421-B:5-501(a)(2), a person has a duty to disclose complete information when he or she chooses to make an affirmative statement that is technically true but materially misleading without the information withheld. In fact, state securities laws generally recognize that half-truths are fraudulent. *See* Louis Loss & Edward M. Cowett, *Blue Sky Law*, 251 (Draftsmen's Commentary to Uniform Securities Act §101) (Little, Brown & Co. 1958) (stating that omission liability arises "when there is an express or implied statement which has the effect of a half-truth unless something is added"). Thus, when Appellants chose to tout Fincke's experience while omitting material facts that would bring the value of that experience into question, they violated the NHUSA by choosing not to tell the whole truth.

B. *Macquarie* does not apply to these facts.

Macquarie cannot be applied to this case because the circumstances in that case were completely different from those at issue here. The relevant question in *Macquarie* was whether the failure to make a disclosure required by Securities and Exchange Commission ("SEC") rules alone creates omission liability under Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b),⁷ "even if the failure [to disclose] does not render any 'statements made' misleading." *Macquarie*, 601 U.S. at 260.⁸ The

⁷ As noted above, RSA 421-B:3, I(b) and RSA 421-B:5-501(a)(2) are both modeled on Exchange Act Rule 10b-5(b) and section 17(a)(2) of the Securities Act of 1933.

⁸ This is what the *Macquarie* court meant when it spoke about "pure omissions," *i.e.*, omissions without any statements made misleading by the omission. *See id.* at 263-65.

company in *Macquarie* was wholly silent on the subject it omitted from its offering documents. *See id.* at 261 (noting that the company “did not discuss [the relevant topic] in its public offering documents”). That is not what happened here; the Bureau did not allege that Appellants failed to make a disclosure mandated by regulation. Instead, the Bureau found that Appellants violated the NHUSA by voluntarily disclosing misleading half-truths about Advent’s founder and CEO.

Although it is not clear, Appellants seem to contend that they did not violate the NHUSA because their omissions did not violate an affirmative disclosure rule. *See* Brief of Appellants (“Advent Br.”), 37 (June 23, 2025).⁹ That is irrelevant. The existence of a specific disclosure rule is not necessary to invoke RSA 421-B:3, I(b) and RSA 421-B:5-501(a)(2). Appellants cite no authority to argue otherwise, and NASAA is aware of none. Nor would that make sense; these provisions are meant to apply generally to any “statements made” – whether required by rule or not – where the omitted information makes the statements misleading “in the light of the circumstances in which they are made.” Indeed, RSA 421-B:3, I(b) and RSA 421-B:5-501(a)(2) require the Bureau to plead that a misleading statement was made. Again, that was not the circumstance at issue in *Macquarie*, and therefore *Macquarie* does not apply to any case where the alleged misconduct involves liability arising from misleading statements.

⁹ Appellants also fault the Bureau for not citing “any New Hampshire common law” requiring the disclosure at issue. *Id.* This was unnecessary, as the state and federal antifraud provisions were crafted intentionally to reach beyond common-law fraud claims. *See* RSA 421-B:2, VI (“‘Fraud,’ ‘deceit,’ and ‘defraud’ are not limited to common law deceit.”); RSA 421-B:1-102(17) (same).

No matter how Appellants might try to mischaracterize the record to apply *Macquarie*, this is not a “pure omissions” case. The Bureau found that Appellants made misleading statements when they “provide[d] [Fincke’s] biography and history with Zoll Medical Corporation, Cadent, and Access,” and that those statements were misleading in the absence of the fact that two of those companies successfully sued Fincke for securities fraud and theft of trade secrets. App. 420. Put plainly, Appellants tried to turn Fincke’s troubled resume into a selling point by hiding the black marks.

Appellants also seem to contend that because they did not speak about the lawsuits specifically, they cannot be liable under the NHUSA for withholding information about those lawsuits. *See* Advent Br., 37, 39. That argument cannot be correct because it would turn violative conduct itself – material omissions – into an escape hatch from liability. Appellants’ argument turns the law on its head. Further, it is foreclosed by *Macquarie* itself. As the U.S. Supreme Court explained, silence can be actionable if “the circumstances . . . give any particular meaning to that silence.” *Macquarie*, 601 U.S. at 263. This is not a case in which Appellants’ selective silence on the topic of litigation “has no special significance because no information was disclosed.” *Id.* Rather, Appellants’ decision to tout Fincke’s experience as a selling point without disclosing the associated legal issues painted a rosier picture about the background of Advent’s founder and CEO than was warranted.

C. Information about Fincke’s legal troubles was material.

A false or misleading statement must be “material” to create liability. *See, e.g., Basic Inc. v. Levinson*, 485 U.S. 224, 238 (1988); RSA 421-B:3, I(b). A fact is material if there is “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.” *Basic*, 485 U.S. at 231-32 (internal quotations omitted). This Court followed the same standard in *State v. Bates*, Case No. 2019-0396, 2020 WL 6779377, at *4 (N.H. 2020), which the Bureau cites in the Final Order. *See App.* 422. Materiality is an objective standard. *SEC v. Morgan Keegan & Co., Inc.*, 678 F.3d 1233, 1251 n.24 (11th Cir. 2012). Accordingly, it is irrelevant whether any of the individual investors read or relied on the alleged misleading statement, or found it material.

Appellants made the following statement to investors about Fincke’s experience in the medical device industry:

Randall has over 25 years of marketing and technology management experience in the medical device industry, including several patents in instrumentation and Biphasic defibrillation waveforms. Mr. Fincke formed Advent Medical Products to develop and market an innovative line of medical devices and defibrillators for use in the medical markets. Mr. Fincke formed Access CardioSystems in 2000 to develop and market a new AED product in the defibrillation pre-hospital market. Prior to Access, he was founder and CEO of Cadent Medical Corporation, and was responsible for developing the Personal Wearable Defibrillator for continuous monitoring and automatic defibrillation of high risk ambulatory patients. Previously he was the VP of Research and Development at Zoll Medical, where he managed the startup and development of a full line of defibrillators. Prior to Zoll, he was the R&D Manager for Warren E. Collins, Inc., developing products for

stress testing and respiratory gas monitoring. Mr. Fincke received a BS in Mechanical Engineering from the University of New Hampshire, and an MS in Engineering Design from Tufts University.

App., 452. It is not difficult to understand why information about Fincke's legal troubles, stemming from his employment and entrepreneurial history with other companies in the same business as Advent, would be important to a reasonable investor in deciding whether to invest in Advent. If Appellants had disclosed that Fincke had been found liable for securities fraud and stealing trade secrets, his resume would have more accurately informed investors about the risk associated with investing in his company. The information Appellants chose to hide would have caused reasonable investors to think twice about the offer.

D. Courts have continued to find half-truths like those at issue in this case to be fraudulent after *Macquarie*.

After *Macquarie*, courts have continued to find that omissions of prior legal, regulatory, and similar troubles are actionable when statements are made touting a person's experience or expertise. In one recent case, a court held that a defendant who told investors about his past success and experience in the stock market had a duty under Rule 10b-5(b) to disclose his disciplinary history, including that he had been convicted of securities fraud under state law, was subject to a permanent injunction arising from an SEC lawsuit involving the same conduct, and was barred by both state and federal authorities from participating in the securities or investment advisory business. *SEC v. Melton*, No. 1:23-CV-434, 2025 WL 1135180, at **1-2, 8 (M.D.N.C., Apr. 17, 2025) (slip copy). Recognizing settled case law, the court reasoned that information about the defendant's disciplinary

history was “necessary to properly contextualize his affirmative representation.” *Id.* at *7 (citing *SEC v. Merchant Capital, LLC*, 483 F.3d 747, 770-71 (11th Cir. 2007)). Further, while acknowledging that “[p]ure omissions are not actionable under Rule 10b-5(b),” *id.* at *4 (quoting *Macquarie*, 601 U.S. at 266), the court concluded that the omitted facts were “were material omissions . . . because of [defendant’s] affirmative representation” and granted summary judgment to the SEC on its Rule 10b-5(b) claim, *id.* at **8, 13.

In another post-*Macquarie* case, a different court found that the SEC had sufficiently pleaded securities fraud when it alleged that the defendant “‘touted [the company’s] track record as a leader in [its] industry but failed to disclose [the company’s] regulatory history and [its principal’s] criminal background.’” *SEC v. Westhead*, 733 F. Supp. 3d 1284, 1296 (S.D. Fla. 2024). That court correctly found that one of the individual defendants’ affirmative statements about the offering’s compliance with the securities laws, the completeness of the information in the offering materials, and the company’s “track record as a leader” in the relevant industry “firmly remove [her] from the safe harbor for ‘pure omissions.’” *Id.* at 1299 (citing *Macquarie*, 601 U.S. at 258-60). These conclusions are not novel. Other courts have reached similar conclusions with respect to undisclosed bankruptcies and cease and desist orders. *See, e.g., Merchant Capital*, 483 F.3d at 770-72; *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1323-24 (11th Cir. 1982).

Finally, Appellants’ reliance on *Access Cardiosystems* is unavailing because it does not appear that the plaintiffs in that case alleged that Fincke made misleading half-truths about his experience with Zoll. While the

Access Cardiosystems plaintiffs argued simply that information about the outcome of litigation against Fincke “would have been material to their decisions to invest in Access,” *Access Cardiosystems*, 404 B.R. at 666, the court’s opinion does not suggest that the plaintiffs alleged that Fincke made misleading statements about his experience with Zoll. *See id.* at 666-67. Accordingly, the court’s focus on the plaintiffs’ failure to “point[] to” a legal basis for a duty to disclose in that case, *see id.* at 666, does not mean generally that “[d]isclosure of the outcome of the lawsuits to prospective investors is not required by the terms of [the NHUSA]” *Advent Br.*, 35, as Appellants contend. The consistency in the law of misleading half-truths before and after *Macquarie* convincingly shows otherwise. Regardless of what the plaintiffs did or failed to do in *Access Cardiosystems*, in this case the Bureau both alleged and established that Appellants made misleading statements about Fincke’s background and withheld information that was “necessary to properly contextualize” those statements. *See Melton*, 2025 WL 1135180, at *7. Therefore, this Court should not permit Appellants to generalize the decision in *Access Cardiosystems* and should give it little weight in this case.

III. The broad territorial scope of the NHUSA is constitutionally sound.

A. The NHUSA applies if any element of the offer or sale occurs in New Hampshire.

Both the current and the prior NHUSA track the territoriality provisions of the Uniform Securities Act. *See* RSA 421-B:30; Unif. Sec. Act (1956), § 414; RSA 421-B:6-610; Unif. Sec. Act (2002), § 610. These provisions were written to further two legitimate state policies: (1)

protecting the state's citizens in the purchase or sale of securities, regardless of where the securities came from; and (2) protecting legitimate issuers in the state by regulating activities deemed to have taken place at least partially within the state's borders. *See Lintz v. Carey Manor Ltd.*, 613 F. Supp. 543, 549 (W.D. Va. 1985); *Benjamin*, 499 N.E.2d at 1315. Thus, when elements of a transaction occur in multiple states, each state's law will apply and allow that state to protect its legitimate interests by regulating the activity.

State securities laws like the NHUSA apply so long as any element of a transaction occurs in the state. Through 2015, the NHUSA applied whenever an offer to sell was made in New Hampshire, meaning that the offer originated from New Hampshire or was directed to and received in New Hampshire. RSA 421-B:30.¹⁰ The current NHUSA applies not only when an offer to sell is made in New Hampshire, but also whenever the sale itself is made in New Hampshire. RSA 421-B:6-610. Both the current and previous NHUSA defined "sale" and "offer to sell" to include "every . . . disposition of a security or interest in a security for value" and "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value," respectively. RSA 421-B:1-102(49); RSA 421-B:2, XIX. These definitions are intended "to exclude nothing that could possibly be regarded as a sale" and encompasses "every step toward the completion of a sale[.]" *Benjamin*, 499 N.E.2d at 1315. Thus, "sale"

¹⁰ Since the sale to Investor #4 occurred in 2012, her investment was subject to the prior NHUSA. *See* RSA 421-B:7-701(a) ("The predecessor act exclusively governs all actions or proceedings that . . . may be instituted on the basis of conduct occurring before the effective date of this chapter [January 1, 2016.]). That fact, however, is of no significance because in either version of the NHUSA jurisdiction would attach under these circumstances.

should be interpreted to include steps such as paying consideration and delivering the security. *See* Joseph C. Long, et al., 12A Blue Sky Law § 10:7 (June 2025). “If any of these steps occurs in [a state], [that state] has jurisdiction under [its version of the Uniform Securities Act].” *State v. Lundberg*, 445 P.3d 1113, 1119 (Kan. 2019).

B. The Bureau’s exercise of its broad jurisdiction in this case is consistent with the Commerce Clause.

Appellants erroneously assert that applying the NHUSA to the investments by Investors #4 and #13 would violate the Commerce Clause of the U.S. Constitution, U.S. Const. art. I, § 8, cl. 3. Relying principally on *In Re Nat’l Century Financial Enterprise, Inc.*, 755 F. Supp. 2d 857 (S.D. Ohio 2010), and *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), Appellants contend that it is unconstitutional to apply the NHUSA to these investments because doing so would regulate conduct that occurred outside of New Hampshire, despite both transactions’ connections to the state. *See* Advent Br., 29-30.

This Court should reject Appellants’ argument because the U.S. Supreme Court firmly rejected the same interpretation two years ago in *Nat’l Pork Producers Council v. Ross*, 598 U.S. 371 (2023). Similar to Appellants in this case, the petitioners in *Ross* argued that U.S. Supreme Court precedent established an “‘almost *per se*’ rule forbidding enforcement of state laws that have the ‘practical effect of controlling commerce outside the State,’ even when those laws do not purposely discriminate against out-of-state economic interests.” 598 U.S. 356, 371 (2023) (quoting petitioners’ brief). In rejecting that theory, the *Ross* court observed that “many (maybe most) state laws have the ‘practical effect of controlling’

extraterritorial behavior,” citing state securities laws among a long list of examples and noting that applying the extraterritoriality principle as requested “would cast a shadow over laws long understood to represent valid exercises of the States’ constitutionally reserved powers.” *Id.* at 374-75. Therefore, this Court should reject Appellants’ Commerce Clause challenge because the rule that they cite is no longer viable. *See Mosaic Financial Ltd. v. Mutual Shareholder Servs., LLC*, 767 F. Supp. 3d 619, 660 (N.D. Ohio 2025) (questioning whether *Nat’l Century* “continues to have persuasive value after *Ross*”).

The *Ross* court further explained that *Edgar* “does not support the rule petitioners propose” and distinguished that case by observing that “[t]hat decision spoke to a law that *directly* regulated out-of-state transactions by those with *no* connection to the State.” *Id.* at 376 n.1 (emphasis original). That was also the case in *Nat’l Century*. The same distinction recognized in *Ross* applies here. The Bureau found that the offer to Investor #4 originated from New Hampshire. App. 417-18, 425. Investor #13 is a New Hampshire resident and the economic reality of his investment is tied to New Hampshire, notwithstanding the transitory relationship to Massachusetts. App. 403-04, 408. Thus, the investments by Investors #4 and #13 each have a connection to New Hampshire.¹¹

¹¹ Appellants do not, and cannot, contend that the NHUSA discriminates against out-of-state commerce by favoring in-state businesses or burdening out-of-state businesses. *See Ross*, 598 U.S. at 369 (stating that “this antidiscrimination principle lies at the “very core” of our dormant Commerce Clause jurisprudence”). Nor have they alleged that applying NHUSA to the investments by Investors #4 and #13 would impose a “substantial burden” on interstate commerce. *Id.* at 383.

The *Ross* court's holding rejecting the application of the dormant Commerce Clause should apply here as well. The Bureau's jurisdiction under the NHUSA is wholly consistent with the Commerce Clause. Appellants have failed to show otherwise.

IV. The NHUSA is not vague.

Appellants argue that the general antifraud provisions in RSA 421-B:5-501(a) are "void for vagueness" because a person of ordinary intelligence would not understand (i) that RSA 421-B:5-501(a)(2) would require a company to disclose the outcome of prior litigation involving its Chief Executive Officer, (ii) "that the Bureau could and would triple count each violation because three securities were sold as part of the transaction," or (iii) that their "technical" registration violations could result in "the magnitude of civil penalties" and other remedies imposed by the Bureau. *See Advent Br.*, 50-52. These arguments have no merit.

The federal antifraud provisions, which are substantively identical to those in the NHUSA, have already withstood vagueness challenges. As the Second Circuit explained as far back as 1975:

While it is true that the language of (the section) uses general terms, its provisions, while perhaps falling short of the standards of immutability followed by the laws of the Medes and the Persians, are definite enough according to the canons of Anglo-American law.

Subjecting the words . . . to critical scrutiny, we find no fatal ambiguity or indefiniteness, such as might prove a pitfall to any person, in the language of the appellants, "attempting to obey the law." *No honest and reasonable citizen could have difficulty in understanding the meaning of "untrue," "material fact," "any omission to state a material fact," "in light of the circumstances under which they were made," or*

“misleading.” All these terms, it is true, call for interpretation in accordance to the facts of a given case. So do the terms “malice,” “probable cause,” “self-defense,” “negligence,” “fraud,” “duress,” “justification,” and thousands of other expressions well established in the law.

United States v. Persky, 520 F.2d 283, 287 (2d Cir. 1975) (emphasis added, punctuation original) (quoting *Coplin v. United States*, 88 F.2d 652, 657 (9th Cir. 1937)); see also *Speed v. Transamerica Corp.*, 99 F. Supp. 808, 831-32 (D. Del. 1951).

The fact that the Bureau can and will count each security sold as a violation is clear on the face of the statute. RSA 421-B:5-501(a) enumerates violative conduct “in connection with the offer, sale, or purchase of *a security*” and specifies that the violation can be either “direct[] or indirect[].” (Emphasis added.) RSA 421-B:3-301 and RSA 421-B:11 were likewise clear on their face that the violative conduct is the offer or sale of “*a[ny] security*” that is unregistered and not exempt, not the effectuation of a securities *transaction*. The Court should dismiss this argument as well.

Finally, the potential magnitude of civil penalties that may be issued is not vague; it is specified in the statute. See RSA 421-B:6-604(d) (authorizing fines “up to a maximum of \$2,500 for a single violation”). Appellants state that “no reasonable person would understand that eight failures to register with the Bureau years ago, when registration would not be required under current law, could result in the magnitude of civil penalties” issued. *Advent Br.*, 51. Even if Appellants were correct in their counting of the relevant violations, that does not relieve them of their obligation to follow the law as it exists.

In sum, the Court should reject Appellants' arguments to the effect that the NHUSA is void for vagueness in any respect.

CONCLUSION

For the reasons stated above, The Court should affirm the Bureau's ruling that Appellants violated the NHUSA and the remedies imposed for those violations.

Dated: October 31, 2025

Respectfully submitted,

NORTH AMERICAN SECURITIES
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** Pending admission pro hac vice*

STATEMENT OF COMPLIANCE

I hereby certify that pursuant to New Hampshire Supreme Court Rule 16(11), this brief contains approximately 6,146 words, which is fewer than the 9,500 words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

/s/ Jeffrey C. Christensen

Jeffrey Christensen

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document is being served electronically upon counsel for the City of Claremont, New Hampshire through the Court's electronic filing system, in compliance with Supreme Court Rule 16(3).

/s/ Jeffrey C. Christensen

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