

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 3 BROKER-DEALER AND AGENTS RECORDS

12.11.3.1 ISSUING AGENCY: Regulation and Licensing Department - New Mexico Securities Division.
[12.11.3.1 NMAC - Rp, 12 NMAC 11.2.1.1, 1-1-2010]

12.11.3.2 SCOPE: All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer or an issuer of securities, and their agents.
[12.11.3.2 NMAC - Rp, 12 NMAC 11.2.1.2, 1-1-2010]

12.11.3.3 STATUTORY AUTHORITY: Section 58-13C-605A NMSA 1978 authorizes the director to make, amend and rescind rules as are necessary to carry out the provisions of the New Mexico Uniform Securities Act Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the “New Mexico Uniform Securities Act”.
[12.11.3.3 NMAC - Rp, 12 NMAC 11.2.1.3, 1-1-2010]

12.11.3.4 DURATION: Permanent.
[12.11.3.4 NMAC - Rp, 12 NMAC 11.2.1.4 NMAC, 1-1-2010]

12.11.3.5 EFFECTIVE DATE: January 1, 2010, unless a later date is cited at the end of a section.
[12.11.3.5 NMAC - Rp, 12 NMAC 11.2.1.5, 1-1-2010]

12.11.3.6 OBJECTIVE: To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.
[12.11.3.6 NMAC - Rp, 12 NMAC 11.2.1.6, 1-1-2010]

12.11.3.7 DEFINITIONS: [RESERVED]

12.11.3.8 BROKER-DEALERS REQUIRED BY FEDERAL LAW TO KEEP RECORDS: Every registered broker-dealer subject to the Securities Exchange Act of 1934 (“the 1934 Act”) and which is a member of a self-regulatory organization shall prepare and keep current the records required by the 1934 Act and the appropriate self-regulatory organization.
[12.11.3.8 NMAC - Rp, 12 NMAC 11.2.6.1, 1-1-2010]

12.11.3.9 BROKER-DEALERS RECORDS: Every registered broker-dealer not subject to 12.11.3.8 NMAC shall prepare and keep current the following books and records relating to its business:

A. blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits; such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

B. ledgers or other records reflecting all assets and liabilities, income, expense and capital accounts;

C. ledgers or other records reflecting securities in transfer, dividends and interest received, securities borrowed and securities loaned, moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in the collateral), and securities failed to receive and failed to deliver;

D. a securities record or ledger reflecting separately for each security as of the clearance dates, all “long” or “short” positions (including securities in safekeeping) carried by the broker-dealer for its account or for the account of its customers or partners, and showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried;

E. a memorandum of each order (order ticket), and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted; the memorandum shall show the terms and conditions of the order or instruction; any modification or cancellation thereof; the account for which entered; whether the transaction was unsolicited; the time of entry; the price at which executed; and, to the extent feasible, the time of execution or cancellation; orders entered pursuant to the exercise of discretionary power by the broker-

dealer, or any employee thereof, shall be so designated; the term “time of entry” shall mean the time when the broker-dealer transmits the order or instructions for execution or, if it is not so transmitted, the time when it is received;

F. a memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution;

G. copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of the security involved, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of the broker-dealer;

H. copies of all communications, correspondence and other records relating to securities transactions with customers;

I. a separate file containing all complaints made or submitted by customers to the broker-dealer or its agents relating to securities transactions; in this subsection, “complaint” means any written or oral statement of a customer alleging a grievance involving the activities of persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of any securities or funds of that customer that would constitute a violation of the New Mexico Uniform Securities Act or any rule or order thereunder;

J. a customer information form (new account information worksheet) for each customer; if recommendations are to be made to the customer, the form shall include information regarding the customer's name, address, telephone number, age, occupation, annual income, net worth and investment objectives or, if the customer refuses to provide the required information upon request, a notation to that effect;

K. for each cash and margin account established and maintained with the broker-dealer, information setting forth the name and address of the beneficial owner of each account, and copies of all guarantees of accounts and all margin, lending and option agreements; in the case of joint, partnership, corporate and limited liability accounts, the records required by this subsection must be executed by persons authorized to transact business for the account;

L. copies of all powers of attorney and other evidence of the granting of any discretionary authority with respect to a customer's account;

M. a record of the proof of money balances of all ledger accounts in the form of trial balances;

N. all partnership agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books and stock certificate books or, in the case of a limited liability company, all articles of organization and operating agreements of the broker-dealer;

O. a separate file containing copies of all advertising by the broker-dealer in the conduct of its securities business; and

P. a computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its net capital on form X-17A-5 of the SEC’s FOCUS report as it may be amended from time to time.

[12.11.3.9 NMAC - Rp, 12 NMAC 11.2.6.2, 1-1-2010]

12.11.3.10 BROKER-DEALERS PRESERVATION OF RECORDS: Every registered broker-dealer not subject to 12.11.3.8 NMAC shall preserve for at least five years, the most recent two years in an easily accessible place, all records required under 12.11.3.9 NMAC except that records required under Subsections J and L of 12.11.3.9 NMAC shall be preserved by the broker-dealer for at least five years after the closing of the account; and records required under Subsection N of 12.11.3.9 NMAC shall be preserved by the broker-dealer for at least five years after withdrawal or expiration of its registration in this state. After a record or other document has been preserved for one year as required under this section, a microfilm copy thereof may be substituted for the remainder of the required period.

[12.11.3.10 NMAC - Rp, 12 NMAC 11.2.6.3, 1-1-2010]

12.11.3.11 BROKER-DEALER BRANCH OFFICE RECORDS: Except as provided in Subsection E below, every branch office of a registered broker-dealer not subject to 12.11.3.8 NMAC shall prepare and keep current the following records:

A. copies of the records described in Subsections E, G, H, I, J and O of 12.11.3.9 NMAC;

B. blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities; this requirement may be satisfied by maintaining a unit filing system where the order ticket information (described in Subsection E of 12.11.3.9 NMAC) required in Subsection A of 12.11.3.11 NMAC is accumulated and segregated on a daily basis;

C. blotters (or other records of original entry) setting forth an itemized daily record of all receipts and deliveries of securities (including certificate numbers) and all receipts and disbursements of cash;

D. copies of customer monthly or other periodic statements that are issued by the broker-dealer or that are furnished to the broker-dealer by the issuer of a security purchased by a customer of the broker-dealer; and

E. branch offices of broker-dealers engaged solely in the offer and sale of either securities issued by open-end investment companies, face-amount certificate companies or unit investment trusts registered under the Investment Company Act of 1940, or the securities of direct participation program issuers, or both, shall prepare and keep current copies of those records described in Subsections C, E, H, I and J of 12.11.3.9 NMAC.

[12.11.3.11 NMAC - Rp, 12 NMAC 11.2.6.4, 1-1-2010]

12.11.3.12 BROKER-DEALER PRESERVATION OF BRANCH OFFICE RECORDS: The records required in 12.11.3.11 NMAC shall be preserved at the branch office for a period of not less than five years, the most recent two years in an easily accessible place, except that customer new account forms shall be preserved for a period of not less than three years after the closing of the account. After a record or document has been preserved for one year as required under this subsection, a microfilm copy thereof may be substituted for the remainder of the required period.

[12.11.3.12 NMAC - Rp, 12 NMAC 11.2.6.5, 1-1-2010]

12.11.3.13 RECORDS OF CLEARING BROKER-DEALER: This part does not require a registered broker-dealer to make and keep such records of transactions cleared for the registrant by another registered broker-dealer as are customarily made and kept by the clearing broker-dealer.

[12.11.3.13 NMAC - Rp, 12 NMAC 11.2.6.6, 1-1-2010]

12.11.3.14 DIRECTOR MAY ORDER EXEMPTION: The director may by order exempt any broker-dealer from all or part of the requirements of this part, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the director finds the issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

[12.11.3.14 NMAC - Rp, 12 NMAC 11.2.6.7, 1-1-2010]

12.11.3.15 AGENT RECORDS: Every registered agent shall have and keep current the following records relating to customer securities transactions, unless the director by order exempts an agent from all or part of the requirements of this part:

A. the customer information form as set forth in Subsection J of 12.11.3.9 NMAC;

B. a securities holding record for each customer including the customer's name, address, telephone number, age, occupation, investment objectives and a chronological listing of the names and amount of all securities purchased or sold for the account of the customer, including the date of each transaction, and the unit purchase or sale price; and

C. the record requirements may not be satisfied by maintaining a file of confirmations unless permitted by order of the director.

[12.11.3.15 NMAC - Rp, 12 NMAC 11.2.7, 1-1-2010]

HISTORY OF 12.11.3 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the commission of public records - state records center and archives:

FID 67-1, Regulation 67-62, General Requirements, filed 5-18-67.

FID 76-1, Order 76-64, Regulation 76-1, Relating to Options Clearing Corporations, filed 3-26-76.

SD Rule 84-1, New Mexico Blue Sky Regulations, filed 9-5-84.

SB Rule 86-3.03, Broker-Dealers' Records, filed 7-11-86.

SB Rule 86-3.04, Sales Representatives Records, filed 7-11-86.

History of Repealed Material:

12 NMAC 11.2 Subpart 6, Broker-Dealer Records and 12 NMAC 11.2 Subpart 7, Sales Representatives Records (filed 4-19-99) repealed 1-1-2010.

Other History:

SB Rule 86-3.03, Broker-Dealers' Records (filed 7-11-86) and SB Rule 86-3.04, Sales Representatives Records (filed 7-11-86) were **renumbered** into first version of the New Mexico Administrative Code as 12 NMAC 11.2, Broker-Dealers and Sales Representatives, effective 5-1-99.

Those relevant portions of 12 NMAC 11.2, Subpart 6, Broker-Dealer Records and Subpart 7, Sales Representative Records (filed 4-19-99) were **renumbered, reformatted and replaced by** 12.11.3 NMAC, Broker-Dealer and Agents Records, effective 1-1-2010.