

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 12 EXEMPT TRANSACTIONS

12.11.12.1 ISSUING AGENCY: Regulation and Licensing Department - New Mexico Securities Division.
[12.11.12.1 NMAC - Rp, 12.11.12.1 NMAC, 1-1-2010]

12.11.12.2 SCOPE: All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their representatives and agents.
[12.11.12.2 NMAC - Rp, 12.11.12.2 NMAC, 1-1-2010]

12.11.12.3 STATUTORY AUTHORITY: Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate 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”.
[12.11.12.3 NMAC - Rp, 12.11.12.3 NMAC, 1-1-2010]

12.11.12.4 DURATION: Permanent.
[12.11.12.4 NMAC - Rp, 12.11.12.4 NMAC, 1-1-2010]

12.11.12.5 EFFECTIVE DATE: January 1, 2010, unless a later date is cited at the end of a section.
[12.11.12.5 NMAC - Rp, 12.11.12.5 NMAC, 1-1-2010]

12.11.12.6 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.
[12.11.12.6 NMAC - Rp, 12.11.12.6 NMAC, 1-1-2010]

12.11.12.7 DEFINITIONS: [RESERVED]

12.11.12.8 SECTION 58-13C-202A - ISOLATED NON-ISSUER TRANSACTIONS:

A. An “isolated non-issuer transaction” pursuant to Section 58-13C-202A shall mean an offer or sale of a security that meets both of the following conditions:

(1) no 12-month period in which the date of the sale can be included contains more than three sales of the security in New Mexico by the seller or affiliates, and

(2) no person offers or sells the security by means of a general solicitation, except as permitted under Subsection C of this section.

B. For purposes of this section, a husband and wife shall be considered as one purchaser. A corporation, partnership, limited liability company, association, joint stock company, trust or unincorporated organization shall be considered as one purchaser unless the entity was organized for the purpose of acquiring the purchased securities. If the entity was organized for the purpose of acquiring the purchased securities, each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser.

C. For purposes of this section, if an offer or sale is conducted through an issuer-controlled trading system maintained in an electronic form or another form for the purpose of facilitating trades of that issuer’s securities between nonissuers, the offer or sale shall not be considered to have been made by general solicitation.
[12.11.12.8 NMAC - Rp, 12.11.12.8 NMAC, 1-1-2010]

12.11.12.9 SECTION 58-13C-202B(4) - MANUAL OR ELECTRONICALLY AVAILABLE INFORMATION EXEMPTION:

A. For purposes of the registration exemption in Section 58-13C-202B, any Standard & Poor’s, Mergent or Fitch securities manual that contains, in whatever format, the information specified in Section 58-202B4(a) to (d) is designated as a “nationally recognized securities manual” under Section 58-202B(4)(a) to (d).

B. All information provided pursuant to Section 58-202B4(a) to (d) must be current. The time for determining whether the entries are current is at the date of the particular sale, not the date the manual listings are published. If a manual listing is not continually updated, the exemption would not be available once the published balance sheet becomes more than 18 months old or the list of officers and directors is not reasonably current.
[12.11.12.9 NMAC - Rp, 12.11.12.10 NMAC, 1-1-2010]

12.11.12.10 SECTION 58-13C-202K - TRANSACTIONS IN SECURED DEBT INSTRUMENTS:

A. The exemption provided in Section 58-13C-202K is not available for any transaction in which the evidence of indebtedness, regardless of form, is offered or sold to more than one investor. Transactions fractionalizing, serializing, or forming partnerships, corporations, or other associations solely for the purpose of acquiring evidence of indebtedness will not qualify for the exemption.

B. For purposes of Subsection A of this section:

(1) a husband, wife and minor children of either spouse, or any two or more of them, residing in the same household shall count as one investor; and

(2) a limited partnership, limited liability company, trust, corporation or limited liability partnership shall count as one investor if it was not formed for the purpose of investing or trading in the securities of the issuer claiming this exemption and such entity has substantial other business or investments; an industrial revenue bond that is sold to an affiliate of the entity on whose behalf the bond was issued shall count as one investor provided that such affiliate is wholly owned, directly or indirectly, by the entity on whose behalf the bond was issued or its parent company.

[12.11.12.10 NMAC - Rp, 12.11.12.12 NMAC, 1-1-2010]

12.11.12.11 SECTION 58-13C-202X - SMALL OFFERINGS BY ISSUERS WITH LOCAL OPERATIONS:

A. Pursuant to Section 58-13C-202X, notification must be given on the securities division's form X and filed with the division ten business days prior to any offer of securities.

B. No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state.

C. No exemption shall be available under Section 58-13C-202X for the securities of any issuer if any of the persons described in the Securities Act of 1933, Regulation A, Rule 230.262 (a), (b) or (c):

(1) has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;

(2) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

(3) is currently subject to any administrative enforcement order or judgment entered by any state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment, in which fraud or deceit including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption;

(4) is subject to any state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(5) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security or involving the making of any false filing with any state entered within five years prior to the filing of the notice required under this exemption.

D. The requirements set forth in Subsection C of this section may be waived by the director if the director determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

E. At a minimum, the following information shall be disclosed to potential investors in offerings claiming the exemption provided in Section 58-13C-202X:

(1) a general description of the offering and the business activity to be engaged in including:

(a) the general nature of the securities being offered;

(b) the maximum aggregate amount of the offering;

(c) the subscription price;

(d) the period of the offering;

- (e) the maximum amount of any sales or underwriting commission to be paid and the nature of any sharing arrangement and fees;
 - (f) the federal exemption under the Securities Act of 1933 on which the issue is being offered;
 - (g) the specific purposes for which the registrant intends to employ its funds in the event that the minimum capital is received; and
 - (h) the estimated amount to be paid during the first 12 months following commencement of operations for administrative and similar services;
- (2) for corporate offerings, a statement of dilution;
 - (3) for partnership offerings, suitability requirements for investors;
 - (4) the business experience of the sponsors and affiliates, particularly with regard to the business of the offeror;
 - (5) all compensation, direct or indirect, which is to be paid to the sponsor, officers, directors or control persons;
 - (6) a statement of the purposes for which the net proceeds of the offering are intended to be used and the approximate amount and percentages intended to be used for each such purpose;
 - (7) for partnership offerings, a statement prominently set forth as to whether additional assessments are provided for and, if so, the method of assessment and the penalty for default;
 - (8) a description of the proposed business activity including, where applicable, prior business history;
 - (9) a full description of any transactions and the dollar amount thereof which may be entered into between the offeror and the sponsor or control persons or affiliates, including a full description of the material terms of any agreement and dollar amount thereof between the offeror and the sponsor or control persons or affiliates;
 - (10) where the sponsor originates or promotes other offerings, a full description of the equitable principles which will apply in resolving any conflict between the offerings;
 - (11) in the case where the offeror has been in existence, a full description of all transactions and contracts of the offeror with the sponsor or any affiliate during the period of such existence;
 - (12) all conflicts set forth in one section entitled "Conflict of Interest and Transactions with Affiliates";
 - (13) in the case of offerings of direct participation programs as defined in Paragraph 2310(a)(4) of the FINRA manual, an opinion of counsel complying with American bar association opinion 346 as to the material tax consequences; and
 - (14) a brief description of any pending legal proceedings which might materially affect the venture.

F. Notice to prospective investors of material changes in the condition of the issuer occurring after the effective date of offering or when new information is substituted for that contained in the prospectus shall be effected through an amendment. Such amendments will not become effective until the director so orders and a corrected offering document will be sent to present stockholders including stockholders who may already have sold their shares. Post-effective amendments to change the price of securities will not be permitted. Post-effective amendments to lower the minimum amount of the offering will not be permitted. Amendments to increase the minimum amount of the offering, however, will be permitted.

G. Unless extended by the director, an offering shall be completed no later than one year from the date of acknowledgment by the director of the claim of exemption.

H. No offering document is required for sales of securities by a professional corporation or association to persons duly licensed in the corporation's area of business.
[12.11.12.11 NMAC - Rp, 12.11.12.13 NMAC, 1-1-2010]

12.11.12.12 SECTION 58-13C-202Y - LIMITED OFFERING EXEMPTION: For exemptions provided in Section 58-13C-202Y, a notice filing on the securities division's form Y shall be completed by issuers that are not organized or incorporated in New Mexico to give notice of intent to claim the exemption afforded by Section 58-13C-202Y for offerings of issuers that result in there being no more than 25 security holders. Form 202Y is optional for issuers organized or incorporated in New Mexico. No fee is required for these exemptions.
[12.11.12.12 NMAC - Rp, 12.11.12.14 NMAC, 1-1-2010]

12.11.12.13 SECTION 58-13C-2020 - EXISTING SECURITY HOLDERS EXEMPTION:

A. The exemption contained in Subsection O of Section 58-13C-202 shall only be available for the offer and sale of equity securities where an offer is made pro rata to all such security holders of record who are residents of this state.

B. As used in Subsection O of Section 58-13C-202:

(1) the term “security holder” shall not include persons who are holders of equity securities issued in violation of or without compliance with the New Mexico Uniform Securities Act and the rules and regulations adopted thereunder; and

(2) the term “standby commission” shall mean the commission payable to a broker-dealer registered under the New Mexico Uniform Securities Act for its firm commitment to purchase all securities offered to existing security holders which are not purchased by such security holders.
[12.11.12.13 NMAC - Rp, 12.11.12.15 NMAC, 1-1-2010]

12.11.12.14 SECTION 58-13C-202N - SALES TO TEN OR FEWER PURCHASERS:

A. Filings required. To claim the exemption provided by Section 58-13C-202N, a completed form 202N must be filed with the director no less than five business days before the first sale of securities in this state.

B. Counting purchasers and security holders. The following rules apply in counting the number of purchasers pursuant to Section 58-13C-202N(1) and the number of beneficial owners pursuant to Section 58-13C-202N(3)(b):

(1) a husband, wife and minor children of either spouse, or any two or more of them, residing in the same household shall count as one purchaser or beneficial owner; and

(2) a limited partnership, limited liability company, trust, corporation or limited liability partnership shall count as one purchaser or beneficial owner if it was not formed for the purpose of investing or trading in the securities of the issuer claiming this exemption and such entity has substantial other business or investments.

C. Reasonable belief of purchase for investment. An issuer will be presumed to have a reasonable belief that all of the purchasers of its securities in this state are purchasing for investment pursuant to Section 58-13C-202N(3)(a) if:

(1) the issuer, prior to a sale of its securities to a purchaser, obtains from that purchaser a signed statement that the purchaser is acquiring the securities for its own account and does not intend to resell the securities within twelve months of the purchase date;

(2) the issuer maintains a record of all statements obtained pursuant to Paragraph (1) of this subsection;

(3) written disclosure is provided to each purchaser prior to sale that the securities have not been registered under the New Mexico Uniform Securities Act and cannot be resold unless the securities are so registered or can qualify for an exemption from registration; and

(4) a legend is placed on the certificate or other document that evidences the security stating that the securities have not been registered under the New Mexico Uniform Securities Act and cannot be resold unless the securities are so registered or can qualify for an exemption from registration.

D. Reasonable belief of fifty or fewer beneficial owners. An issuer will be presumed to have a reasonable belief that its securities are held by fifty or fewer beneficial owners pursuant to Section 58-13C-202N(3)(b) if:

(1) the issuer or the issuer’s transfer agent maintains an adequate record of security holders and requires security holders to notify the issuer or the issuer’s transfer agent of its intent to sell or otherwise dispose of securities of the issuer; and

(2) a legend is placed on the certificate or other document that evidences the security stating that the securities have not been registered under the New Mexico Uniform Securities Act and cannot be resold unless the securities are so registered or can qualify for an exemption from registration.

[12.11.12.14 NMAC - Rp, 12.11.12.16 NMAC, 1-1-2010]

12.11.12.15 SECTION 58-13C-202U - EMPLOYEE BENEFIT PLANS:

A. For purposes of the exemption provided in Section 58-13C-202U, employee benefit plans that require advance cash contributions from employees may be denied the benefit of this exemption where employee money is used to purchase securities of the employer or its affiliates unless:

(1) the formula price at which employees may purchase shares is calculated at least annually and is not less than 85 percent of the fair market value of the stock at the beginning of the one-year purchase period or the end of the purchase period, whichever is lower, and shares purchased are fully paid for at the end of each period, stock certificates are issued and no fractional shares are issued;

(2) the issuer delivers to all participating employees copies of the issuer’s annual financial statements;

(3) a participating employee has the right to withdraw from the plan at any time without penalty;

(4) if there is no adequate public market for the issuer's shares, the issuer offers to repurchase the shares at a price determined by the same formula pursuant to which the shares were purchased by the employee under the issuer's plan, upon the happening of either of the following events:

(a) the employee ceases to be employed by the issuer (or a subsidiary) and a written request for repurchase is received by the issuer within 180 days after termination of employment; or

(b) the employee experiences severe financial hardship due to illness or death in the immediate family, major uninsured casualty loss or other unforeseen events, and delivers to the issuer a written irrevocable election to have the issuer repurchase the shares, including a statement in reasonable detail as to the nature of the employee's financial hardship, and within 20 days the issuer's board of directors does not determine that no severe financial hardship exists;

(5) all funds contributed to the plan for the purchase of shares are protected from claims of creditors of the issuer;

(6) any withholding from an employee's compensation is limited to not more than ten percent of the compensation each pay period;

(7) all shares issued under the plan have voting, dividend and liquidation rights; and

(8) if the securities to be purchased under the plan are not registered under the Securities Act of 1933, the issuer has a satisfactory opinion of counsel as to its exempt status under that act.

B. The following transactions are exempted pursuant to Section 58-13C-203: offers or sales of a security by an issuer pursuant to a written compensatory benefit plan including, without limitation, a purchase, savings, option, bonus, stock appreciation, profit-sharing, thrift, incentive, pension or similar plan, and interests in any such plan, provided that the offers and sales qualify for use of the registration exemption in Rule 230.701 under Section 28 of the Securities Act of 1933.

[12.11.12.15 NMAC - Rp, 12.11.11.9 NMAC, 1-1-2010]

12.11.12.16 SECTION 58-13C-202CC - TRANSACTIONS INVOLVING INTERESTS IN OIL, GAS AND MINING RIGHTS:

A. Sponsors and persons selling programs and claiming therefor the exemption provided in Section 58-13C-202CC shall make every reasonable effort to assure that the investment is suitable for the persons being offered or sold interests, taking into consideration each person's financial situation, investment objectives and business acumen.

B. For purposes of determining suitability, sponsors and persons offering or selling the investment shall ensure that the investors meet one of the following financial criteria:

(1) a minimum net worth of \$100,000 (exclusive of home, furnishings and automobiles); or

(2) a minimum net worth of \$50,000 (exclusive of home, furnishings and automobiles) and an annual income of \$50,000.

C. An offer or sale claiming the exemption provided in Section 58-13C-202CC must require a total minimum investment of \$5,000 and a minimum initial investment of \$2,500.

D. At a minimum, the following information shall be disclosed to potential investors in programs claiming the exemption provided in Section 58-13C-202CC:

(1) a general description of the program and the business activity to be engaged in including: the general nature of the units being offered; the maximum aggregate amount of the offering; subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid or the nature of any sharing arrangement and fees; and, the estimated amount to be paid during the first 12 months following commencement of operations for administrative and similar services;

(2) a carefully organized series of concise paragraphs, under subcaptions where appropriate, describing the risk factors to be considered before making an investment in the program;

(3) suitability requirements for investors;

(4) the business experience of the sponsors and affiliates, particularly with regard to the oil, gas or mining business;

(5) all compensation, direct or indirect, which is to be paid to the sponsor;

(6) a statement of the purposes for which the net proceeds to the program are intended to be used and the approximate amount and percentages intended to be used for each such purpose;

(7) a statement prominently set forth as to whether additional assessments are provided for and, if so, the method of assessment and the penalty for default;

(8) a statement describing the location and general character of all materially important oil, gas or mining interests now held or presently intended to be acquired by the program;

(9) a full description of any transactions and the dollar amount thereof which may be entered into between the program and sponsor or any affiliate, including a full description of the material terms of any agreement and the dollar amount thereof between the program and the sponsor or any affiliate; where the sponsor originates or promotes other programs, describe the equitable principles which will apply in resolving any conflict among the programs; in the case where the program has been in existence, include all transactions and contracts of the program with the sponsor or any affiliate during the period of such existence; all conflicts shall be set forth in one section and shall be entitled "Conflicts of Interest and Transactions with Affiliates"; and

(10) a brief description of any pending legal proceedings which may materially affect the venture.

E. For the purposes of Section 58-13C-202CC, "principally operating in New Mexico" includes a limited liability company organized under the laws of this state or a limited liability company in which a majority in interest of the members are residents of this state.

[12.11.12.16 NMAC - Rp, 12.11.11.17 NMAC, 1-1-2010]

12.11.12.17 SECTION 58-13C-203 - TRANSACTIONS INVOLVING SECURITIES OF AN

INVESTMENT CLUB: By authority delegated to the director in Section 58-13C-203 to promulgate rules, the issuance of securities by an investment club shall be exempt from Section 58-13C-301 provided that:

A. the membership is limited to not more than 75 members and provided that a husband and wife may be counted as one member;

B. periodic contributions are equal;

C. if a licensed or registered broker-dealer or investment adviser or employee of such broker-dealer or investment adviser is an organizer or member, such relationship is fully disclosed to the director;

D. the management of the funds of the club is not in the hands of a licensed or registered broker-dealer or investment adviser or employee of such broker-dealer or investment adviser;

E. securities in which the club invests are not bought on margin nor is any money borrowed or assets pledged;

F. unanimous consent of the members is required for any major investment policy change;

G. no member receives any fee or remuneration for services in the operation of the club except for administrative services; the members of the board of directors may be given token remuneration for their services on the board provided that such remuneration has been approved by majority vote of the membership;

H. the books of the club shall be open for inspection by members at any reasonable time;

I. memberships in the club are nontransferable;

J. the articles of incorporation or other organizational documents provide that club members may withdraw from the club and that, upon such withdrawal, the club will pay a pro rata share of the club's net asset value to such member; memberships that have been forfeited, repurchased by or otherwise returned to the club shall not be subject to resale;

K. the monthly payment by each member is not in excess of \$50.00 dollars per month; and

L. the initial payment for entry into the club does not exceed \$250.00 per membership.

[12.11.12.17 NMAC - Rp, 12.11.11.18 NMAC, 1-1-2010]

12.11.12.18 SECTION 58-13C-203 - WORLD-CLASS SECURITIES EXEMPTION:

A. In addition to the transactions exempt from registration pursuant to Section 58-13C-202W, pursuant to the authority delegated to the director by Section 58-13C-202W and Section 58-13C-203 of the New Mexico Uniform Securities Act, transactions meeting the following criteria are exempt from Sections 58-13C-301 and 58-13C-504:

(1) any transaction by a licensed or registered broker-dealer in a security (or an American depository receipt representing such a security) of an issuer domiciled in a foreign country with which the United States currently maintains diplomatic relations, of a class that has been outstanding in the hands of the public for not less than 180 days, if at the time of the transaction, either Moody's investor service, *Moody's international manual* or Standard & Poor's corporation records, or any other securities manual designated by rule or order of the director, contains a description of the issuer's business or operations, the names of the issuer's officers and directors or their corporate equivalents in the issuer's country of domicile, an audited balance sheet of the issuer as of a date within 18 months and audited profit and loss statements for each of the issuer's two fiscal years immediately preceding that date and all of the following criteria are met:

(a) the security is traded on or through the facilities of one of the following foreign securities exchanges or foreign securities markets, which are hereby designated by the director pursuant to Section 58-13C-202W: Helsinki, Mexico, Oslo, Alberta, Istanbul, Eurobond Market, Amsterdam, Australia, Brussels, Frankfurt,

Hong Kong, London Stock Exchange, Johannesburg, Luxembourg, Milan, Montreal, Paris, Stockholm, Tokyo, Zurich, or such other foreign securities exchange or foreign securities market designated by the director by rule or order;

(b) the issuer of the security, including any predecessor(s), has been in continuous operation for at least five years and is a going concern actually engaged in business and neither in the organizational stage nor in bankruptcy or receivership;

(c) the issuer has net tangible assets as reflected in the manual of at least \$100,000,000; and

(d) the issuer had an average annual income after taxes, as reflected in the manual, of at least \$10,000,000 cumulative for the most recent two years of operation with a minimum annual income after taxes of \$2,000,000 for either of the two years;

(2) the exemption provided in Paragraph (1) of Subsection A of this section shall not be available for any security unless:

(a) the security is sold at a price reasonably related to the current market price of such security at the time of the transaction; and

(b) the security does not constitute the whole or part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of such security.

B. The director may by rule or order deny, suspend or revoke this exemption with respect to any specific transaction, security or broker-dealer upon a finding that such action is necessary for the protection of the public.

C. The director may by rule or order exempt any security of an issuer domiciled in a foreign country upon a finding that such an exemption is in the public interest.

[12.11.12.18 NMAC - Rp, 12.11.11.19 NMAC, 1-1-2010]

12.11.12.19 SECTION 58-13C-203 - ACCREDITED INVESTOR EXEMPTION: By authority delegated to the director in Section 58-13C-203, any offer or sale of a security by an issuer in a transaction that meets the requirements of this section is exempt from the registration requirements of Section 58-13C-301.

A. Sales of securities shall be made only to persons who are, or the issuer reasonably believes are, accredited investors. "Accredited investor" is defined in Rule 501, Regulation D, of the Securities Act of 1933.

B. The exemption is not available to an issuer that is in the developmental stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

C. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Sections 58-13C-303 and 58-13C-304 or to an accredited investor pursuant to an exemption available under the New Mexico Uniform Securities Act.

D. The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, and of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

(2) within the last five years, has been convicted of any criminal offense in connection with the offering, purchase or sale of any security involving fraud or deceit;

(3) is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(4) is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security or involving the making of any false filing with any state entered within five years prior to the filing of the notice required under this exemption.

E. Paragraph (1) of Subsection D of this section shall not apply if:

(1) the party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment or decree, waives the disqualification; or

(3) the issuer establishes that it did not know and, in the exercise of reasonable care based on a factual inquiry, could not have known that a disqualification existed under Paragraph (1) of Subsection D of this section.

F. A general announcement of the proposed offering may be made by any means, but shall include only the following information, unless additional information is specifically permitted by the director:

- (1) the name, address and telephone number of the issuer of the securities;
- (2) the name, a brief description and price (if known) of any security to be issued;
- (3) a brief description of the business of the issuer in 25 words or less;
- (4) the type, number and aggregate amount of securities being offered;
- (5) the name, address and telephone number of the person to contact for additional information; and
- (6) a statement that:

(a) sales will only be made to accredited investors;

(b) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(c) the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

G. The issuer, in connection with an offer, may provide information in addition to the general announcement under Paragraph (6) of Subsection F of this section if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

H. No telephone solicitation shall be permitted unless, prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

I. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

J. The issuer shall file with the division a New Mexico uniform notice of transaction; form U-2, uniform consent to service of process; a copy of the general announcement; and, a fee of \$350.00 within 15 days after the first sale in this state.

[12.11.12.19 NMAC - Rp, 12.11.11.20 NMAC, 1-1-2010]

12.11.12.20 USE OF ADVERTISEMENT OR PUBLIC SOLICITATION: No claim of exemption may be made under Subsections A, N, Z, Y or CC of Section 58-13C-202 for any transaction in which use is made of advertisement or public solicitation.

[12.11.12.20 NMAC - Rp, 12.11.11.21 NMAC, 1-1-2010]

12.11.12.21 CONFIRMATION OF FILING: Any person filing a claim of exemption may receive confirmation that the claim has been received by the securities division by sending a copy of the claim or letter and a stamped, self-addressed envelope with the original notice or letter to the division. Any person not following the foregoing procedures will not receive a confirmation of receipt of the claim by the division. Confirmation of receipt of the claim by the division does not constitute a determination on the availability or appropriateness of the exemption.

[12.11.12.21 NMAC - Rp, 12.11.11.22 NMAC, 1-1-2010]

12.11.12.22 SECTION 58-13C-203 - OFFERS OF SECURITIES ON THE INTERNET:

A. Pursuant to Section 58-13C-203, offers made by, or on behalf of, issuers on or through the internet shall be exempt from Sections 58-13C-301 and 58-13C-504 if the following conditions are met:

(1) the internet offer indicates, directly or indirectly, that the securities are not being offered to residents of this state;

(2) the internet offer is not specifically directed to any person in this state by, or on behalf of, the issuer of the securities; and

(3) no sales of the issuer's securities are made in this state until such time as the securities being offered have been registered or an exemption perfected under the applicable provisions of the New Mexico Uniform

Securities Act and, to the extent required, a final prospectus or form U-7 is delivered to New Mexico investors prior to such sales.

B. Nothing in this section shall preclude an issuer or a person acting on behalf of an issuer which offers securities on the internet or effects sales to New Mexico residents following such an offering from relying upon any other applicable exemption pursuant to the provisions of the New Mexico Uniform Securities Act, nor shall this section otherwise relieve such persons from liability under the New Mexico Uniform Securities Act. [12.11.12.22 NMAC - Rp, 12.11.11.23 NMAC, 1-1-2010]

12.11.12.23 SECTION 58-13C-203 - OFFERS AND SALES OF SECURITIES BY EXEMPT CANADIAN BROKER-DEALERS AND AGENTS: Any offer or sale of a security effected by a Canadian broker-dealer or agent of such broker-dealer exempted from registration pursuant to 12.11.2.17 NMAC is exempted from the securities registration requirements of Section 58-13C-301 and the filing requirements of Section 58-13C-504 provided that such offer or sale meets the requirements in Subsection D of 12.11.2.17 NMAC. [12.11.12.23 NMAC - Rp, 12.11.12.24 NMAC, 1-1-2010]

HISTORY of 12.11.12 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;

SB Rule 84-1, New Mexico Blue Sky Regulations, filed 9-5-84;

SD Rule 86-6.02, Exempt Transactions, filed 7-14-86;

SD Rule 86-6.03, Confirmation of Notice Filing, filed 7-14-86.

History of Repealed Material: 12.11.12 NMAC, Exempt Transactions (filed 1-16-2002) repealed 1-1-2010.

Other History:

SD Rule 86-6.02, Exempt Transactions (filed 7-14-86) and SD Rule 86-6.03, Confirmation of Notice Filing (filed 7-14-86) were **renumbered** into first version of the New Mexico Administrative Code as 12 NMAC 11.4, Registration and Exemption of Securities, effective 5-01-1999.

Those relevant portions of 12 NMAC 11.4, Registration and Exemption of Securities (filed 4-19-99), were renumbered, reformatted, amended and replaced by 12.11.12 NMAC, Exempt Transactions, effective 01-31-2002. 12.11.12 NMAC, Exempt Transactions (filed 01-16-2002) was replaced by 12.11.12 NMAC, Exempt Transactions, effective 1-1-2010.