

**TITLE 12      TRADE, COMMERCE AND BANKING**  
**CHAPTER 11    SECURITIES**  
**PART 13        UNIFORM LIMITED OFFERING EXEMPTION**

**12.11.13.1      ISSUING AGENCY:** Regulation and Licensing Department - New Mexico Securities Division.  
[12.11.13.1 NMAC - 12 NMAC 11.4.1.1, 1-1-2010]

**12.11.13.2      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 or agents.  
[12.11.13.2 NMAC - 12 NMAC 11.4.1.2, 1-1-2010]

**12.11.13.3      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".  
[12.11.13.3 NMAC - 12 NMAC 11.4.1.3, 1-1-2010]

**12.11.13.4      DURATION:** Permanent.  
[12.11.13.4 NMAC - 12 NMAC 11.4.1.4, 1-1-2010]

**12.11.13.5      EFFECTIVE DATE:** January 1, 2010, unless a later date is cited at the end of a section.  
[12.11.13.5 NMAC - 12 NMAC 11.4.1.5, 1-1-2010]

**12.11.13.6      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.  
[12.11.13.6 NMAC - 12 NMAC 11.4.1.6, 1-1-2010]

**12.11.13.7      DEFINITIONS:** [RESERVED]

**12.11.13.8      UNIFORM LIMITED OFFERING EXEMPTION:** By authority delegated to the director in Section 58-13C-203, any offer or sale of securities is exempt from the registration provisions of the New Mexico Uniform Securities Act if such securities are offered or sold in compliance with the Securities Act of 1933, Regulation D. Rules 230.501 to 230.503, 230.505, 230.507 and 230.508 and the conditions and limitations set forth in this section.

**A.** 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.

**B.** No exemption under this rule shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262, sections (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 that 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.

**C.** The prohibitions of Paragraphs (1) to (3) and (5) of Subsection B of this section shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if such person is registered in this state and the form BD or form U-4 filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered.

**D.** Any disqualification caused by Subsection B of this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

[12.11.13.8 NMAC - Rp, 12 NMAC 11.4.7.2.11.1, 1-1-2010]

**12.11.13.9 NOTICE:**

**A.** The issuer shall file with the director a notice on form D (17 C.F.R. 239.500):

(1) five days prior to making any offer in this state and at such other times and in the form required under Regulation D, Rule 230.503 of the Securities Act of 1933 to be filed with the SEC;

(2) including with or in the notice a consent to service of process, unless otherwise available; and

(3) a filing fee of \$350.00.

**B.** The notice shall contain the information furnished by the issuer to offerees. In the case of offerings of direct participation programs as defined in Paragraph 2310(a)(4) of the FINRA manual, delivery of a disclosure document containing the information required by Rule 502(b)(2) of Regulation D to individuals covered by Subsections (5), (6), and (7) of Rule 501(a) of Regulation D is required.

[12.11.13.9 NMAC - Rp, 12 NMAC 11.4.7.2.11.2, 1-1-2010]

**12.11.13.10 SUITABILITY:** The exemption provided for in this section is available for sales to non-accredited investors in this state provided that the issuer, and any person acting on the issuer's behalf, after having made reasonable inquiry, reasonably believes that one of the following conditions is satisfied:

**A.** the investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs; for the purpose of this condition only, it may be presumed that, if the investment does not exceed ten percent of the investor's net worth, it is suitable; or

**B.** the purchaser either alone or with the purchaser's representative(s) has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks of the prospective investment.

[12.11.13.10 NMAC - Rp, 12 NMAC 11.4.7.2.11.3, 1-1-2010]

**12.11.13.11 ADEQUATE DISCLOSURE:** Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy Section 58-13C-501 of the New Mexico Uniform Securities Act.

[12.11.13.11 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.1, 1-1-2010]

**12.11.13.12 EXEMPTION NOT AVAILABLE:** In view of the objective of this rule and the purposes and policies underlying the New Mexico Uniform Securities Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

[12.11.13.12 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.2, 1-1-2010]

**12.11.13.13 KNOW-YOUR-CUSTOMER STANDARDS:** Nothing in this rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know-your-customer standards or any other requirements of law otherwise applicable to such registered persons.

[12.11.13.13 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.3, 1-1-2010]

**12.11.13.14 EXEMPTION AVAILABLE ONLY TO ISSUERS:** The exemption provided by 12.11.13 NMAC is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person

from resales of the issuer's securities. 12.11.13 NMAC provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.  
[12.11.13.14 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.4, 1-1-2010]

**12.11.13.15 AVAILABILITY OF OTHER EXEMPTIONS:** Transactions that are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of the New Mexico Uniform Securities Act. However, nothing in this limitation shall act as an election. Should for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.  
[12.11.13.15 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.5, 1-1-2010]

**12.11.13.16 DIRECTOR'S DISCRETION:** The director may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.  
[12.11.13.16 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.6, 1-1-2010]

**12.11.13.17 CITATION:** The exemption authorized by 12.11.13 NMAC shall be known and may be cited as the "Uniform Limited Offering Exemption".  
[12.11.13.17 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.7, 1-1-2010]

#### **HISTORY OF 12.11.13 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.

**History of Repealed Material:** That relevant portion of 12 NMAC 11.4; numbered Subpart 7, Registration Exemptions (filed 4-19-99) repealed 1-1-2010.

#### **Other History:**

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

That relevant portion of 12 NMAC 11.4; numbered Subpart 7, Registration Exemptions (filed 4-19-99) was renumbered, reformatted, amended and replaced by 12.11.13 NMAC, Uniform Limited Offering Exemption, effective 1-1-2010.