

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 14 NOTICE FILINGS FOR OFFERINGS OF COVERED SECURITIES

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

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

12.11.14.3 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”.
[12.11.14.3 NMAC - N, 1-1-2010]

12.11.14.4 DURATION: Permanent.
[12.11.14.4 NMAC - N, 1-1-2010]

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

12.11.14.6 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.
[12.11.14.6 NMAC - N, 1-1-2010]

12.11.14.7 DEFINITIONS: [RESERVED]

12.11.14.8 NOTICE FILINGS FOR OFFERINGS OF INVESTMENT COMPANY SECURITIES:

A. Forms and fees. Uniform investment company notice filing (form NF), accompanied by uniform consent to service of process (form U-2) for initial filings, shall be used to notify the securities division of the intent to sell securities as required by Section 58-13C-302A(1). The issuer or person filing a notice filing on behalf of the issuer shall pay a filing fee of \$525 as authorized under Section 58-13C-302A(1). A separate form NF, accompanied by appropriate fee, shall be filed for each portfolio or class of securities and shall be deemed to cover an indefinite amount of securities.

B. Federal registration documents need not be filed. No document which is part of a federal registration statement filed with the securities and exchange commission or part of an amendment to such federal registration statement need be filed to complete a notice filings either prior to the initial offer or after the initial offer in this state unless requested by the director. The division will not require filing of annual or periodic reports of the value of investment company securities sold or offered in this state, unless the fund or trust is specifically requested to submit such reports.

C. Term of notice filing. Notice filings will be made effective upon receipt by the director of the filing and payment of fees and will expire one year from such date. The term of the notice filing will not be based on the SEC effectiveness date.

D. Permits. The director will acknowledge the effectiveness of the initial notice filing by returning a date stamped copy of form NF or through electronic process. The director will assign a new file number to each portfolio or class of securities. A notice filing will not be considered as filed unless form NF has been properly completed and is accompanied by a filing fee as discussed in Subsection A of this section.

E. Completion of form NF. Item 4 of form NF must identify, on the separate lines provided, the name of the fund or trust. Do not repeat the name of the trust or fund on the space provided for portfolio name; do not repeat the name of the trust, fund, or portfolio in the space provided for class(es).

F. Renewals. A notice filing may be renewed by filing two copies of form NF, or electronically, with the director no earlier than 90 days prior to or less than 14 business days prior to the expiration date of the notice currently in effect. The notice must be accompanied by applicable filing fee in accordance with Section 58-13C-302B. The division may suspend fund or trust sales for failure to pay fees and may assess penalties or impose

other available remedies for late or underpaid fees. The renewal will be effective for one year from the date of the expiration of the previous notice filing. A person who has filed a form U-2 in connection with a previous registration or notice filing need not file another.

G. Amendments. Amendments to notice filings may be made by filing form NF marked “amendment” in the appropriate box. The change should be explained under item 3, “other”. Amendments to the name of the fund, trust, portfolio, or class must include the former name under item 3 of form NF in the line reserved for that purpose and must be accompanied by a fee of \$50. A change in the name of the trust or fund must be accompanied by an amended form U-2. Withdrawal or termination of a notice filing may be made by filing form NF or providing the director with other notice of the withdrawal or termination and shall be effective upon receipt by the director of such notice.

H. Other amendments. Amendments to the name and address of the contact person (item 6) must be submitted on an amended form NF.

[12.11.14.8 NMAC - Rp, 12 NMAC 11.4.11.1, 1-1-2010]

12.11.14.9 NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS: Pursuant to Section 58-13C-302C, an issuer offering a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file with the director no later than 15 days after the first sale of such federal covered security in this state the following: a notice on SEC form D and a fee of \$350. If the notice filing is late but within 10 days after the due date, the fee accompanying the late filing shall be \$700. If the notice filing is more than 10 days after the due date, the fee accompanying the late filing shall be \$1050. For purposes of this rule, the securities and exchange commission “form D” is defined as the document, as adopted by the securities and exchange commission and in effect on September 1, 1996, as may be amended by the securities and exchange commission from time to time, entitled “form D: notice of sale of securities pursuant to Regulation D, Section 4(6), and/or uniform limited offering exemption,” including part E and the appendix. A notice filing shall be considered filed with the New Mexico securities division as of the date on which it is received by the New Mexico securities division.

[12.11.14.9 NMAC - Rp, 12 NMAC 11.4.11.2, 1-1-2010; A, 7-1-2010; A, 12-1-2010]

12.11.14.10 INDUSTRIAL REVENUE BONDS: Municipal securities which are covered securities pursuant to Section 18(b)(4)(C) of the Securities Act of 1933 shall file a notice prior to any offer or sale of such security in this state on form U-1, uniform application to register securities, unless the securities meet the requirements of the exemption pursuant to Section 58-13C-201A. The form U-1 shall be stamped “notice filing” and shall be accompanied by the appropriate fee calculated pursuant to Section 58-13C-305B, which shall be based on the amount estimated to be sold in this state.

[12.11.14.10 NMAC - Rp, 12 NMAC 11.4.11.3, 1-1-2010]

12.11.14.11 NON-ISSUER TRANSACTIONS BY BROKER DEALERS IN VOLUNTARY

REGISTERED COMPANIES SECURITIES: A security will not be considered to be a federal covered security pursuant to Section 18(b)(4)(A) of the Securities Act of 1933, unless the issuer is current in its reporting pursuant to Section 13 and 15(d) of the Securities Exchange Act of 1934.

[12.11.14.11 NMAC - Rp, 12 NMAC 11.4.11.5, 1-1-2010]

HISTORY OF 12.11.14 NMAC:

Pre NMAC History: none.

History of Repealed Material:

12 NMAC 11.4, Subpart 11, Covered Securities (filed 4-19-99) repealed 1-1-2010.

Other History:

That relevant portion of 12 NMAC 11.4, Subpart 11, Covered Securities (filed 4-19-99) was renumbered, reformatted, and replaced by 12.11.14 NMAC, Notice Filings for Offerings of Covered Securities, effective 1-1-2010.