

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 15 FRAUDULENT PRACTICES

12.11.15.1 ISSUING AGENCY: Regulation and Licensing Department - New Mexico Securities Division.
[12.11.15.1 NMAC - Rp, 12 NMAC 11.5.1.1, 1-1-2010]

12.11.15.2 SCOPE: All persons that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their agents and representatives.
[12.11.15.2 NMAC - Rp, 12 NMAC 11.15.1.2, 1-1-2010]

12.11.15.3 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”.
[12.11.15.3 NMAC - Rp, 12 NMAC 11.15.1.3, 1-1-2010]

12.11.15.4 DURATION: Permanent.
[12.11.15.4 NMAC - Rp, 12 NMAC 11.15.1.4, 1-1-2010]

12.11.15.5 EFFECTIVE DATE: January 1, 2010, unless a later dated is cited at the end of a section.
[12.11.15.5 NMAC - Rp, 12 NMAC 11.15.5, 1-1-2010]

12.11.15.6 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.
[12.11.15.6 NMAC - Rp, 12 NMAC 11.15.1.6, 1-1-2010]

12.11.15.7 DEFINITIONS: [RESERVED]

12.11.15.8 APPLICATION OF PROCEEDS: An issuer of securities or any person who is an officer, director or controlling person of the issuer is deemed to employ a “device, scheme or artifice to defraud” the purchasers of the securities within the meaning of Section 58-13C-501A of the New Mexico Uniform Securities Act if the person applies, authorizes or causes to be applied any material part of the proceeds from the sale of the securities in any material way contrary to the purposes specified in the prospectus used in the offering of the securities and not reasonably related to the business of the issuer as described in the prospectus.
[12.11.15.8 NMAC - Rp, 12 NMAC 11.15.2, 1-1-2010]

12.11.15.9 STOCK DISTRIBUTION: A person authorizing or causing the distribution of securities as a stock dividend by a corporation other than the issuer, without registration of the securities under the New Mexico Uniform Securities Act or the federal Securities Act of 1933, is deemed to employ a “device, scheme or artifice to defraud” the purchasers of the securities in broker-dealer transactions, within the meaning of Section 58-13C-501A of the New Mexico Uniform Securities Act, if:

A. the issuer of the securities was organized or the securities were acquired for the purpose of distribution or in connection therewith, either by the distributing corporation or by any person in control of, controlled by, or under common control with, the distributing corporation; or

B. the issuer has nominal assets or income at the time of the distribution and the person has reason to believe that the distribution will be followed by transactions in securities effected by broker-dealers.

[12.11.15.9 NMAC - Rp, 12 NMAC 11.15.3, 1-1-2010]

12.11.15.10 SECURITIES TRANSFERS: An issuer of outstanding securities, registered under the New Mexico Uniform Securities Act or exempt from registration, or any controlling person of the issuer, is deemed to employ a “device, scheme or artifice to defraud” the purchasers of the securities within the meaning of Section 58-13C-501A if the issuer fails to provide adequate facilities for the transfer and delivery of the securities to the purchasers thereof without unreasonable delay, either directly or through its transfer agent for the securities.
[12.11.15.10 NMAC - Rp, 12 NMAC 11.15.4, 1-1-2010]

12.11.15.11 BROKER-DEALER ACTIVITIES: The terms “device, scheme or artifice to defraud” within the meaning of Subsection A of Section 58-13C-501 of the New Mexico Uniform Securities Act and “an act, practice or course of business that operates or would operate as a fraud or deceit upon another person” within the meaning of Section 58-13C-501C are defined to include the failure to comply with the requirements of 17 C.F.R. 240.15(g), as well as the activities described in 17 C.F.R. 240.15(c)1-1 through 240.15(c)1-9.
[12.11.15.11 NMAC - Rp, 12 NMAC 11.15.5, 1-1-2010]

12.11.15.12 MARKET MANIPULATION: Without limiting the general applicability of Section 58-13C-501 of the New Mexico Uniform Securities Act, a person is deemed to employ a “device, scheme or artifice to defraud” within the meaning of Section 58-13C-501A or “an act, practice or course of business that operates or would operate as a fraud or deceit upon another person” within the meaning of Section 58-13C-501C if the person directly or indirectly:

- A. quotes a fictitious price with respect to a security;
- B. effects a transaction in a security which involves no change in the beneficial ownership of the security for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;
- C. enters an order for the purchase of a security with the knowledge that an order of substantially the same size and at substantially the same time and price for the sale of the security has been or will be entered by or for the same or affiliated person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;
- D. enters an order for the sale of a security with knowledge that an order of substantially the same size and at substantially the same time and price for the purchase of the security has been or will be entered by or for the same or affiliated person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;
- E. effects, alone or with one or more other persons, a series of transactions in a security to:
 - (1) create active trading, actual or apparent, in that security; or
 - (2) raise or depress the price of the security, in each case for the purpose of inducing the purchase or sale of that security or of other securities of the same or another issuer by others; or
- F. employs any other deceptive or fraudulent device, scheme or artifice to manipulate the market in a security.

[12.11.15.12 NMAC - Rp, 12 NMAC 11.15.6, 1-1-2010]

12.11.15.13 INSIDE INFORMATION:

A. An issuer or any person who is an officer, director or affiliate of an issuer or any other person whose relationship to the issuer gives him access, directly or indirectly, to material information about the issuer not generally available to the public is deemed to employ a “device, scheme or artifice to defraud” within the meaning of Section 58-13C-501A or “an act, practice or course of business that operates or would operate as a fraud or deceit upon another person” within the meaning of Section 58-13C-501C, who purchases or sells any security of the issuer in this state at a time when he knows material information about the issuer gained from such relationship, which information:

- (1) would significantly affect the market price of that security;
- (2) is not generally available to the public; and
- (3) is not intended to be available to the public unless he has reason to believe and believes that the person selling to or buying from him is also in possession of the information.

B. Notwithstanding Subsection A of this section, activities permitted under the Securities Exchange Act of 1934, its rules and regulations shall not constitute a violation of this section.

[12.11.15.13 NMAC - N, 1-1-2010]

12.11.15.14 APPLICATION OF PART NOT EXCLUSIVE: Nothing in this part shall limit the director’s authority to enforce existing provisions of law.

[12.11.15.14 NMAC - N, 1-1-2010]

HISTORY OF 12.11.15 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 86-7.01, Application of Proceeds, filed 7-14-86;
SD Rule 86-7.02, Stock Distribution, filed 7-14-86;
SD Rule 86-7.03, Securities Transfers, 7-14-86;
SD Rule 86-7.04, Broker-Dealer Activities, filed 7-14-86;
SD Rule 86-7.05, Market Manipulation, filed 7-14-86.

History of Repealed Material:

12 NMAC 11.5, Fraudulent Practices (filed 4-19-99) repealed 1-1-2010.

Other History:

SD Rule 86-7.01, Application of Proceeds (filed 7-14-86); SD Rule 86-7.02, Stock Distribution (filed 7-14-86); SD Rule 86-7.03, Securities Transfers (filed 7-14-86); SD Rule 86-7.04, Broker-Dealer Activities (filed 7-14-86); SD Rule 86-7.05, Market Manipulation (filed 7-14-86) were **renumbered** into first version of the New Mexico Administrative Code as 12 NMAC 11.5, Fraudulent Practices, effective 5-1-99.
12 NMAC 11.5, Fraudulent Practices (filed 4-19-99) was **renumbered, reformatted, and replaced by** 12.11.15 NMAC, Fraudulent Practices, effective 1-1-2010.