

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 16 FORMS

12.11.16.1 ISSUING AGENCY: Regulation and Licensing Department - New Mexico Securities Division.
[12.11.16.1 NMAC - Rp, 12.11.16.1 NMAC, 1-1-2010]

12.11.16.2 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.
[12.11.16.2 NMAC - Rp, 12.11.16.2 NMAC, 1-1-2010]

12.11.16.3 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”.
[12.11.16.3 NMAC - Rp, 12.11.16.3 NMAC, 1-1-2010]

12.11.16.4 DURATION: Permanent.
[12.11.16.4 NMAC - Rp, 12.11.16.4 NMAC, 1-1-2010]

12.11.16.5 EFFECTIVE DATE: January 1, 2010, unless a later date is cited at the end of a section.
[12.11.16.5 NMAC - Rp, 12.11.16.5 NMAC, 1-1-2010]

12.11.16.6 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.
[12.11.16.6 NMAC - Rp, 12.11.16.6 NMAC, 1-1-2010]

12.11.16.7 DEFINITIONS: [RESERVED]

12.11.16.8 FORMS RELATING TO REGISTRATION OF SECURITIES: The forms set forth in this part 16 are prescribed for registration or exemption matters under the New Mexico Uniform Securities Act. For exemptions where no form is prescribed, a letter setting forth details and claiming the exemption is acceptable.

A. Form U-1, uniform application to register securities, shall be used for registrations by filing, coordination and qualification.

B. Form U-2, uniform consent to service of process, shall be used for all securities registrations.

C. Form U-2A, uniform corporate resolution, shall be used for all corporate securities registrations.

D. Form U-7, small company offerings registration, may be used for all registrations of securities from small corporate offerings.

E. Security escrow agreement may be used in connection with escrow of promotional shares as set forth in 12.11.9.13 NMAC.

[12.11.16.8 NMAC - Rp, 12.11.16.8 NMAC, 1-1-2010]

12.11.16.9 FORMS RELATING TO EXEMPTION FROM REGISTRATION OF SECURITIES:

A. Form 202X, notice of claim of exemption pursuant to Section 58-13C-202X, shall be used to give notice of intent to claim the exemption afforded by Section 58-13C-202X for offerings of issuers seeking no more than \$2,500,000 from the sale of securities and shall include the following:

(1) general information regarding the company claiming the exemption including:

(a) name and mailing address of company;

(b) type of entity (corporation, limited partnership, limited liability company, limited liability partnership or other);

(c) date and place of creation (incorporation, organization, filing or date of partnership agreement);

(d) term of the entity (if applicable);

(e) purpose or objective of business;

- (f) address where books and records, stock certificates or capital accounts are kept and by whom;
- (g) name, address and telephone number of person who should be contacted about the notice of claim of exemption;
- (2) information about the offering including:
 - (a) type of security, number of shares or units to be offered;
 - (b) offering price per share or unit;
 - (c) aggregate offering price;
 - (d) name and address of, and compensation to be received by, each person who will be effecting or attempting to effect sales of securities;
 - (e) if monies from sales of securities are to be escrowed until a certain amount is raised, a copy of the escrow agreement showing name and address of the escrow bank;
 - (f) general description of use of proceeds;
 - (g) general description of property, including location, in which such proceeds are to be invested;
 - (h) a statement as to whether the issuer, underwriter, or their affiliates, is subject to disqualification pursuant to Subsection C of 12.11.12.11 NMAC;
 - (i) a copy of the prospectus or offering memorandum describing the offering which will be utilized to offer the securities and comply with the disclosure requirements set forth in Subsection E of 12.11.12.11 NMAC and copies of all advertising or promotional literature;
- (3) governing instruments including a copy of the articles of incorporation,, articles of organization, certificate of limited partnership or other instruments of creation of the issuer, including all amendments; and
- (4) the signature and title of the person authorized to execute the notice of claim of exemption and the date of execution of the notice.

B. Form 202Y, notice of claim of exemption under Section 58-13C-202Y, described in this subsection, shall be used 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. Form 202Y shall include the following:

- (1) general information regarding the company claiming the exemption including:
 - (a) name and mailing address of company;
 - (b) type of entity (corporation, limited partnership, limited liability company, limited liability partnership or other);
 - (c) date and place of creation (incorporation, organization, filing or date of partnership agreement);
 - (d) term of the entity (if applicable);
 - (e) purpose or objective of business;
 - (f) address where books and records, stock certificates or capital accounts are kept and by whom;
 - (g) estimated number of persons to whom offers will be made;
 - (h) number of current security holders;
 - (i) name and address of each person who will be effecting or attempting to effect sales of securities;
- (2) copies of governing instruments including the articles of incorporation, articles of organization, certificate of limited partnership or other instruments of creation of the issuer, including all amendments;
- (3) representations by the signator authorized to file the notice of claim of exemption that:
 - (a) the number of security holders will not in consequence of any sale made under the exemption afforded by Section 58-13C-202Y exceed 25;
 - (b) sales have been and will be made only to buyers believed to be purchasing for investment;
 - (c) no commissions or other remunerations have been, are being, or will be paid or given, directly or indirectly, for soliciting prospective buyers except to broker-dealers and agents registered pursuant to the New Mexico Uniform Securities Act;
 - (d) no news releases, advertisements in newspapers, radio, television nor any other form of public advertising will be used in any manner to contact prospective buyers;
 - (e) the issuer understands that acceptance of the issuer's notice filing does not constitute approval or recommendation by the director of the securities division of the securities to be issued and sold;

(f) the promoters and persons listed in the notice pursuant to Subparagraph (i) of Paragraph (1) of Subsection B of this section understand the provisions of Section 58-13C-501 of the New Mexico Uniform Securities Act which states that it is unlawful for a person, in connection with the offer to sell, sale, offer to purchase or purchase of a security, directly or indirectly, to employ a device or artifice to defraud; make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances pursuant to which it is made, not misleading; or to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person;

(4) the signature and title of the person authorized to execute the notice of claim of exemption and the date of execution of the notice.

C. Form D, notice of sale of securities pursuant to Regulation D, shall be used for offerings made in compliance with Rules 504, 505 and 506 of Regulation D of the 1933 Securities Act.

D. Form 202N, notice of claim of exemption under Section 58-13C-202N, shall be used to give notice of intent to claim the exemption afforded by Section 58-13C-202N and shall include the following:

(1) general information regarding the company claiming the exemption with respect to offers and sales of its securities including:

- (a) name and mailing address of company;
- (b) type of entity (corporation, limited partnership, limited liability company, limited liability partnership or other);
- (c) date and place of creation (incorporation, organization, filing or date of partnership agreement);
- (d) term of the entity (if applicable);
- (e) purpose or objective of business;
- (f) address where books and records, stock certificates or capital accounts are kept and by whom;

(2) information regarding number of purchasers including:

- (a) estimated number of persons to whom offers will be made in New Mexico;
- (b) number of current security holders in New Mexico;
- (c) date(s) securities acquired by security holders in New Mexico;
- (d) total number of security holders inside and outside of New Mexico;
- (e) date of issuer's last sale of securities;

(3) information about offering including:

- (a) name and address of each person who will be effecting or attempting to effect sales of securities;
- (b) aggregate amount of offering, type of security ((debt, equity (common); equity (preferred), partnership interests, membership interests));
- (c) minimum investment that will be accepted from any individual security purchaser;

(4) copies of governing instruments including the articles of incorporation, articles of organization, certificate of limited partnership or other instruments of creation of the issuer, including all amendments;

(5) representations by the signator authorized to file the notice of claim of exemption that:

- (a) the number of security holders in New Mexico will not in consequence of any sale made under the exemption afforded by Section 58-13C-202N exceed ten during any twelve months;
- (b) sales have been and will be made only to buyers believed to be purchasing for investment or the issuer reasonably believes that the securities of the issuer will be held by fifty or fewer investors following the offering and the aggregate offering does not exceed \$1,000,000 during any twelve consecutive months, and specifying which alternative;

(c) no commissions or other remunerations have been, are being, or will be paid or given, directly or indirectly, for soliciting prospective buyer except to broker-dealers and agents registered pursuant to the New Mexico Uniform Securities Act;

(d) no news releases, advertisements in newspapers, radio, television nor any other form of public advertising will be used in any manner to contact prospective buyers;

(e) no commissions or other remunerations have been, are being, or will be paid or given, directly or indirectly, for soliciting prospective buyers except to broker-dealers and agents registered pursuant to the New Mexico Uniform Securities Act;

(f) the issuer understands that acceptance of the issuer's notice filing does not constitute approval or recommendation by the director of the securities division of the securities to be issued and sold;

(g) the promoters and persons listed in the notice pursuant to Subparagraph (i) of Paragraph (1) of Subsection B of this section understand the provisions of Section 58-13C-501 of the New Mexico Uniform Securities Act which states that it is unlawful for a person, in connection with the offer to sell, sale, offer to purchase or purchase of a security, directly or indirectly, to employ a device or artifice to defraud; make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances pursuant to which it is made, not misleading; or to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person;

(6) the signature and title of the person authorized to execute the notice of claim of exemption and the date of execution of the notice.

E. Notice of transaction, accredited investor exemption, shall be used for offerings of issuers which meet the criteria of 12.11.12.19 NMAC and shall include the following:

(1) general information regarding the company claiming the exemption including:

- (a) name, mailing address, web site address and telephone number of company;
- (b) type of entity (corporation, limited partnership, limited liability company, limited liability partnership or other);
- (c) date and place of creation (incorporation, organization, filing or date of partnership agreement);
- (d) identity of officers and directors, managing members or other individuals acting in a similar capacity, including names addresses and telephone numbers of each;
- (e) purpose or objective of business;
- (f) address where books and records, stock certificates or capital accounts are kept and by whom;
- (g) name, address and telephone number of person who should be contacted about the notice of claim of exemption;

(2) information about the offering including:

- (a) description of security ((debt, equity (common); equity (preferred), convertible, partnership interests, membership interests, other (specify));
- (b) price per security;
- (c) number of securities to be offered or sold;
- (d) aggregate dollar amount of offering.

(3) description of business and business address;

(4) name of broker-dealer who has solicited or intends to solicit purchasers in New Mexico;

(5) representations by issuer that:

(a) sales of securities shall be made only to accredited investors as defined in 17 C.F.R. 230.501(a);

(b) the issuer is not an issuer in the development 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, except a resale to an accredited investor or pursuant to a registration statement effective under applicable state securities laws, shall be presumed to be with a view to distribution and not for investment; securities issued under this exemption may only be resold pursuant to registration or an exemption under applicable state securities laws;

(d) the issuer is familiar with the conditions that must be satisfied to be entitled to the accredited investor exemption in New Mexico and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied;

(e) the signator for the issuer has read this notification and knows the contents to be true and is duly authorized by the issuer to sign on the issuer's behalf; and

(6) the signature and title of the person authorized to execute the notice of claim of exemption and the date of execution of the notice.

F. Form NF, uniform investment company notice filing, shall be used by investment companies which are required to file notice under the New Mexico Uniform Securities Act.

[12.11.16.9 NMAC - Rp, 12.11.16.9 NMAC, 1-1-2010]

12.11.16.10 FORMS RELATING TO REGISTRATION, REPORTING AND RENEWALS OF BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES:

A. Form BD, uniform application for broker-dealer registration, shall be used for initial registration and periodic reporting by broker-dealers.

B. Form BDW, uniform request for broker-dealer withdrawal, shall be used for withdrawal from registration by broker-dealers.

C. Form U-2, uniform consent to service of process, shall be used for initial registration by broker-dealers and investment advisers.

D. Form U-4, uniform application for securities industry registration or transfer, shall be used for initial registration and periodic reporting by broker-dealer agents, investment adviser representatives and issuer sales representatives.

E. Form U-5, uniform termination notice for securities industry registration, shall be used to report termination of employment of broker-dealer agents and investment adviser representatives.

F. Form ADV, uniform application for investment adviser registration, shall be used for initial registration and periodic reporting of investment advisers required to be registered under the New Mexico Uniform Securities Act and for notice filings of federal covered advisers.

G. Form ADV-W, notice of withdrawal from registration as investment advisor, shall be used for withdrawal from registration by investment advisers.

H. Form ADV-E, certificate of accounting of client securities and funds in the possession or custody of an investment adviser, shall be used annually for filing with the renewal report by investment advisers who retain custody of client funds or securities.

I. BF-2, securities registrant's blanket bond, or its substantial equivalent, shall be used for initial registration of investment advisers that are not federal covered advisers, that have custody of clients' funds or securities, for initial registration of issuer agents, and for initial registration of broker-dealers that are not registered under the Securities Exchange Act of 1934. This bond shall be signed by the registrant and the surety, dated, verified and acknowledged; and contain the following terms and conditions:

(1) that the registrant, as principal, and the named surety, as surety, are bound unto the state of New Mexico in the penal sum of (*setting forth the specific dollar amount required by 12.11 NMAC and the director*) for the payment of which the registrant and the surety bind themselves;

(2) that the conditions of this obligation is such that whereas the above-named principal (name of registrant) has applied to the director of the New Mexico securities division for registration as a (*insert type of registration sought*);

(3) that the if the named principal and those registrants employed by him and registered as provided by law shall strictly comply with the duties and obligations imposed upon such registrants by the New Mexico Uniform Securities Act and shall satisfy any loss or damages suffered by a purchaser injured by a sale or contract for sale made in violation of the New Mexico Uniform Securities Act or of any order issued by the director of the New Mexico securities division under any provision of the New Mexico Uniform Securities Act, then this obligation shall be void, otherwise it shall remain in full force and effect; provided further that any such purchaser having a cause of action shall have the right to bring an action on this bond except, however, no action may be maintained to enforce any liability on the bond unless such action is brought within five years after the sale or other act on which such action is based;

(4) that the surety shall have the right to terminate its obligation under this bond by filing written notice with the director of the New Mexico securities division 30 days prior to the effective date of such termination;

(5) that, in no event shall the liability of the surety exceed the penal sum of (*insert same dollar amount set forth in Paragraph (1) of this subsection*); and

(6) setting forth the bond number and attaching a power of attorney authorizing the signator to execute bonds for the surety for any signator for the surety who is not a corporate officer of the surety.

J. Affidavit of no sales, shall be used for initial registration by broker-dealers. This affidavit shall be a sworn written statement, dated, signed, verified and acknowledged, under oath by an official of the broker-dealer firm on whose behalf the affidavit is made who is authorized to make the affidavit on behalf of the broker-dealer. The affidavit shall contain the following representations and recitals by the affiant:

(1) the affiant is an official of the broker-dealer firm on whose behalf the affidavit is made and identifying the broker-dealer firm by name;

(2) the broker-dealer has not transacted business as a broker-dealer in New Mexico;

(3) the broker-dealer agrees to comply with the New Mexico Uniform Securities Act and to refrain from transacting business as a broker-dealer in New Mexico until such time as both the broker-dealer and an agent thereof are duly registered by the New Mexico securities division;

(4) the affiant executed the affidavit on behalf of the broker-dealer after reading and understanding the contents thereof, and with knowledge that the representations contained in the affidavit will be verified with the broker-dealer's clearing broker(s); and

(5) that all information contained in the affidavit is true, current and complete, to the best of the affiant's knowledge and belief.

[12.11.16.10 NMAC - Rp, 12.11.16.10 NMAC, 1-1-2010]

HISTORY of 12.11.16 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 86-10.01, Forms, filed 7-1-86.

History of Repealed Material:

12.11.16 NMAC, Forms (filed 1-16-02) repealed 1-1-2010.

Other History:

SD Rule 86-10.01, Forms (filed 7-1-86) was **renumbered** into first version of the New Mexico Administrative Code as 12 NMAC 11.6, Forms, effective 5/01/1999.

12 NMAC 11.6, Forms (filed 4-19-99) was renumbered, reformatted, amended and replaced by 12.11.16 NMAC, Forms, effective 1-31-2002.

12.11.16 NMAC, Forms (filed 1-16-02) was replaced by 12.11.16 NMAC, Forms, effective 1-1-2010.