

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 8 REGISTRATION OF SECURITIES - GENERAL PROVISIONS

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

12.11.8.2 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.
[12.11.8.2 NMAC - Rp, 12 NMAC 11.4.1.2, 1-1-2010]

12.11.8.3 STATUTORY AUTHORITY: Section 58-13C-605A authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, NMSA 1978, Sections 58-13C-101 to 701, hereinafter referred to in this Chapter 11 as the “New Mexico Uniform Securities Act”.
[12.11.8.3 NMAC - Rp, 12 NMAC 11.4.1.3, 1-1-2010]

12.11.8.4 DURATION: Permanent.
[12.11.8.4 NMAC - Rp, 12 NMAC 11.4.1.4, 1-1-2010]

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

12.11.8.6 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.
[12.11.8.6 NMAC - Rp, 12 NMAC 11.4.1.6, 1-1-2010]

12.11.8.7 DEFINITIONS: [RESERVED]

12.11.8.8 GENERAL REGISTRATION PROVISIONS: The following provisions shall apply generally to the registration of securities in New Mexico in addition to any requirements found elsewhere in the New Mexico Uniform Securities Act or these rules.

A. Registration statements.

(1) A registration application will not be considered as filed unless form U-1, uniform application to register securities, has been properly completed and endorsed, is accompanied by a filing fee calculated in accordance with Section 58-13C-305B, and applicable documents specified in form U-1. Checks are to be made payable to the New Mexico securities division. Fees paid upon the filing of the registration statement are not refundable.

(2) Issuers may satisfy filing requirements contained in these rules by filing required documents and fees using an electronic filing system in such a manner as approved by order of the director.

B. Consent to service of process. Applications to register securities shall be accompanied by a properly prepared and endorsed form U-2, uniform consent to service of process, and, in the case of corporations, a form U-2A, uniform corporate resolution. Form U-2 shall specify the director of the New Mexico securities division as the agent to receive service of process.

C. Registration effectiveness.

(1) If a registration application seeks to register only a portion of a larger offering, the application shall be deemed effective only as to the securities specified to be offered in this state.

(2) If it appears that a registration application is incomplete, inaccurate, compromises investor protection, tends to work a fraud on investors or is in any other way in violation of the New Mexico Uniform Securities Act, the division may issue a comment letter. Matters raised in the comment letter may be cause for issuance of a stop order if not resolved.

D. Fees for amendments to increase amount of securities offered.

(1) Pre-effective amendments increasing the amount of securities to be offered and sold are subject to additional fees of 1/10 of 1 percent of the amount of the increase, provided that no additional fee is required if, as a result of the increase, the total amount registered is less than \$525,000.

(2) Pursuant to Section 58-13C-305J, post-effective amendments registering additional securities become effective upon filing of the amendment and payment of fees of 3/10 of 1 percent of the incremental amount of increase. Each increase will be subject to a minimum fee of \$525.00 and maximum of \$2,500 unless the maximum fee of \$2,500 was previously paid in connection with such application for registration. If the maximum fee of \$2,500 was previously paid, then no further fee shall be required.

E. Confidentiality. Unless a valid claim of privilege or confidentiality is asserted pursuant to Section 58-13C-607B(2) of the New Mexico Uniform Securities Act, information contained in registration applications filed with the division is available for public inspection.

F. Amendments.

(1) Amendments to the application for registration may be made by filing an amended form U-1 plainly marked "Amendment" at the top of the form and accompanied by a letter explaining the change.

(2) The following will require an amended form U-1:

(a) amendments to the name under which the issuer is doing or intends to do business; amended form U-1 must include the former and current names and must be accompanied by a fee of \$50.00, an amended form U-2 and, if a corporation, form U-2A;

(b) changes to the location of the issuer's principal business office and, if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice or service of process;

(c) changes to the names and addresses of the underwriters;

(d) changes to the names and addresses of the issuer's correspondents; and

(e) changes to the amount of securities to be registered.

G. Multiple types of securities.

(1) A separate application and fee must be filed for each type of security offered, unless such securities are sold as units.

(2) In the case of warrants and rights, the securities purchasable upon exercise shall be registered together with the warrants and rights. In the case of convertible securities, only the convertible security itself need be registered if no further consideration is required for conversion other than the surrender of the convertible security.

H. Sequential partnerships.

(1) Limited partnerships offered sequentially or simultaneously must be registered individually in the name of each specific partnership and accompanied by the proper fee even if multiple partnerships are registered in a single registration statement with the security and exchange commission. If the issuer wishes to avoid the filing of duplicate exhibits for each partnership within a series, all partnerships to be included within a series must be identified to the division at the time of the initial filing.

(2) As subsequent partnerships are sought to be declared effective, the following must be filed with the division:

(a) form U-1;

(b) a copy of any supplement or any post-effective amendment filed with the security and exchange commission; such supplement or post-effective amendment must detail any material changes in any exhibit previously filed with the division and must include any additional exhibits pertaining to a particular partnership within a series that have not been previously filed;

(c) the appropriate filing fee; and

(d) in the absence of any material changes, subsequent partnerships within a series will be declared effective upon receipt of notice of the offering commencement date.

I. Renewal of permits. Permits authorizing the sale of securities registered by filing, coordination or qualification are effective for one year from date of issuance. In order to extend the permit, a new application must be filed on form U-1 together with the latest amendment to the offering document. All previously filed exhibits may be incorporated by reference. The application must be accompanied by a new filing fee and must be received by the division no later than two weeks prior to the expiration of the current permit.

J. Abandonment and withdrawal of registration statement. Any registration statement filed by filing, coordination or qualification shall be considered abandoned and withdrawn if there is no communication or activity regarding such filing for a period of six consecutive months. Any registration statement that has been abandoned and withdrawn may be re-filed by filing anew the appropriate documents and filing fee.

[12.11.8.8 NMAC - Rp, 12 NMAC 11.4.1.8, 1-1-2010]

12.11.8.9 RESERVED.

12.11.8.10 REGISTRATION BY COORDINATION: A registration statement under Section 58-13C-303(B) shall be submitted on form U-1, shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 58-13C-303B and Section 58-13C-305C and the consent to service of process on form U-2 required by Section 58-13C-303B(3):

A. copies of the articles of incorporation and by-laws or equivalents currently in effect, any agreements with or among underwriters of the offering, any instrument governing the issuance of the security to be registered, a specimen of the security and, if the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture, unless the security is a face-amount certificate registered under the Investment Company Act of 1940 or unless the requirement to furnish a trust indenture relating to the securities is waived by the director for good cause shown; and

B. one copy of any other information or any documents required to be filed under form U-1.
[12.11.8.10 NMAC - Rp, 12 NMAC 11.4.3, 1-1-2010]

12.11.8.11 REGISTRATION BY QUALIFICATION: A registration statement under Section 58-13C-304 shall be submitted on form U-1, shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 58-13C-304 and the consent to service of process on form U-2 required by Section 58-13C-304B:

A. copies of the articles of incorporation and by-laws or equivalents currently in effect, any agreements with or among underwriters of the offering, any instrument governing the issuance of the security to be registered, a specimen of the security and, if the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture unless the security is a face amount certificate registered under the Investment Company Act of 1940 or unless the requirement to furnish a trust indenture relating to the securities is waived by the director for good cause shown; and

B. one copy of any other information or any documents required to be filed under form U-1.
[12.11.8.11 NMAC - Rp, 12 NMAC 11.4.4, 1-1-2010]

12.11.8.12 PROSPECTUS REQUIREMENTS:

A. As a condition of registration, a prospectus, offering circular, or similar document meeting the requirements of Subsections B, C and D of 12.11.8.12 NMAC shall be sent or given to each person to whom an offer is made by or for the account of the issuer or any other person on whose behalf the offering is made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription as a participant in the distribution. The document shall be sent or given either before or concurrently with the earlier of any of the following:

- (1) any written offer made to the person, otherwise than by means of public advertisement;
- (2) confirmation of any sale to the person;
- (3) payment pursuant to any sale to the person; or
- (4) delivery of the security pursuant to any sale to the person.

B. The outside front cover of the prospectus, unless otherwise permitted by the director, shall meet the requirements of any appropriate form under the Securities Act of 1933 or shall contain substantially the following information:

- (1) name and location of issuer and its type of organization;
- (2) designation of securities offered;
- (3) per share or unit and aggregate public offering price, underwriting or selling commissions and discounts and net proceeds to offeror;
- (4) name of managing underwriter or broker-dealer or statement that the securities are being offered by the issuer;
- (5) a statement describing the anticipated secondary market for the securities being offered, including the identity of anticipated market makers;
- (6) date of prospectus;
- (7) legends:
 - (a) the following legend, or its substantial equivalent, shall appear on the cover of the prospectus in boldface type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES DIVISION OF THE NEW MEXICO DEPARTMENT OF REGULATION AND LICENSING, NOR HAS THE SECURITIES DIVISION PASSED UPON THE

ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;

(b) the following information, to the extent appropriate, shall appear on the cover page of any offering document utilized in connection with the offer and sale of securities which are exempt from registration under the Securities Act of 1933 as amended, but subject to a filing requirement under a state securities law: IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISK INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;

(8) if the offering is exempt under Section (3)(a)(11) of the Securities Act of 1933, the following statement shall appear in boldface type: THESE SECURITIES ARE OFFERED ONLY TO BONA FIDE RESIDENTS OF THE STATE OF NEW MEXICO; and

(9) such other information as the director may permit or require.

C. The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities. A prospectus meeting the requirements of form S-1 under the Securities Act of 1933 is deemed to satisfy the requirements of this subsection.

D. Unless otherwise permitted by the director, the body of the prospectus and all notes to financial statements and other tabular data included therein shall be in times new roman type or its substantial equivalent, at least as large and as legible as 10-point modern type, except that financial statements and other tabular data, including tabular data in notes, may be in times new roman type or its substantial equivalent, at least as large and as legible as 8-point modern type. All such type shall be leaded at least two points.

E. At the end of each period of not more than one year from the effectiveness of the registration statement, or in the event of any material change relating to the issuer or the securities subsequent to the filing of a prospectus, an amended prospectus shall be filed reflecting any such changes, and a current disclosure of all material facts relating to the issuer and the securities, including financial statements. No further solicitations or sales of the securities may be made thereafter until such amended prospectus has been filed with the director.

[12.11.8.12 NMAC - Rp, 12 NMAC 11.4.5, 1-1-2010]

HISTORY of 12.11.8 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 86-5.01, Discounts, Commissions and Other Compensation, filed 7-11-86;

SD Rule 95-5.01, Discounts, Commissions and Other Compensation, filed 9-27-95;

SD Rule 86-5.02, Offering Price, filed 7-11-86;

SD Rule 95-5.02, Selling Expenses and Selling Security Holders, filed 9-27-95;

SD Rule 86-5.03, Options and Warrants, filed 7-11-86;

SD Rule 86-5.04, Cheap Stock, filed 7-11-86;

SD Rule 95-5.04, Promotional Shares, filed 9-27-95;

SD Rule 86-5.05, Insiders' Equity, filed 7-11-86;

SD Rule 86-5.06, Real Estate Offerings, filed 7-14-86;

SD Rule 86-5.07, Oil and Gas Offerings, filed 7-14-86;

SD Rule 86-5.08, Real Estate Investment Trusts, filed 7-14-86;

SD Rule 86-5.09, Equipment Leasing, filed 7-14-86;

SD Rule 86-5.10, Cattle Feeding Programs, filed 7-14-86;

SD Rule 86-5.11, Registration by Filing, filed 7-14-86.

SD Rule 86-5.12, Registration by Coordination, filed 7-14-86.

SD Rule 86-5.13, Registration by Qualification, filed 7-14-86.

SD Rule 86-5.14, Prospectus Requirements, filed 7-14-86.

SD Rule 86-5.15, Reporting Requirements In Registration of an Indefinite Amount of Securities, filed 7-14-86;

SD Rule 86-5.15, Reporting Requirements In Registration of an Indefinite Amount of Securities, filed 10-22-86;

SD Rule 86-5.15, Reporting Requirements In Registration of an Indefinite Amount of Securities, filed 1-2-87;

SD Rule 88-5.15, Reporting Requirements In Registration of an Indefinite Amount of Securities, filed 5-11-88;
SD Rule 95-5.15, Registration of an Indefinite Amount of Securities, filed 9-27-95;
SD Rule 86-5.16, Registration of Open-End Investment Companies of Different Series of Portfolios, filed 7-14-86;
SD Rule 86-5.17, Renewal of Permits Other Than Those for Open-Ended Investment Companies or Face Amount Certificate Companies, filed 7-14-86;
SD Rule 86-5.18, Renewal of Permits for Open-Ended Investment Companies or Face Amount Certificate Companies, filed 7-14-86;
SD Rule 86-5.18, Renewal of Permits for Open-Ended Investment Companies or Face Amount Certificate Companies, filed 10-22-86;
SD Rule 88-5.18, Registration and Renewal Requirements of Definite Amount of Securities, filed 5-11-88;
SD Rule 86-5.19, Abandonment and Withdrawal of Registration Statement, filed 7-14-86;
SD Rule 86-5.20, Amendments to Increase Dollar Amount of Securities, filed 10-22-86;
SD Rule 86-5.21, Name Changes to Registration Statements on File, filed 10-22-86;
SD Rule 88-5.22, Reduced Filing Requirements for Qualified Opened-End Investment Companies, Face Amount Certificate Companies, and Unit Investment Trust Companies, filed 5-11-88.
SD Rule 95-5.23, Small Corporate Offering Registration (SCOR), filed 9-27-95;
SD Rule 95-5.24, Impoundment of Proceeds, filed 9-27-95;
SD Rule 95-5.25, Loans and Other Material Affiliated Transactions, filed 9-27-95;
SD Rule 95-5.26, Debt Securities, filed 9-27-95;
SD Rule 86-6.01, Registration Exemptions, filed 7-14-86;
SD Rule 86-6.01, Registration Exemptions, filed 10-22-86;
SD Rule 86-6.02, Exempt Transactions, filed 7-14-86;
SD Rule 86-6.03, Confirmation of Notice of Filing, filed 7-14-86.

History of Repealed Material:

SD Rule 86-5.06, Real Estate Offerings (filed 7-14-86) repealed 5-1-99.
SD Rule 86-5.07, Oil and Gas Offerings (filed 7-14-86) repealed 5-1-99.
SD Rule 86-5.08, Real Estate Investment Trusts (filed 7-14-86) repealed 5-1-99.
SD Rule 86-5.09, Equipment Leasing (filed 7-14-86) repealed 5-1-99.
SD Rule 86-5.10, Cattle Feeding Programs (filed 7-14-86) repealed 5-1-99.
SD Rule 86-5.20, Amendments to Increase Dollar Amount of Securities (filed 10-22-86) repealed 5-1-99.
SD Rule 86-5.21, Name Changes to Registration Statements on File (filed 10-22-86) repealed 5-1-99.
SD Rule 88-5.22, Reduced Filing Requirements for Qualified Opened-End Investment Companies, Face Amount Certificate Companies, and Unit Investment Trust Companies (filed 5-11-88) repealed 5-1-99.
SD Rule 95-5.15, Registration of an Indefinite Amount of Securities (filed 9-27-95) repealed 5-1-99.
Those relevant portions of 12 NMAC 11.4; numbered Subpart 1, General Provisions (filed 4-19-99), Subpart 2, Registration by Filing (filed 4-19-1999), Subpart 3, Registration by Coordination (filed 4-19-99), Subpart 4, Registration by Qualification (filed 4-19-99), Subpart 5, Prospectus Requirements (filed 4-19-99) and Subpart 9, Registration and Renewal of a Definite Amount of Securities by Investment Companies (filed 4-19-99) repealed 1-1-2010.

Other History:

SD Rule 95-5.01, Discounts, Commissions and Other Compensation, filed 10-14-95;
SD Rule 95-5.02, Selling Expenses and Selling Security Holders, filed 9-27-95;
SD Rule 86-5.03, Options and Warrants, filed 7-11-86;
SD Rule 95-5.04, Promotional Shares, filed 9-27-95;
SD Rule 86-5.05, Insiders' Equity, filed 7-11-86;
SD Rule 86-5.11, Registration by Filing, filed 7-14-86.
SD Rule 86-5.12, Registration by Coordination, filed 7-14-86.
SD Rule 86-5.13, Registration by Qualification, filed 7-14-86.
SD Rule 86-5.14, Prospectus Requirements, filed 7-14-86.
SD Rule 86-5.16, Registration of Open-End Investment Companies of Different Series of Portfolios, filed 7-14-86;
SD Rule 86-5.17, Renewal of Permits Other Than Those for Open-Ended Investment Companies or Face Amount Certificate Companies, filed 7-14-86;
SD Rule 88-5.18, Registration and Renewal Requirements of Definite Amount of Securities, filed 5-11-88;
SD Rule 86-5.19, Abandonment and Withdrawal of Registration Statement, filed 7-14-86;

SD Rule 95-5.23, Small Corporate Offering Registration (SCOR), filed 9-27-95;
SD Rule 95-5.24, Impoundment of Proceeds, filed 9-27-95;
SD Rule 95-5.25, Loans and Other Material Affiliated Transactions, filed 9-27-95;
SD Rule 95-5.26, Debt Securities, filed 9-27-95;
SD Rule 86-6.01, Registration Exemptions, filed 10-22-86;
SD Rule 86-6.02, Exempt Transactions, filed 7-14-86;
SD Rule 86-6.03, Confirmation of Notice of 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, filed 4-19-99. Those relevant portions of 12 NMAC 11.4; numbered Subpart 1, General Provisions (filed 4-19-99), Subpart 2, Registration by Filing (filed 4-19-1999), Subpart 3, Registration by Coordination (filed 4-19-99), Subpart 4, Registration by Qualification (filed 4-19-99), Subpart 5, Prospectus Requirements (filed 4-19-99) and Subpart 9, Registration and Renewal of a Definite Amount of Securities by Investment Companies (filed 4-19-99) were **renumbered, reformatted, and replaced by** 12.11.8 NMAC, Registration of Securities - General Provisions, effective 1-1-2010.