

This rule was filed as 13 NMAC 3.5.

TITLE 13 INSURANCE
CHAPTER 3 INSURANCE SECURITIES
PART 5 REGISTRATION OF INSURANCE SECURITIES

13.3.5.1 ISSUING AGENCY: New Mexico State Corporation Commission [Public Regulation Commission], Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269.
[7/1/97; Recompiled 11/30/01]

13.3.5.2 SCOPE: This rule applies to sale or offer in this state of any insurance security issued or proposed to be issued by any corporation or person whether or not organized under the laws of this state or authorized to transact business in this state. This rule does not apply to the extent its provisions are preempted by the Capital Markets Efficiency Act of 1996, P.L. 104-290, Section 101 et seq.
[7/1/97; Recompiled 11/30/01]

13.3.5.3 STATUTORY AUTHORITY: Section 59A-2-9 NMSA 1978, and the Sale of Insurance Securities Law, Section 59A-35-1 NMSA 1978 et seq.
[12/1/85; Recompiled 11/30/01]

13.3.5.4 DURATION: Permanent.
[7/1/97; Recompiled 11/30/01]

13.3.5.5 EFFECTIVE DATE: December 1, 1985, unless a later date is cited at the end of a section or paragraph. Repromulgated in NMAC format effective July 1, 1997.
[12/1/85, 7/1/97; Recompiled 11/30/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

13.3.5.6 OBJECTIVE: The purpose of this rule is to set out requirements and methods for registration of insurance securities.
[7/1/97; Recompiled 11/30/01]

13.3.5.7 DEFINITIONS: To the extent applicable to securities of insurance companies, all definitions relating to general securities set forth in the New Mexico Securities Act and the New Mexico Blue Sky Regulations promulgated by the New Mexico securities bureau shall apply to the sale of insurance securities in New Mexico.
[12/1/85; Recompiled 11/30/01]

13.3.5.8 REGISTRATION OF INSURANCE SECURITIES: All insurance securities required to be registered under the Sale of Insurance Securities Law shall be registered with and shall be filed with the superintendent of insurance in the manner provided in these regulations.
[12/1/85; Recompiled 11/30/01]

13.3.5.9 REGISTRATION OF NEWLY-FORMED INSURERS: All filings for registration of insurance securities of newly-formed proposed insurers or entities shall include the disclosure of the information required pursuant to Section 59A-35-8 NMSA 1978.
[12/1/85; Recompiled 11/30/01]

13.3.5.10 REGISTRATION BY NOTIFICATION: If an insurance security would qualify for registration by notification pursuant to Section 58-13-5A NMSA 1978 if it were not exempt from that provision pursuant to Section 58-13-29C(3) NMSA 1978, it may be registered by notification with the superintendent.

A. **Information required:** A registration statement for registration by notification shall contain the following information:

- (1) a statement demonstrating eligibility form registration by notification;

- (2) the issuer's name, address and form of organization, the state of foreign jurisdiction and the date of its organization and the general character and location of its business;
- (3) a description of the securities being registered;
- (4) the total amount of securities to be offered and amount of securities to be offered in this state;
- (5) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons other than as underwriting and selling discounts or commissions and finders' fees, including cash, securities or anything else of value;
- (6) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered other than through an underwriter;
- (7) a description of any security options outstanding or to be created in connection with the offering.

B. **Documents Required.** A registration statement for registration by notification shall be accompanied by the following documents, along with a consent to service of process:

- (1) any adverse order, judgment or decree previously entered in connection with the offering by any court or by the securities and exchange commission;
- (2) a copy of any offering circular or prospectus to be used in connection with the offering;
- (3) in the case of security qualifying for registration by notification under Section 58-13-5A(2) NMSA 1978 which does not also satisfy the conditions of Section 58-13-5A(1) NMSA 1978, a balance sheet of the issuer, certified by a certified public accountant as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than two years;
- (4) any agreements with or among underwriters with respect to the offering;
- (5) any instrument governing the insurance of the security to be registered;
- (6) and a specimen of the security.

C. If no stop order is in effect and no proceeding is pending, a registration statement filed pursuant to this section automatically becomes effective at 3:00 p.m. eastern standard time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at an earlier time as the superintendent determines.

D. A prospectus regarding the securities described in an application for registration by notification shall contain the information required pursuant to Section 58-13-6 NMSA 1978 for securities registered by notification pursuant to the New Mexico Securities Act.

E. The superintendent of insurance may, on the request of the registered dealer or issuer filing the registration statement, waive the furnishing in a prospectus of any item of information or any document which the superintendent of insurance deems to be unnecessary in view of the nature of the securities described in such statement.

F. If the securities described in a registration statement are registered under the Securities Act of 1933, the superintendent shall accept in lieu of the prospectus prescribed in this section the prospectus filed under the Securities Act of 1933 with all amendments to that prospectus as of the date on which the registration statement is filed under this section.

[12/1/85; Recompiled 11/30/01]

13.3.5.11 REGISTRATION BY COORDINATION: Any insurance security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

A. **Information required:** A registration statement for registration by coordination shall contain the following information:

- (1) the amount of securities to be offered in this state;
- (2) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
- (3) an undertaking to forward promptly all amendments to the federal registration statement other than amendments which merely delay the effective date.

B. **Documents required:** A registration statement for registration by coordination shall be accompanied by the following documents, along with a consent to service of process:

- (1) a copy of the prospectus and of all amendments filed under the Securities Act of 1933;

(2) any adverse order, judgment or decree previously entered in connection with the offering by any court or by the securities and exchange commission;

(3) a copy of any agreements with or among underwriters, copy of any indenture or other instrument governing the issuance of the security to be registered and a specimen or copy of the security.

C. A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) no stop order is in effect and no proceeding is pending;

(2) the registration statement has been on file with the superintendent of insurance for at least thirty days; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or for a shorter period allowed by the superintendent of insurance and the offerings made within these limitations. The registrant shall promptly notify by telephone of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. As used in this section, "price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price.

D. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the superintendent of insurance may enter a stop order, without notice of hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section, if he promptly notifies the registrant of the issuance of the order by telegram or by telephone and promptly confirms his telephone message by letter or telegram. If the registrant proves compliance with the requirements of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The superintendent of insurance may waive either or both of the conditions specified in 13 NMAC 3.5.11.3.2 and 3.5.11.3.3 [now Paragraphs (2) and (3) of Subsection C of 13.3.5.11 NMAC]. If the federal registration statement becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the superintendent of insurance of the date when the federal registration is expected to become effective, the superintendent of insurance shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates denial of the permit under Section 59A-35-10 NMSA 1978.

[12/1/85; Recompiled 11/30/01]

13.3.5.12 REGISTRATION BY QUALIFICATION: Any insurance security may be registered by qualification.

A. **Information required:** A registration statement filed under this section shall contain the following information:

(1) the issuer's and any significant subsidiary's name, address and form of organization, the state or foreign jurisdiction and the date of organization, the general character and location of its business, a description of its physical properties and equipment and a statement of the general competitive conditions in the industry or business in which it is engaged or will be engaged;

(2) every issuer's, director's, and officer's, or person occupying a similar status or performing similar functions, name, address and principal occupation for the past five years, the amount of securities of the issuer held by him as of a specified date within ninety days of the filing of the registration statement, the aggregate remuneration paid to all such persons during the past twelve months and that estimated to be paid during the next twelve months, directly or indirectly, by the issuer and all predecessors, parents and subsidiaries;

(3) the information required in 13 NMAC 3.5.12.1.2 [now Paragraph (2) of Subsection A of 13.3.5.12 NMAC], other than occupation, for all other persons owning of record, or beneficiary if known, ten percent or more of the outstanding shares of any class of equity security of the issuer;

(4) if the issuer was organized within the past three years, the information required in 13 NMAC 3.5.12.1.2 [now Paragraph (2) of Subsection A of 13.3.5.12 NMAC] for every promoter not specified in 13 NMAC 3.5.12.1.2 or 3.5.12.1.3 [now Paragraphs (2) and (3) of Subsection A of 13.3.5.12 NMAC], along with any amount paid to him by the issuer within that period or intended to be paid to him and the consideration for the payment;

(5) the capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets,

services, patents, goodwill or anything else, for which the issuer or subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(6) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any person except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including, separately, cash, securities or anything else of value to accrue to the underwriters in connection with the offering; the estimated amounts of other selling expenses and legal, engineering and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered other than through an underwriter;

(7) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amounts to be used for each purpose; the order or priority in which the proceeds will be used for the purpose stated; the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, other than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(8) a description of any stock options or other security options outstanding, or to be created, in connection with the offering, together with the amount of any such options held, or to be held, by every person required to be named in 13 NMAC 3.5.12.1.2, 3.5.12.1.3, 3.5.12.1.4, 3.5.12.1.5 or 3.5.12.1.7 [now Paragraphs (2), (3), (4), (5) or (7) of Subsection A of 13.3.5.12 NMAC], and by any person who holds, or will hold, ten percent or more, in the aggregate, of any such options;

(9) the states in which a registration statement or similar document in connection with the offering has been, or is expected to be, filed.

B. Documents required: A registration statement filed under this section shall contain the following information and be accompanied by the following documents, along with a consent to service of process:

(1) any adverse order, judgment or decree previously entered in connection with the offering by any court or by the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any litigation or proceedings known to be contemplated by governmental authorities;

(2) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(3) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect and a copy of any indenture or other instrument covering the security to be registered;

(4) a signed or confirmed copy of an opinion of counsel, if available, as to the legality of the security to be registered; and

(5) a balance sheet of the issuer, certified by public accountant, as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant. In the case of a non-issuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

C. A registration statement under this section becomes effective when the superintendent so orders. The superintendent may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in 13 NMAC 3.5.12.1 and 3.5.12.2 [now Subsections A and B of 13.3.5.12 NMAC] be sent or given to each person to whom an offer is made before, or concurrently with:

(1) the first written offer made to him other than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

- (2) the confirmation of any sale made by or for the account of any such person;
- (3) payment pursuant to any such sale; or
- (4) delivery of the security pursuant to any such sale, whichever occurs first, but the superintendent

shall accept for use under any such requirement a current prospectus or offering for the same securities filed under the Securities Act of 1933 or regulations thereunder.

[12/1/85; Recompiled 11/30/01]

13.3.5.13 SALE OF INSURANCE SECURITIES WITH NON-LICENSED INSURER: Any insurer not presently holding a certificate of authority to transact insurance in the state of New Mexico shall not sell or offer to sell in the state its securities unless in addition to the registration requirements it provides to the superintendent of insurance proof that it would be able to qualify for a certificate of authority to transact insurance in the state. Such proof shall consist of the filing of such financial and biographical information as would be required by an insurer seeking to be licensed in this state.

[12/1/85; Recompiled 11/30/01]

13.3.5.14 INCORPORATION OF PREVIOUS FILINGS: Any document filed with the superintendent of insurance under the Sale of Insurance Securities Law within five (5) years preceding the filing of a registration statement may be incorporated by reference in the new registration statement to the extent that the document is currently accurate.

[12/1/85; Recompiled 11/30/01]

13.3.5.15 REGISTRATION FEE: Each registration statement submitted for filing with the superintendent shall be accompanied by a check or money order for the proper amount of registration fee pursuant to Section 59A-35-9 NMSA 1978. Failure to include the fee with the registration statement shall render the registration incomplete and ineffective.

[12/1/85; Recompiled 11/30/01]

13.3.5.16 MINIMUM PAR VALUE OF DOMESTIC INSURER: The par value of each capital stock insurer organized under the laws of the state of New Mexico shall be stated in the articles of incorporation and shall be not less than five dollars (\$5.00) per share.

[12/1/85; Recompiled 11/30/01]

HISTORY OF 13.3.5 NMAC:

Pre-NMAC History: The subject matter of this rule was previously filed with the State Records Center as: SCC 85-17, Insurance Department Regulation 35-1, Regulation Regarding Registration of Insurance Securities, filed 11/5/85.

History of Repealed Material: [RESERVED]