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SENATE BILL 19

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Timothy M. Keller

FOR THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO SECURITIES; AMENDING THE NEW MEXICO UNIFORM  
SECURITIES ACT TO ALLOW FOR ENFORCEMENT BY THE ATTORNEY GENERAL  
AND TO INCREASE THE STATUTE OF LIMITATIONS; EXPANDING THE  
DEFINITION OF "FRAUD".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-13C-102 NMSA 1978 (being Laws 2009,  
Chapter 82, Section 102) is amended to read:

"58-13C-102. DEFINITIONS.--As used in the New Mexico  
Uniform Securities Act, unless the context otherwise requires:

A. "agent" means an individual, other than a  
broker-dealer, who represents a broker-dealer in effecting or  
attempting to effect purchases or sales of securities or  
represents an issuer in effecting or attempting to effect  
purchases or sales of the issuer's securities, but a partner,

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1 officer or director of a broker-dealer or issuer, or an  
2 individual having a similar status or performing similar  
3 functions, is an agent only if the individual otherwise comes  
4 within the term. "Agent" does not include an individual  
5 excluded by rule adopted or order issued pursuant to the New  
6 Mexico Uniform Securities Act;

7 B. "bank" means:

8 (1) a banking institution organized pursuant  
9 to the laws of the United States;

10 (2) a member bank of the federal reserve  
11 system;

12 (3) any other banking institution, whether  
13 incorporated or not, doing business pursuant to the laws of a  
14 state or of the United States, a substantial portion of the  
15 business of which consists of receiving deposits or exercising  
16 fiduciary powers similar to those permitted to be exercised by  
17 national banks pursuant to the authority of the comptroller of  
18 the currency pursuant to Section 1 of Public Law 87-722 (12  
19 U.S.C. Section 92a) and that is supervised and examined by a  
20 state or federal agency having supervision over banks and that  
21 is not operated for the purpose of evading the New Mexico  
22 Uniform Securities Act; and

23 (4) a receiver, conservator or other  
24 liquidating agent of any institution or firm included in  
25 Paragraph (1), (2) or (3) of this subsection;

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1 C. "broker-dealer" means a person engaged in the  
2 business of effecting transactions in securities for the  
3 account of others or for the person's own account.

4 "Broker-dealer" does not include:

- 5 (1) an agent;  
6 (2) an issuer;  
7 (3) a bank or savings institution described in  
8 Paragraph (2) of Subsection D of this section if its activities  
9 as a broker-dealer are limited to those specified in  
10 Subsections 3(a)(4)(B)(i) through (vi), (viii) through (x) and  
11 (xi), if limited to unsolicited transactions; 3(a)(5)(B); and  
12 3(a)(5)(C) of the federal Securities Exchange Act of 1934 (15  
13 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the  
14 conditions described in Subsection 3(a)(4)(E) of the federal  
15 Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));  
16 (4) an international banking institution; or  
17 (5) a person excluded by rule adopted or order  
18 issued pursuant to the New Mexico Uniform Securities Act;

19 D. "depository institution" means:

- 20 (1) a bank; or  
21 (2) a savings institution, trust company,  
22 credit union or similar institution that is organized or  
23 chartered pursuant to the laws of a state or of the United  
24 States, authorized to receive deposits and supervised and  
25 examined by an official or agency of a state or the United

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1 States if its deposits or share accounts are insured to the  
2 maximum amount authorized by statute by the federal deposit  
3 insurance corporation, the national credit union share  
4 insurance fund or a successor authorized by federal law, or a  
5 receiver, conservator or other liquidating agent of such  
6 institutions or entities. "Depository institution" does not  
7 include:

8 (a) an insurance company or other  
9 organization primarily engaged in the business of insurance;

10 (b) a Morris plan bank; or

11 (c) an industrial loan company that is  
12 not an "insured depository institution" as defined in Section  
13 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C.  
14 1813(c)(2), or any successor federal statute;

15 E. "director" means the director of the securities  
16 division of the regulation and licensing department;

17 F. "division" means the securities division of the  
18 regulation and licensing department, which for purposes of  
19 administering the provisions of the New Mexico Uniform  
20 Securities Act and conducting investigations of violations of  
21 that act shall be considered a law enforcement agency;

22 G. "federal covered investment adviser" means a  
23 person registered pursuant to the federal Investment Advisers  
24 Act of 1940;

25 H. "federal covered security" means a security that

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1 is, or upon completion of a transaction will be, a covered  
2 security pursuant to Section 18(b) of the federal Securities  
3 Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations  
4 adopted pursuant to that section;

5 I. "filing" means the receipt pursuant to the New  
6 Mexico Uniform Securities Act of a record by the director, or a  
7 designee of the director, in a form and format designated by  
8 the director;

9 J. "fraud", "deceit" and "defraud" are not limited  
10 to common law deceit and need not include scienter or intent to  
11 defraud as elements;

12 K. "guaranteed" means guaranteed as to payment of  
13 all principal and all interest;

14 L. "institutional investor" means any of the  
15 following, whether acting for itself or for others in a  
16 fiduciary capacity:

17 (1) a depository institution or international  
18 banking institution;

19 (2) an insurance company;

20 (3) a separate account of an insurance  
21 company;

22 (4) an investment company as defined in the  
23 federal Investment Company Act of 1940;

24 (5) a broker-dealer registered pursuant to the  
25 federal Securities Exchange Act of 1934;

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1 (6) an employee pension, profit-sharing or  
2 benefit plan if the plan has total assets in excess of ten  
3 million dollars (\$10,000,000) or its investment decisions are  
4 made by a named fiduciary, as defined in the federal Employee  
5 Retirement Income Security Act of 1974, that is a broker-dealer  
6 registered pursuant to the federal Securities Exchange Act of  
7 1934, an investment adviser registered or exempt from  
8 registration pursuant to the federal Investment Advisers Act of  
9 1940, an investment adviser registered pursuant to the New  
10 Mexico Uniform Securities Act, a depository institution or an  
11 insurance company;

12 (7) a plan established and maintained by a  
13 state, a political subdivision of a state or an agency or  
14 instrumentality of a state or a political subdivision of a  
15 state for the benefit of its employees, if the plan has total  
16 assets in excess of ten million dollars (\$10,000,000) or its  
17 investment decisions are made by a duly designated public  
18 official or by a named fiduciary, as defined in the federal  
19 Employee Retirement Income Security Act of 1974, that is a  
20 broker-dealer registered pursuant to the federal Securities  
21 Exchange Act of 1934, an investment adviser registered or  
22 exempt from registration pursuant to the federal Investment  
23 Advisers Act of 1940, an investment adviser registered pursuant  
24 to the New Mexico Uniform Securities Act, a depository  
25 institution or an insurance company;

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1 (8) a trust, if it has total assets in excess  
2 of ten million dollars (\$10,000,000), its trustee is a  
3 depository institution and its participants are exclusively  
4 plans of the types identified in Paragraph (6) or (7) of this  
5 subsection, regardless of the size of their assets, except a  
6 trust that includes as participants self-directed individual  
7 retirement accounts or similar self-directed plans;

8 (9) an organization described in Section  
9 501(c)(3) of the federal Internal Revenue Code of 1986  
10 (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust  
11 or similar business trust, limited liability company or  
12 partnership, not formed for the specific purpose of acquiring  
13 the securities offered, with total assets in excess of ten  
14 million dollars (\$10,000,000);

15 (10) a small business investment company  
16 licensed by the small business administration pursuant to  
17 Section 301(c) of the federal Small Business Investment Act of  
18 1958 (15 U.S.C. Section 681(c)) with total assets in excess of  
19 ten million dollars (\$10,000,000);

20 (11) a private business development company as  
21 defined in Section 202(a)(22) of the federal Investment  
22 Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with  
23 total assets in excess of ten million dollars (\$10,000,000);

24 (12) a federal covered investment adviser  
25 acting for its own account;

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1 (13) a "qualified institutional buyer", as  
2 defined in Rule 144A(a)(i)(1), other than Rule 144A(a)(1)(H),  
3 adopted pursuant to the federal Securities Act of 1933  
4 (17 C.F.R. 230.144A);

5 (14) a "major U.S. institutional investor" as  
6 defined in Rule 15a-6(b)(4)(i)(17 C.F.R. 240.15a-6) adopted  
7 pursuant to the federal Securities Exchange Act of 1934;

8 (15) any other person, other than an  
9 individual, of institutional character with total assets in  
10 excess of ten million dollars (\$10,000,000) not organized for  
11 the specific purpose of evading the New Mexico Uniform  
12 Securities Act; or

13 (16) any other person specified by rule  
14 adopted or order issued pursuant to the New Mexico Uniform  
15 Securities Act;

16 M. "insurance company" means a company organized as  
17 an insurance company whose primary business is writing  
18 insurance or reinsuring risks underwritten by insurance  
19 companies and that is subject to supervision by the insurance  
20 commissioner or a similar official or agency of a state;

21 N. "insured" means insured as to payment of all  
22 principal and all interest;

23 O. "international banking institution" means an  
24 international financial institution of which the United States  
25 is a member and whose securities are exempt from registration

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1 pursuant to the federal Securities Act of 1933;

2 P. "investment adviser" means a person that, for  
3 compensation, engages in the business of advising others,  
4 either directly or through publications or writings, as to the  
5 value of securities or the advisability of investing in,  
6 purchasing or selling securities or that, for compensation and  
7 as a part of a regular business, issues or promulgates analyses  
8 or reports concerning securities. "Investment adviser"  
9 includes a financial planner or other person that, as an  
10 integral component of other financially related services,  
11 provides investment advice to others for compensation as part  
12 of a business or that holds itself out as providing investment  
13 advice to others for compensation. "Investment adviser" does  
14 not include:

15 (1) an investment adviser representative;

16 (2) a lawyer, accountant, engineer or teacher  
17 whose performance of investment advice is solely incidental to  
18 the practice of the person's profession;

19 (3) a broker-dealer or its agents whose  
20 performance of investment advice is solely incidental to the  
21 conduct of business as a broker-dealer and that does not  
22 receive special compensation for the investment advice;

23 (4) a publisher, employee or columnist of a  
24 bona fide newspaper, news magazine or business or financial  
25 publication of general and regular circulation or an owner

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1 operator, producer or employee of a cable, radio or television  
2 network, station or production facility, if, in either case:

3 (a) the financial or business news or  
4 advice is contained in a publication or broadcast disseminated  
5 to the general public; and

6 (b) the content does not consist of  
7 rendering advice on the basis of the specific investment  
8 situation of each client;

9 (5) a federal covered investment adviser;

10 (6) a bank or a savings institution described  
11 in Paragraph (2) of Subsection D of this section; or

12 (7) any other person excluded by rule adopted  
13 or order issued pursuant to the New Mexico Uniform Securities  
14 Act;

15 Q. "investment adviser representative" means an  
16 individual employed by or associated with an investment adviser  
17 or federal covered investment adviser and who makes any  
18 recommendations or otherwise gives investment advice regarding  
19 securities, manages accounts or portfolios of clients,  
20 determines which recommendation or advice regarding securities  
21 should be given, provides investment advice or holds herself or  
22 himself out as providing investment advice, receives  
23 compensation to solicit, offer or negotiate for the sale of or  
24 for selling investment advice or supervises employees who  
25 perform any of the foregoing. "Investment adviser

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1 representative" does not include an individual who:

2 (1) performs only clerical or ministerial  
3 acts;

4 (2) is an agent whose performance of  
5 investment advice is solely incidental to the individual acting  
6 as an agent and who does not receive special compensation for  
7 investment advisory services;

8 (3) is employed by or associated with a  
9 federal covered investment adviser, unless the individual has a  
10 place of business in New Mexico, as "place of business" is  
11 defined by rule adopted pursuant to Section 203A of the federal  
12 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and  
13 is:

14 (a) an investment adviser  
15 representative, as "investment adviser representative" is  
16 defined by rule adopted pursuant to Section 203A of the federal  
17 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

18 (b) not a supervised person as  
19 "supervised person" is defined in Section 202(a)(25) of the  
20 federal Investment Advisers Act of 1940 (15 U.S.C. Section  
21 80b-2(a)(25)); or

22 (4) is excluded by rule adopted or order  
23 issued pursuant to the New Mexico Uniform Securities Act;

24 R. "issuer" means a person that issues or proposes  
25 to issue a security, subject to the following:

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1 (1) the issuer of a voting trust certificate,  
2 collateral trust certificate, certificate of deposit for a  
3 security or share in an investment company without a board of  
4 directors or individuals performing similar functions is the  
5 person performing the acts and assuming the duties of depositor  
6 or manager pursuant to the trust or other agreement or  
7 instrument under which the security is issued;

8 (2) the issuer of an equipment trust  
9 certificate or similar security serving the same purpose is the  
10 person by which the property is or will be used or to which the  
11 property or equipment is or will be leased or conditionally  
12 sold or that is otherwise contractually responsible for  
13 assuring payment of the certificate; and

14 (3) the issuer of a fractional undivided  
15 interest in an oil, gas or other mineral lease or in payments  
16 out of production pursuant to a lease, right or royalty is the  
17 owner of an interest in the lease or in payments out of  
18 production pursuant to a lease, right or royalty, whether whole  
19 or fractional, that creates fractional interests for the  
20 purpose of sale;

21 S. "legal rate of interest" means the rate of  
22 interest set by Subsection A of Section 56-8-4 NMSA 1978 or its  
23 successor statutes;

24 T. "nonissuer transaction" or "nonissuer  
25 distribution" means a transaction or distribution not directly

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1 or indirectly for the benefit of the issuer;

2 U. "offer to purchase" includes an attempt or offer  
3 to obtain, or solicitation of an offer to sell, a security or  
4 interest in a security for value. "Offer to purchase" does not  
5 include a tender offer that is subject to Section 14(d) of the  
6 federal Securities Exchange Act of 1934 (15 U.S.C. 78n(d));

7 V. "person" means an individual; corporation;  
8 business trust; estate; trust; partnership; limited liability  
9 company; association; joint venture; government; governmental  
10 subdivision, agency or instrumentality; public corporation; or  
11 any other legal or commercial entity;

12 W. "place of business" of a broker-dealer, an  
13 investment adviser or a federal covered investment adviser  
14 means:

15 (1) an office at which the broker-dealer,  
16 investment adviser or federal covered investment adviser  
17 regularly provides brokerage or investment advice or solicits,  
18 meets with or otherwise communicates with customers or clients;  
19 or

20 (2) a location that is held out to the general  
21 public as a location at which the broker-dealer, investment  
22 adviser or federal covered investment adviser provides  
23 brokerage or investment advice or solicits, meets with or  
24 otherwise communicates with customers or clients;

25 X. "predecessor act" means the New Mexico

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1 Securities Act of 1986;

2 Y. "price amendment" means the amendment to a  
3 registration statement filed pursuant to the federal Securities  
4 Act of 1933 or, if an amendment is not filed, the prospectus or  
5 prospectus supplement filed pursuant to that act that includes  
6 a statement of the offering price, underwriting and selling  
7 discounts or commissions, amount of proceeds, conversion rates,  
8 call prices and other matters dependent upon the offering  
9 price;

10 Z. "principal place of business" of a  
11 broker-dealer, investment adviser or federal covered investment  
12 adviser means the executive office of the broker-dealer,  
13 investment adviser or federal covered investment adviser from  
14 which the officers, partners or managers of the broker-dealer,  
15 investment adviser or federal covered investment adviser  
16 direct, control and coordinate the activities of the  
17 broker-dealer, investment adviser or federal covered investment  
18 adviser;

19 AA. "record", except in the phrases "of record",  
20 "official record" and "public record", means information that  
21 is inscribed on a tangible medium or that is stored in an  
22 electronic or other medium and is retrievable in perceivable  
23 form;

24 BB. "sale" includes every contract of sale,  
25 contract to sell or disposition of a security or interest in a

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1 security for value, and "offer to sell" includes every attempt  
2 or offer to dispose of, or solicitation of an offer to  
3 purchase, a security or interest in a security for value. Both  
4 terms include:

5 (1) a security given or delivered with, or as  
6 a bonus on account of, a purchase of securities or any other  
7 thing constituting part of the subject of the purchase and  
8 having been offered and sold for value;

9 (2) a gift of assessable stock involving an  
10 offer and sale; and

11 (3) a sale or offer of a warrant or right to  
12 purchase or subscribe to another security of the same or  
13 another issuer and a sale or offer of a security that gives the  
14 holder a present or future right or privilege to convert the  
15 security into another security of the same or another issuer,  
16 including an offer of the other security;

17 CC. "securities and exchange commission" means the  
18 United States securities and exchange commission;

19 DD. "security" means a note; stock; treasury stock;  
20 security future; bond; debenture; evidence of indebtedness;  
21 certificate of interest or participation in a profit-sharing  
22 agreement; collateral trust certificate; preorganization  
23 certificate or subscription; transferable share; investment  
24 contract; voting trust certificate; certificate of deposit for  
25 a security; fractional undivided interest in oil, gas or other

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1 mineral rights; put, call, straddle, option or privilege on a  
2 security, certificate of deposit or group or index of  
3 securities, including an interest therein or based on the value  
4 thereof; put, call, straddle, option or privilege entered into  
5 on a national securities exchange relating to foreign currency;  
6 or, in general, an interest or instrument commonly known as a  
7 "security"; or a certificate of interest or participation in,  
8 temporary or interim certificate for, receipt for, guarantee of  
9 or warrant or right to subscribe to or purchase any of the  
10 foregoing. "Security":

11 (1) includes both a certificated and an  
12 uncertificated security;

13 (2) does not include an insurance or endowment  
14 policy or annuity contract pursuant to which an insurance  
15 company promises to pay a fixed or variable sum of money either  
16 in a lump sum or periodically for life or other specified  
17 period;

18 (3) does not include an interest in a  
19 contributory or noncontributory pension or welfare plan subject  
20 to the federal Employee Retirement Income Security Act of 1974;

21 (4) does not include landowner royalties in  
22 the production of oil, gas or other minerals created through  
23 the execution of a lease of the lessor's mineral interest;

24 (5) includes an investment in a common  
25 enterprise with the expectation of profits to be derived

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1 primarily from the efforts of a person other than the investor.  
2 As used in this paragraph, "common enterprise" means an  
3 enterprise in which the fortunes of the investor are interwoven  
4 with those of either the person offering the investment, a  
5 third party or other investors;

6 (6) includes any interest in a limited  
7 partnership or a limited liability company; and

8 (7) includes as an investment contract an  
9 investment in a viatical settlement or similar agreement;

10 EE. "self-regulatory organization" means a national  
11 securities exchange registered pursuant to the federal  
12 Securities Exchange Act of 1934, a national securities  
13 association of broker-dealers registered pursuant to that act,  
14 a clearing agency registered pursuant to that act or the  
15 municipal securities rulemaking board established pursuant to  
16 that act;

17 FF. "sign" means, with present intent to  
18 authenticate or adopt a record:

19 (1) to execute or adopt a tangible symbol; or

20 (2) to attach or logically associate with the  
21 record an electronic symbol, sound or process;

22 GG. "state" means a state of the United States, the  
23 District of Columbia, Puerto Rico, the United States Virgin  
24 Islands or any territory or insular possession subject to the  
25 jurisdiction of the United States; and

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1           HH. "underwriter" means any person who has  
2 purchased from an issuer with the intent to offer or sell a  
3 security or to distribute any security; who participates or has  
4 a direct or indirect participation in any undertaking; or who  
5 participates or has a participation in the direct or indirect  
6 underwriting of any undertaking. "Underwriter" does not  
7 include a person whose interest is limited to a commission from  
8 an underwriter or dealer not in excess of the usual and  
9 customary distributors' or sellers' commission. As used in  
10 this subsection, "issuer" includes any person directly or  
11 indirectly controlling or controlled by the issuer; or any  
12 person under direct or indirect common control with the  
13 issuer."

14           Section 2. Section 58-13C-508 NMSA 1978 (being Laws 2009,  
15 Chapter 82, Section 508) is amended to read:

16           "58-13C-508. CRIMINAL PENALTIES.--

17           A. A person who willfully violates Section [~~501 or~~  
18 ~~502 of the New Mexico Uniform Securities Act]~~ 58-13C-501 or  
19 58-13C-502 NMSA 1978 is guilty of a third degree felony and,  
20 upon conviction, shall be fined not more than five thousand  
21 dollars (\$5,000) or imprisoned not more than three years, or  
22 both, for each violation. For purposes of Subsection B of  
23 Section 31-18-13 NMSA 1978, the minimum term prescribed by this  
24 subsection is three years.

25           B. A person who willfully violates Section [~~505 of~~

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1 ~~the New Mexico Uniform Securities Act]~~ 58-13C-505 NMSA 1978  
2 knowing the statement made to be false or misleading in a  
3 material respect is guilty of a third degree felony and, upon  
4 conviction, shall be fined not more than five thousand dollars  
5 (\$5,000) or imprisoned not more than three years, or both, for  
6 each violation. For purposes of Subsection B of Section  
7 31-18-13 NMSA 1978, the minimum term prescribed by this  
8 subsection is three years.

9 C. No criminal penalties apply to violations of  
10 Section [~~504 of the New Mexico Uniform Securities Act]~~  
11 58-13C-504 NMSA 1978 or the notice filing requirements of  
12 Section [~~302 or 405 of that act]~~ 58-13C-302 or 58-13C-405 NMSA  
13 1978.

14 D. Except as provided in Subsections A through C of  
15 this section, a person who willfully violates any provision of  
16 the New Mexico Uniform Securities Act or a rule adopted or  
17 order issued pursuant to that act is guilty of a fourth degree  
18 felony and, upon conviction, shall be fined not more than five  
19 thousand dollars (\$5,000) or imprisoned not more than eighteen  
20 months, or both, for each violation. For purposes of  
21 Subsection B of Section 31-18-13 NMSA 1978, the minimum term  
22 prescribed by this subsection is eighteen months.

23 E. An individual convicted of violating a rule or  
24 order pursuant to the New Mexico Uniform Securities Act may be  
25 fined, but shall not be imprisoned, if the individual did not

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1 have knowledge of the rule or order.

2 F. For the purposes of this section, "willfully"  
3 means purposely or intentionally committing the act or making  
4 the omission and does not require an intent to violate the law  
5 or knowledge that the act or omission is unlawful.

6 G. Each offense shall constitute a separate  
7 offense, and a prosecution for any one of such offenses shall  
8 not bar prosecution or conviction for any other offenses.

9 H. All persons convicted of criminal violations of  
10 the New Mexico Uniform Securities Act shall be sentenced in  
11 accordance with the Criminal Sentencing Act or its successor  
12 statute.

13 I. No indictment or information may be brought  
14 pursuant to this section more than five years after the alleged  
15 violation.

16 J. The attorney general acting without a letter of  
17 declination from a district attorney or the proper district  
18 attorney, with or without a referral from the director, may  
19 institute criminal proceedings pursuant to the New Mexico  
20 Uniform Securities Act. The attorney general or district  
21 attorney may request assistance from the director or employees  
22 of the division. When so requested by the director, the  
23 attorney general shall commission as a special assistant  
24 attorney general any attorney employed by the director or  
25 contracted with by the director and approved by the attorney

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1 general to assist the director in carrying out the director's  
2 duties, including providing legal advice and prosecuting  
3 offenders.

4 K. The New Mexico Uniform Securities Act does not  
5 limit the power of New Mexico to punish a person for conduct  
6 that constitutes a crime pursuant to other laws of New Mexico."

7 Section 3. Section 58-13C-509 NMSA 1978 (being Laws 2009,  
8 Chapter 82, Section 509) is amended to read:

9 "58-13C-509. CIVIL LIABILITY.--

10 A. Enforcement of civil liability pursuant to this  
11 section is subject to the federal Securities Litigation Uniform  
12 Standards Act of 1998 (P.L. 105-353, 112 Stat. 3227, et seq.).

13 B. A person is liable to the purchaser if the  
14 person sells a security in violation of Section [~~301 of the New~~  
15 ~~Mexico Uniform Securities Act]~~ 58-13C-301 NMSA 1978 or, by  
16 means of an untrue statement of a material fact or an omission  
17 to state a material fact necessary in order to make the  
18 statement made, in light of the circumstances pursuant to which  
19 it is made, not misleading, the purchaser not knowing the  
20 untruth or omission and the seller not sustaining the burden of  
21 proof that the seller did not know and, in the exercise of  
22 reasonable care, could not have known of the untruth or  
23 omission. An action pursuant to this subsection is governed by  
24 the following:

25 (1) the purchaser may maintain an action to

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1 recover the consideration paid for the security, less the  
2 amount of any income received on the security, and interest at  
3 the legal rate of interest from the date of the purchase, costs  
4 and reasonable attorney fees determined by the court, upon the  
5 tender of the security, or for actual damages as provided in  
6 Paragraph (3) of this subsection;

7 (2) the tender referred to in Paragraph (1) of  
8 this subsection may be made any time before entry of judgment.  
9 Tender requires only notice in a record of ownership of the  
10 security and willingness to exchange the security for the  
11 amount specified. A purchaser that no longer owns the security  
12 may recover actual damages as provided in Paragraph (3) of this  
13 subsection; and

14 (3) actual damages in an action arising  
15 pursuant to this subsection are the amount that would be  
16 recoverable upon a tender less the value of the security when  
17 the purchaser disposed of it, and interest at the legal rate of  
18 interest from the date of the purchase, costs and reasonable  
19 attorney fees determined by the court.

20 C. A person is liable to the seller if the person  
21 buys a security by means of an untrue statement of a material  
22 fact or omission to state a material fact necessary in order to  
23 make the statement made, in light of the circumstances pursuant  
24 to which it is made, not misleading, the seller not knowing of  
25 the untruth or omission, and the purchaser not sustaining the

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1 burden of proof that the purchaser did not know, and in the  
2 exercise of reasonable care could not have known, of the  
3 untruth or omission. An action pursuant to this subsection is  
4 governed by the following:

5 (1) the seller may maintain an action to  
6 recover the security, and any income received on the security,  
7 costs and reasonable attorney fees determined by the court,  
8 upon the tender of the purchase price, or for actual damages as  
9 provided in Paragraph (3) of this subsection;

10 (2) the tender referred to in Paragraph (1) of  
11 this subsection may be made any time before entry of judgment.  
12 Tender requires only notice in a record of the present ability  
13 to pay the amount tendered and willingness to take delivery of  
14 the security for the amount specified. If the purchaser no  
15 longer owns the security, the seller may recover actual damages  
16 as provided in Paragraph (3) of this subsection; and

17 (3) actual damages in an action arising  
18 pursuant to this subsection are the difference between the  
19 price at which the security was sold and the value the security  
20 would have had at the time of the sale in the absence of the  
21 purchaser's conduct causing liability, and interest at the  
22 legal rate of interest from the date of the sale of the  
23 security, costs and reasonable attorney fees determined by the  
24 court.

25 D. A person acting as a broker-dealer or agent that

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1 sells or buys a security in violation of Subsection A of  
2 Section [~~401 of the New Mexico Uniform Securities Act~~]  
3 58-13C-401 NMSA 1978, Subsection A of Section [~~402 of that act~~]  
4 58-13C-402 NMSA 1978 or Section [~~506 of that act~~] 58-13C-506  
5 NMSA 1978 is liable to the customer. The customer, if a  
6 purchaser, may maintain an action for recovery of actual  
7 damages as specified in Paragraphs (1) through (3) of  
8 Subsection B of this section, or, if a seller, for a remedy as  
9 specified in Paragraphs (1) through (3) of Subsection C of this  
10 section.

11 E. A person acting as an investment adviser or  
12 investment adviser representative that provides investment  
13 advice for compensation in violation of Subsection A of Section  
14 [~~403 of the New Mexico Uniform Securities Act~~] 58-13C-403 NMSA  
15 1978, Subsection A of Section [~~404 of that act~~] 58-13C-404 NMSA  
16 1978 or Section [~~506 of that act~~] 58-13C-506 NMSA 1978 is  
17 liable to the client. The client may maintain an action to  
18 recover the consideration paid for the advice, interest at the  
19 legal rate of interest from the date of payment, costs and  
20 reasonable attorney fees determined by the court.

21 F. A person that receives, directly or indirectly,  
22 any consideration for providing investment advice to another  
23 person and that employs a device, scheme or artifice to defraud  
24 the other person or engages in an act, practice or course of  
25 business that operates or would operate as a fraud or deceit on

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1 the other person, is liable to the other person. An action  
2 pursuant to this subsection is governed by the following:

3 (1) the person defrauded may maintain an  
4 action to recover the consideration paid for the advice and the  
5 amount of any actual damages caused by the fraudulent conduct,  
6 interest at the legal rate of interest from the date of the  
7 fraudulent conduct, costs and reasonable attorney fees  
8 determined by the court, less the amount of any income received  
9 as a result of the fraudulent conduct; and

10 (2) this subsection does not apply to a  
11 broker-dealer or its agents if the investment advice provided  
12 is solely incidental to transacting business as a broker-dealer  
13 and no special compensation is received for the investment  
14 advice.

15 G. The following persons are liable jointly and  
16 severally with and to the same extent as persons liable  
17 pursuant to Subsections B through F of this section:

18 (1) a person that directly or indirectly  
19 controls a person liable pursuant to Subsections B through F of  
20 this section, unless the controlling person sustains the burden  
21 of proof that the person did not know, and in the exercise of  
22 reasonable care could not have known, of the existence of  
23 conduct by reason of which the liability is alleged to exist;

24 (2) an individual who is a managing partner,  
25 executive officer or director of a person liable pursuant to

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1 Subsections B through F of this section, including an  
2 individual having a similar status or performing similar  
3 functions, unless the individual sustains the burden of proof  
4 that the individual did not know and, in the exercise of  
5 reasonable care could not have known, of the existence of  
6 conduct by reason of which the liability is alleged to exist;

7 (3) an individual who is an employee of or  
8 associated with a person liable pursuant to Subsections B  
9 through F of this section and who materially aids the conduct  
10 giving rise to the liability, unless the individual sustains  
11 the burden of proof that the individual did not know and, in  
12 the exercise of reasonable care could not have known, of the  
13 existence of conduct by reason of which the liability is  
14 alleged to exist; and

15 (4) a person that is a broker-dealer, agent,  
16 investment adviser or investment adviser representative that  
17 materially aids the conduct giving rise to the liability  
18 pursuant to Subsections B through F of this section, unless the  
19 person sustains the burden of proof that the person did not  
20 know and, in the exercise of reasonable care could not have  
21 known, of the existence of conduct by reason of which liability  
22 is alleged to exist.

23 H. A person liable pursuant to this section has a  
24 right of contribution as in cases of contract against any other  
25 person liable pursuant to this section for the same conduct.

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1 I. A cause of action pursuant to this section  
2 survives the death of an individual who might have been a  
3 plaintiff or defendant.

4 J. A person shall not obtain relief unless the suit  
5 is brought:

6 (1) within [~~two~~] four years after discovery of  
7 the violation or after discovery should have been made by the  
8 exercise of reasonable diligence; and

9 (2) within [~~five~~] ten years after the act or  
10 transaction constituting the violation.

11 K. A person that has made, or has engaged in the  
12 performance of, a contract in violation of the New Mexico  
13 Uniform Securities Act or a rule adopted or order issued  
14 pursuant to that act, or that has acquired a purported right  
15 pursuant to the contract with knowledge of conduct by reason of  
16 which its making or performance was in violation of the New  
17 Mexico Uniform Securities Act, may not base an action on the  
18 contract.

19 L. A condition, stipulation or provision binding a  
20 person purchasing or selling a security or receiving investment  
21 advice to waive compliance with the New Mexico Uniform  
22 Securities Act, or a rule adopted or order issued pursuant to  
23 that act, is void.

24 M. The rights and remedies provided by the New  
25 Mexico Uniform Securities Act are in addition to any other

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1 rights or remedies that may exist, but that act does not create  
2 a cause of action not specified in this section or Subsection E  
3 of Section [~~411 of that act~~] 58-13C-411 NMSA 1978."

4 Section 4. Section 58-13C-602 NMSA 1978 (being Laws 2009,  
5 Chapter 82, Section 602) is amended to read:

6 "58-13C-602. INVESTIGATIONS AND SUBPOENAS.--

7 A. The director or attorney general may:

8 (1) conduct public or private investigations  
9 within or outside of New Mexico that the director or attorney  
10 general considers necessary or appropriate to determine whether  
11 a person has violated, is violating or is about to violate the  
12 New Mexico Uniform Securities Act, or a rule adopted or order  
13 issued pursuant to that act, or to aid in the enforcement of  
14 the New Mexico Uniform Securities Act or in the adoption of  
15 rules and forms pursuant to that act;

16 (2) require or permit a person to testify,  
17 file a statement or produce a record, under oath or otherwise  
18 as the director or attorney general determines, as to all the  
19 facts and circumstances concerning a matter to be investigated  
20 or about which an action or proceeding is to be instituted; and

21 (3) publish a record concerning an action,  
22 proceeding or an investigation pursuant to or a violation of  
23 the New Mexico Uniform Securities Act or a rule adopted or  
24 order issued pursuant to that act if the director or attorney  
25 general determines it is necessary or appropriate in the public

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1 interest and for the protection of investors.

2 B. For the purpose of an investigation pursuant to  
3 the New Mexico Uniform Securities Act, the director or the  
4 director's designated officer or the attorney general may  
5 administer oaths and affirmations, subpoena witnesses, seek  
6 compulsion of attendance, take evidence, require the filing of  
7 statements and require the production of any records that the  
8 director or attorney general considers relevant or material to  
9 the investigation.

10 C. If a person does not appear or refuses to  
11 testify, file a statement, produce records or otherwise does  
12 not obey a subpoena as required by the director or attorney  
13 general pursuant to the New Mexico Uniform Securities Act, the  
14 director or attorney general may apply to the district court of  
15 Santa Fe county or other appropriate district court or to a  
16 court of another state, a federal court or a court of a foreign  
17 jurisdiction, or the director may refer the matter to the  
18 attorney general or the proper district attorney to enforce  
19 compliance. The court may:

- 20 (1) hold the person in contempt;  
21 (2) order the person to appear before the  
22 director;  
23 (3) order the person to testify about the  
24 matter under investigation or in question;  
25 (4) order the production of records;

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1 (5) grant injunctive relief, including  
2 restricting or prohibiting the offer or sale of securities or  
3 the providing of investment advice;

4 (6) impose a civil penalty of not more than  
5 ten thousand dollars (\$10,000) for each violation; and

6 (7) grant any other necessary or appropriate  
7 relief.

8 D. This section does not preclude a person from  
9 applying to the appropriate district court or a court of  
10 another state for relief from a request to appear, testify,  
11 file a statement, produce records or obey a subpoena.

12 E. An individual is not excused from attending,  
13 testifying, filing a statement, producing a record or other  
14 evidence or obeying a subpoena of the director or attorney  
15 general pursuant to the New Mexico Uniform Securities Act or in  
16 an action or proceeding instituted by the director or attorney  
17 general pursuant to that act on the grounds that the required  
18 testimony, statement, record or other evidence, directly or  
19 indirectly, may tend to incriminate the individual or subject  
20 the individual to a criminal fine, penalty or forfeiture. If  
21 the individual refuses to testify, file a statement or produce  
22 a record or other evidence on the basis of the individual's  
23 privilege against self-incrimination, the director or attorney  
24 general may apply to the district court of Santa Fe county or  
25 other appropriate district court or to a court of another

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1 state, a federal court or a court of a foreign jurisdiction to  
2 compel the testimony, the filing of the statement, the  
3 production of the record or the giving of other evidence. The  
4 testimony, record or other evidence compelled pursuant to such  
5 an order shall not be used, directly or indirectly, against the  
6 individual in a criminal case, except in a prosecution for  
7 perjury or contempt or otherwise failing to comply with the  
8 order.

9 F. At the request of the securities regulator of  
10 another state or a foreign jurisdiction, the director or  
11 attorney general may provide assistance if the requesting  
12 regulator states that it is conducting an investigation to  
13 determine whether a person has violated, is violating or is  
14 about to violate a law or rule of the other state or foreign  
15 jurisdiction relating to securities matters that the requesting  
16 regulator administers or enforces. The director or attorney  
17 general may provide the assistance by using the authority to  
18 investigate and the powers conferred by this section as the  
19 director or attorney general determines is necessary or  
20 appropriate. The assistance may be provided without regard to  
21 whether the conduct described in the request would also  
22 constitute a violation of the New Mexico Uniform Securities Act  
23 or other law of New Mexico if occurring in New Mexico. In  
24 deciding whether to provide the assistance, the director or  
25 attorney general may consider whether the requesting regulator

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1 is permitted and has agreed to provide assistance reciprocally  
2 within its state or foreign jurisdiction to the director or  
3 attorney general on securities matters when requested; whether  
4 compliance with the request would violate or prejudice the  
5 public policy of New Mexico; and the availability of resources  
6 and employees of the director or attorney general to carry out  
7 the request for assistance."

8 Section 5. Section 58-13C-603 NMSA 1978 (being Laws 2009,  
9 Chapter 82, Section 603) is amended to read:

10 "58-13C-603. CIVIL ENFORCEMENT.--

11 A. If the director or attorney general believes  
12 that a person has engaged, is engaging or is about to engage in  
13 an act, practice or course of business constituting a violation  
14 of the New Mexico Uniform Securities Act or a rule adopted or  
15 order issued pursuant to that act or that a person has, is or  
16 is about to engage in an act, practice or course of business  
17 that materially aids a violation of the New Mexico Uniform  
18 Securities Act or a rule adopted or order issued pursuant to  
19 that act, the director or attorney general may maintain an  
20 action to enjoin the act, practice or course of business and to  
21 enforce compliance with the New Mexico Uniform Securities Act  
22 or a rule adopted or order issued pursuant to that act.

23 B. In an action pursuant to this section and on a  
24 proper showing, the court may:

25 (1) issue a permanent or temporary injunction,

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1 restraining order or declaratory judgment;

2 (2) order other appropriate or ancillary  
3 relief, which may include:

4 (a) an asset freeze, accounting, writ of  
5 attachment, writ of general or specific execution and  
6 appointment of a receiver or conservator, that may be the  
7 director or attorney general, for the defendant or the  
8 defendant's assets;

9 (b) ordering the director or attorney  
10 general to take charge and control of a defendant's property,  
11 including investment accounts and accounts in a depository  
12 institution, rents and profits; to collect debts; and to  
13 acquire and dispose of property;

14 (c) imposing a civil penalty of up to  
15 ten thousand dollars (\$10,000) for each violation;

16 (d) an order of rescission, restitution  
17 or disgorgement directed to a person that has engaged in an  
18 act, practice or course of business constituting a violation of  
19 the New Mexico Uniform Securities Act or the predecessor act or  
20 a rule adopted or order issued pursuant to the New Mexico  
21 Uniform Securities Act or the predecessor act;

22 (e) ordering the payment of prejudgment  
23 and postjudgment interest; and

24 (f) ordering the payment of litigation  
25 expenses of the director or attorney general; and

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1 (3) order such other relief as the court  
2 considers appropriate.

3 C. If a person violates a provision of the New  
4 Mexico Uniform Securities Act and the violation is directed  
5 toward, targets or is committed against a person who, at the  
6 time of the violation, is sixty-two years of age or older, the  
7 court, in addition to any other civil penalties provided for  
8 pursuant to the New Mexico Uniform Securities Act or a rule  
9 issued pursuant to that act, may impose an additional civil  
10 penalty not to exceed ten thousand dollars (\$10,000) for each  
11 violation.

12 D. The director or attorney general shall not be  
13 required to post a bond in an action or proceeding pursuant to  
14 the New Mexico Uniform Securities Act."

15 Section 6. Section 58-13C-608 NMSA 1978 (being Laws 2009,  
16 Chapter 82, Section 608) is amended to read:

17 "58-13C-608. UNIFORMITY AND COOPERATION WITH OTHER  
18 AGENCIES.--

19 A. The director or attorney general may, in the  
20 director's or attorney general's discretion, cooperate,  
21 coordinate, consult and, subject to Section [~~607 of the New~~  
22 ~~Mexico Uniform Securities Act~~] 58-13C-607 NMSA 1978, share  
23 records and information with the securities regulator of  
24 another state, Canada, a Canadian province or territory, a  
25 foreign jurisdiction, the securities and exchange commission,

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1 the United States department of justice, the commodity futures  
2 trading commission, the federal trade commission, the  
3 securities investor protection corporation, a self-regulatory  
4 organization, a national or international organization of  
5 securities regulators, a federal or state banking and insurance  
6 regulator and a governmental law enforcement agency to  
7 effectuate greater uniformity in securities matters among the  
8 federal government, self-regulatory organizations, states and  
9 foreign governments.

10 B. In cooperating, coordinating, consulting and  
11 sharing records and information pursuant to this section and in  
12 acting by rule, order or waiver pursuant to the New Mexico  
13 Uniform Securities Act, the director or attorney general shall,  
14 in the director's or attorney general's discretion, take into  
15 consideration in carrying out the public interest the following  
16 general policies:

17 (1) maximizing effectiveness of regulation for  
18 the protection of investors;

19 (2) maximizing uniformity in federal and state  
20 regulatory standards; and

21 (3) minimizing burdens on the business of  
22 capital formation, without adversely affecting essentials of  
23 investor protection.

24 C. The cooperation, coordination, consultation and  
25 sharing of records and information authorized by this section

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1 includes:

2 (1) establishing or employing one or more  
3 designees as a central depository for registration and notice  
4 filings pursuant to the New Mexico Uniform Securities Act and  
5 for records required or allowed to be maintained pursuant to  
6 that act;

7 (2) developing and maintaining uniform forms;

8 (3) conducting a joint examination or  
9 investigation;

10 (4) holding a joint administrative hearing;

11 (5) instituting and prosecuting a joint civil  
12 or administrative proceeding;

13 (6) sharing and exchanging personnel;

14 (7) coordinating registrations pursuant to  
15 Sections ~~[301 and 401 through 404 of the New Mexico Uniform~~  
16 ~~Securities Act]~~ 58-13C-301 and 58-13C-401 through 58-13C-404  
17 NMSA 1978 and exemptions pursuant to Section ~~[203 of that act]~~  
18 58-13C-203 NMSA 1978;

19 (8) sharing and exchanging records, subject to  
20 Section ~~[607 of the New Mexico Uniform Securities Act]~~  
21 58-13C-607 NMSA 1978;

22 (9) formulating rules, statements of policy,  
23 guidelines, forms and interpretative opinions and releases;

24 (10) formulating common systems and  
25 procedures;

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1 (11) notifying the public of proposed rules,  
2 forms, statements of policy and guidelines;

3 (12) attending conferences and other meetings  
4 among securities regulators, which may include representatives  
5 of governmental and private sector organizations involved in  
6 capital formation, deemed necessary or appropriate to promote  
7 or achieve uniformity; and

8 (13) developing and maintaining a uniform  
9 exemption from registration for small issuers and taking other  
10 steps to reduce the burden of raising investment capital by  
11 small businesses."