

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 18

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

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-101 NMSA 1978 (being Laws 2009,
Chapter 82, Section 101) is amended to read:

"58-13C-101. SHORT TITLE.--~~[Sections 101 through 701 of
this act]~~ Chapter 58, Article 13C NMSA 1978 may be cited as the
"New Mexico Uniform Securities Act"."

SECTION 2. 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:

underscoring material = new
~~[bracketed material]~~ = delete

1 A. "agent" means an individual, other than a
2 broker-dealer, who represents a broker-dealer in effecting or
3 attempting to effect purchases or sales of securities or
4 represents an issuer in effecting or attempting to effect
5 purchases or sales of the issuer's securities, but a partner,
6 officer or director of a broker-dealer or issuer, or an
7 individual having a similar status or performing similar
8 functions, is an agent only if the individual otherwise comes
9 within the term. "Agent" does not include an individual
10 excluded by rule adopted or order issued pursuant to the New
11 Mexico Uniform Securities Act;

12 B. "bank" means:

13 (1) a banking institution organized pursuant
14 to the laws of the United States;

15 (2) a member bank of the federal reserve
16 system;

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

.182842.1

underscored material = new
[bracketed material] = delete

1 is not operated for the purpose of evading the New Mexico
2 Uniform Securities Act; and

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

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

9 "Broker-dealer" does not include:

10 (1) an agent;
11 (2) an issuer;
12 (3) a bank or savings institution described in
13 Paragraph (2) of Subsection D of this section if its activities
14 as a broker-dealer are limited to those specified in
15 Subsections 3(a)(4)(B)(i) through (vi), (viii) through (x) and
16 (xi), if limited to unsolicited transactions; 3(a)(5)(B); and
17 3(a)(5)(C) of the federal Securities Exchange Act of 1934 (15
18 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the
19 conditions described in Subsection 3(a)(4)(E) of the federal
20 Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

21 (4) an international banking institution; or
22 (5) a person excluded by rule adopted or order
23 issued pursuant to the New Mexico Uniform Securities Act;

24 D. "depository institution" means:

25 (1) a bank; or

underscoring material = new
~~[bracketed material]~~ = delete

1 (2) a savings institution, trust company,
2 credit union or similar institution that is organized or
3 chartered pursuant to the laws of a state or of the United
4 States, authorized to receive deposits and supervised and
5 examined by an official or agency of a state or the United
6 States if its deposits or share accounts are insured to the
7 maximum amount authorized by statute by the federal deposit
8 insurance corporation, the national credit union share
9 insurance fund or a successor authorized by federal law, or a
10 receiver, conservator or other liquidating agent of such
11 institutions or entities. "Depository institution" does not
12 include:

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

15 (b) a Morris plan bank; or

16 (c) an industrial loan company that is
17 not an "insured depository institution" as defined in Section
18 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C.
19 1813(c)(2), or any successor federal statute;

20 E. "director" means the director of the securities
21 division of the regulation and licensing department;

22 F. "division" means the securities division of the
23 regulation and licensing department, which for purposes of
24 administering the provisions of the New Mexico Uniform
25 Securities Act and conducting investigations of violations of

.182842.1

underscoring material = new
[bracketed material] = delete

1 that act shall be considered a law enforcement agency;

2 G. "federal covered investment adviser" means a
3 person registered pursuant to the federal Investment Advisers
4 Act of 1940;

5 H. "federal covered security" means a security that
6 is, or upon completion of a transaction will be, a covered
7 security pursuant to Section 18(b) of the federal Securities
8 Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations
9 adopted pursuant to that section;

10 I. "filing" means the receipt pursuant to the New
11 Mexico Uniform Securities Act of a record by the director, or a
12 designee of the director, in a form and format designated by
13 the director;

14 J. "fraud", "deceit" and "defraud" are not limited
15 to common law deceit and need not include scienter or intent to
16 defraud as elements;

17 K. "guaranteed" means guaranteed as to payment of
18 all principal and all interest;

19 L. "institutional investor" means any of the
20 following, whether acting for itself or for others in a
21 fiduciary capacity:

22 (1) a depository institution or international
23 banking institution;

24 (2) an insurance company;

25 (3) a separate account of an insurance

.182842.1

underscoring material = new
~~[bracketed material]~~ = delete

1 company;

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

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

6 (6) an employee pension, profit-sharing or
7 benefit plan if the plan has total assets in excess of ten
8 million dollars (\$10,000,000) or its investment decisions are
9 made by a named fiduciary, as defined in the federal Employee
10 Retirement Income Security Act of 1974, that is a broker-dealer
11 registered pursuant to the federal Securities Exchange Act of
12 1934, an investment adviser registered or exempt from
13 registration pursuant to the federal Investment Advisers Act of
14 1940, an investment adviser registered pursuant to the New
15 Mexico Uniform Securities Act, a depository institution or an
16 insurance company;

17 (7) a plan established and maintained by a
18 state, a political subdivision of a state or an agency or
19 instrumentality of a state or a political subdivision of a
20 state for the benefit of its employees, if the plan has total
21 assets in excess of ten million dollars (\$10,000,000) or its
22 investment decisions are made by a duly designated public
23 official or by a named fiduciary, as defined in the federal
24 Employee Retirement Income Security Act of 1974, that is a
25 broker-dealer registered pursuant to the federal Securities

.182842.1

underscoring material = new
~~[bracketed material]~~ = delete

1 Exchange Act of 1934, an investment adviser registered or
2 exempt from registration pursuant to the federal Investment
3 Advisers Act of 1940, an investment adviser registered pursuant
4 to the New Mexico Uniform Securities Act, a depository
5 institution or an insurance company;

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

13 (9) an organization described in Section
14 501(c)(3) of the federal Internal Revenue Code of 1986
15 (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust
16 or similar business trust, limited liability company or
17 partnership, not formed for the specific purpose of acquiring
18 the securities offered, with total assets in excess of ten
19 million dollars (\$10,000,000);

20 (10) a small business investment company
21 licensed by the small business administration pursuant to
22 Section 301(c) of the federal Small Business Investment Act of
23 1958 (15 U.S.C. Section 681(c)) with total assets in excess of
24 ten million dollars (\$10,000,000);

25 (11) a private business development company as

.182842.1

underscoring material = new
[bracketed material] = delete

1 defined in Section 202(a)(22) of the federal Investment
2 Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with
3 total assets in excess of ten million dollars (\$10,000,000);

4 (12) a federal covered investment adviser
5 acting for its own account;

6 (13) a "qualified institutional buyer", as
7 defined in Rule 144A(a)(i)(1), other than Rule 144A(a)(1)(H),
8 adopted pursuant to the federal Securities Act of 1933
9 (17 C.F.R. 230.144A);

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

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

18 (16) any other person specified by rule
19 adopted or order issued pursuant to the New Mexico Uniform
20 Securities Act;

21 M. "insurance company" means a company organized as
22 an insurance company whose primary business is writing
23 insurance or reinsuring risks underwritten by insurance
24 companies and that is subject to supervision by the insurance
25 commissioner or a similar official or agency of a state;

.182842.1

underscoring material = new
~~[bracketed material] = delete~~

1 N. "insured" means insured as to payment of all
2 principal and all interest;

3 O. "international banking institution" means an
4 international financial institution of which the United States
5 is a member and whose securities are exempt from registration
6 pursuant to the federal Securities Act of 1933;

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

20 (1) an investment adviser representative;

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

24 (3) a broker-dealer or its agents whose
25 performance of investment advice is solely incidental to the

.182842.1

1 conduct of business as a broker-dealer and that does not
2 receive special compensation for the investment advice;

3 (4) a publisher, employee or columnist of a
4 bona fide newspaper, news magazine or business or financial
5 publication of general and regular circulation or an owner
6 operator, producer or employee of a cable, radio or television
7 network, station or production facility, if, in either case:

8 (a) the financial or business news or
9 advice is contained in a publication or broadcast disseminated
10 to the general public; and

11 (b) the content does not consist of
12 rendering advice on the basis of the specific investment
13 situation of each client;

14 (5) a federal covered investment adviser;

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

17 (7) any other person excluded by rule adopted
18 or order issued pursuant to the New Mexico Uniform Securities
19 Act;

20 Q. "investment adviser representative" means an
21 individual employed by or associated with an investment adviser
22 or federal covered investment adviser and who makes any
23 recommendations or otherwise gives investment advice regarding
24 securities, manages accounts or portfolios of clients,
25 determines which recommendation or advice regarding securities

underscoring material = new
~~[bracketed material] = delete~~

1 should be given, provides investment advice or holds herself or
2 himself out as providing investment advice, receives
3 compensation to solicit, offer or negotiate for the sale of or
4 for selling investment advice or supervises employees who
5 perform any of the foregoing. "Investment adviser
6 representative" does not include an individual who:

7 (1) performs only clerical or ministerial
8 acts;

9 (2) is an agent whose performance of
10 investment advice is solely incidental to the individual acting
11 as an agent and who does not receive special compensation for
12 investment advisory services;

13 (3) is employed by or associated with a
14 federal covered investment adviser, unless the individual has a
15 place of business in New Mexico, as "place of business" 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) and
18 is:

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

23 (b) not a supervised person as
24 "supervised person" is defined in Section 202(a)(25) of the
25 federal Investment Advisers Act of 1940 (15 U.S.C. Section

.182842.1

underscoring material = new
~~[bracketed material] = delete~~

1 80b-2(a)(25)); or

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

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

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

13 (2) the issuer of an equipment trust
14 certificate or similar security serving the same purpose is the
15 person by which the property is or will be used or to which the
16 property or equipment is or will be leased or conditionally
17 sold or that is otherwise contractually responsible for
18 assuring payment of the certificate; and

19 (3) the issuer of a fractional undivided
20 interest in an oil, gas or other mineral lease or in payments
21 out of production pursuant to a lease, right or royalty is the
22 owner of an interest in the lease or in payments out of
23 production pursuant to a lease, right or royalty, whether whole
24 or fractional, that creates fractional interests for the
25 purpose of sale;

.182842.1

underscoring material = new
~~[bracketed material] = delete~~

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

4 T. "nonissuer transaction" or "nonissuer
5 distribution" means a transaction or distribution not directly
6 or indirectly for the benefit of the issuer;

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

12 V. "person" means an individual; corporation;
13 business trust; estate; trust; partnership; limited liability
14 company; association; joint venture; government; governmental
15 subdivision, agency or instrumentality; public corporation; or
16 any other legal or commercial entity;

17 W. "place of business" of a broker-dealer, an
18 investment adviser or a federal covered investment adviser
19 means:

20 (1) an office at which the broker-dealer,
21 investment adviser or federal covered investment adviser
22 regularly provides brokerage or investment advice or solicits,
23 meets with or otherwise communicates with customers or clients;
24 or

25 (2) a location that is held out to the general

.182842.1

1 public as a location at which the broker-dealer, investment
2 adviser or federal covered investment adviser provides
3 brokerage or investment advice or solicits, meets with or
4 otherwise communicates with customers or clients;

5 X. "predecessor act" means the New Mexico
6 Securities Act of 1986;

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

15 Z. "principal place of business" of a broker-
16 dealer, investment adviser or federal covered investment
17 adviser means the executive office of the broker-dealer,
18 investment adviser or federal covered investment adviser from
19 which the officers, partners or managers of the broker-dealer,
20 investment adviser or federal covered investment adviser
21 direct, control and coordinate the activities of the broker-
22 dealer, investment adviser or federal covered investment
23 adviser;

24 AA. "record", except in the phrases "of record",
25 "official record" and "public record", means information that

underscoring material = new
~~[bracketed material] = delete~~

1 is inscribed on a tangible medium or that is stored in an
2 electronic or other medium and is retrievable in perceivable
3 form;

4 BB. "sale" includes every contract of sale,
5 contract to sell or disposition of a security or interest in a
6 security for value, and "offer to sell" includes every attempt
7 or offer to dispose of, or solicitation of an offer to
8 purchase, a security or interest in a security for value. Both
9 terms include:

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

14 (2) a gift of assessable stock involving an
15 offer and sale; and

16 (3) a sale or offer of a warrant or right to
17 purchase or subscribe to another security of the same or
18 another issuer and a sale or offer of a security that gives the
19 holder a present or future right or privilege to convert the
20 security into another security of the same or another issuer,
21 including an offer of the other security;

22 CC. "securities and exchange commission" means the
23 United States securities and exchange commission;

24 DD. "security" means a note; stock; treasury stock;
25 security future; bond; debenture; evidence of indebtedness;

.182842.1

underscoring material = new
~~[bracketed material] = delete~~

1 certificate of interest or participation in a profit-sharing
2 agreement; collateral trust certificate; preorganization
3 certificate or subscription; transferable share; investment
4 contract; voting trust certificate; certificate of deposit for
5 a security; fractional undivided interest in oil, gas or other
6 mineral rights; put, call, straddle, option or privilege on a
7 security, certificate of deposit or group or index of
8 securities, including an interest therein or based on the value
9 thereof; put, call, straddle, option or privilege entered into
10 on a national securities exchange relating to foreign currency;
11 or, in general, an interest or instrument commonly known as a
12 "security"; or a certificate of interest or participation in,
13 temporary or interim certificate for, receipt for, guarantee of
14 or warrant or right to subscribe to or purchase any of the
15 foregoing. "Security":

16 (1) includes both a certificated and an
17 uncertificated security;

18 (2) does not include an insurance or endowment
19 policy or annuity contract pursuant to which an insurance
20 company promises to pay a fixed or variable sum of money either
21 in a lump sum or periodically for life or other specified
22 period;

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

.182842.1

underscoring material = new
~~[bracketed material] = delete~~

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

4 (5) includes an investment in a common
5 enterprise with the expectation of profits to be derived
6 primarily from the efforts of a person other than the investor.
7 As used in this paragraph, "common enterprise" means an
8 enterprise in which the fortunes of the investor are interwoven
9 with those of either the person offering the investment, a
10 third party or other investors;

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

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

15 EE. "self-regulatory organization" means a national
16 securities exchange registered pursuant to the federal
17 Securities Exchange Act of 1934, a national securities
18 association of broker-dealers registered pursuant to that act,
19 a clearing agency registered pursuant to that act or the
20 municipal securities rulemaking board established pursuant to
21 that act;

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

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

25 (2) to attach or logically associate with the

.182842.1

underscored material = new
[bracketed material] = delete

1 record an electronic symbol, sound or process;

2 GG. "state" means a state of the United States, the
3 District of Columbia, Puerto Rico, the United States Virgin
4 Islands or any territory or insular possession subject to the
5 jurisdiction of the United States; and

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

19 SECTION 3. Section 58-13C-508 NMSA 1978 (being Laws 2009,
20 Chapter 82, Section 508) is amended to read:

21 "58-13C-508. CRIMINAL PENALTIES.--

22 A. A person who willfully violates Section [~~501 or~~
23 ~~502 of the New Mexico Uniform Securities Act]~~ 58-13C-501 or
24 58-13C-502 NMSA 1978 is guilty of a third degree felony and,
25 upon conviction, shall be fined not more than five thousand

.182842.1

underscored material = new
[bracketed material] = delete

1 dollars (\$5,000) or imprisoned not more than three years, or
2 both, for each violation. For purposes of Subsection B of
3 Section 31-18-13 NMSA 1978, the minimum term prescribed by this
4 subsection is three years.

5 B. A person who willfully violates Section [~~505 of~~
6 ~~the New Mexico Uniform Securities Act~~] 58-13C-505 NMSA 1978
7 knowing the statement made to be false or misleading in a
8 material respect is guilty of a third degree felony and, upon
9 conviction, shall be fined not more than five thousand dollars
10 (\$5,000) or imprisoned not more than three years, or both, for
11 each violation. For purposes of Subsection B of Section
12 31-18-13 NMSA 1978, the minimum term prescribed by this
13 subsection is three years.

14 C. No criminal penalties apply to violations of
15 Section [~~504 of the New Mexico Uniform Securities Act~~]
16 58-13C-504 NMSA 1978 or the notice filing requirements of
17 Section [~~302 or 405 of that act~~] 58-13C-302 or 58-13C-405 NMSA
18 1978.

19 D. Except as provided in Subsections A through C of
20 this section, a person who willfully violates any provision of
21 the New Mexico Uniform Securities Act or a rule adopted or
22 order issued pursuant to that act is guilty of a fourth degree
23 felony and, upon conviction, shall be fined not more than five
24 thousand dollars (\$5,000) or imprisoned not more than eighteen
25 months, or both, for each violation. For purposes of

.182842.1

underscored material = new
[bracketed material] = delete

1 Subsection B of Section 31-18-13 NMSA 1978, the minimum term
2 prescribed by this subsection is eighteen months.

3 E. An individual convicted of violating a rule or
4 order pursuant to the New Mexico Uniform Securities Act may be
5 fined, but shall not be imprisoned, if the individual did not
6 have knowledge of the rule or order.

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

11 G. Each offense shall constitute a separate
12 offense, and a prosecution for any one of such offenses shall
13 not bar prosecution or conviction for any other offenses.

14 H. All persons convicted of criminal violations of
15 the New Mexico Uniform Securities Act shall be sentenced in
16 accordance with the Criminal Sentencing Act or its successor
17 statute.

18 I. No indictment or information may be brought
19 pursuant to this section more than five years after the alleged
20 violation.

21 J. The attorney general, acting without a letter of
22 declination from a district attorney or the proper district
23 attorney, with or without a referral from the director, may
24 institute criminal proceedings pursuant to the New Mexico
25 Uniform Securities Act. The attorney general or district

.182842.1

underscored material = new
[bracketed material] = delete

1 attorney may request assistance from the director or employees
2 of the division. When so requested by the director, the
3 attorney general shall commission as a special assistant
4 attorney general any attorney employed by the director or
5 contracted with by the director and approved by the attorney
6 general to assist the director in carrying out the director's
7 duties, including providing legal advice and prosecuting
8 offenders.

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

12 SECTION 4. Section 58-13C-509 NMSA 1978 (being Laws 2009,
13 Chapter 82, Section 509) is amended to read:

14 "58-13C-509. CIVIL LIABILITY.--

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

18 B. A person is liable to the purchaser if the
19 person sells a security in violation of Section [~~301 of the New~~
20 ~~Mexico Uniform Securities Act~~] 58-13C-301 NMSA 1978 or, by
21 means of an untrue statement of a material fact or an omission
22 to state a material fact necessary in order to make the
23 statement made, in light of the circumstances pursuant to which
24 it is made, not misleading, the purchaser not knowing the
25 untruth or omission and the seller not sustaining the burden of

.182842.1

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

5 (1) the purchaser may maintain an action to
6 recover the consideration paid for the security, less the
7 amount of any income received on the security, and interest at
8 the legal rate of interest from the date of the purchase, costs
9 and reasonable attorney fees determined by the court, upon the
10 tender of the security, or for actual damages as provided in
11 Paragraph (3) of this subsection;

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

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

25 C. A person is liable to the seller if the person

underscoring material = new
~~[bracketed material]~~ = delete

1 buys a security by means of an untrue statement of a material
2 fact or omission to state a material fact necessary in order to
3 make the statement made, in light of the circumstances pursuant
4 to which it is made, not misleading, the seller not knowing of
5 the untruth or omission, and the purchaser not sustaining the
6 burden of proof that the purchaser did not know, and in the
7 exercise of reasonable care could not have known, of the
8 untruth or omission. An action pursuant to this subsection is
9 governed by the following:

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

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

22 (3) actual damages in an action arising
23 pursuant to this subsection are the difference between the
24 price at which the security was sold and the value the security
25 would have had at the time of the sale in the absence of the

.182842.1

underscored material = new
[bracketed material] = delete

1 purchaser's conduct causing liability, and interest at the
2 legal rate of interest from the date of the sale of the
3 security, costs and reasonable attorney fees determined by the
4 court.

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

16 E. A person acting as an investment adviser or
17 investment adviser representative that provides investment
18 advice for compensation in violation of Subsection A of Section
19 [~~403 of the New Mexico Uniform Securities Act~~] 58-13C-403 NMSA
20 1978, Subsection A of Section [~~404 of that act~~] 58-13C-404 NMSA
21 1978 or Section [~~506 of that act~~] 58-13C-506 NMSA 1978 is
22 liable to the client. The client may maintain an action to
23 recover the consideration paid for the advice, interest at the
24 legal rate of interest from the date of payment, costs and
25 reasonable attorney fees determined by the court.

.182842.1

underscoring material = new
~~[bracketed material] = delete~~

1 F. A person that receives, directly or indirectly,
2 any consideration for providing investment advice to another
3 person and that employs a device, scheme or artifice to defraud
4 the other person or engages in an act, practice or course of
5 business that operates or would operate as a fraud or deceit on
6 the other person, is liable to the other person. An action
7 pursuant to this subsection is governed by the following:

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

15 (2) this subsection does not apply to a
16 broker-dealer or its agents if the investment advice provided
17 is solely incidental to transacting business as a broker-dealer
18 and no special compensation is received for the investment
19 advice.

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

23 (1) a person that directly or indirectly
24 controls a person liable pursuant to Subsections B through F of
25 this section, unless the controlling person sustains the burden

underscoring material = new
~~[bracketed material]~~ = delete

1 of proof that the person did not know, and in the exercise of
2 reasonable care could not have known, of the existence of
3 conduct by reason of which the liability is alleged to exist;

4 (2) an individual who is a managing partner,
5 executive officer or director of a person liable pursuant to
6 Subsections B through F of this section, including an
7 individual having a similar status or performing similar
8 functions, unless the individual sustains the burden of proof
9 that the individual did not know and, in the exercise of
10 reasonable care could not have known, of the existence of
11 conduct by reason of which the liability is alleged to exist;

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

20 (4) a person that is a broker-dealer, agent,
21 investment adviser or investment adviser representative that
22 materially aids the conduct giving rise to the liability
23 pursuant to Subsections B through F of this section, unless the
24 person sustains the burden of proof that the person did not
25 know and, in the exercise of reasonable care could not have

.182842.1

underscoring material = new
[bracketed material] = delete

1 known, of the existence of conduct by reason of which liability
2 is alleged to exist.

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

6 I. A cause of action pursuant to this section
7 survives the death of an individual who might have been a
8 plaintiff or defendant.

9 J. A person shall not obtain relief unless the suit
10 is brought:

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

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

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

24 L. A condition, stipulation or provision binding a
25 person purchasing or selling a security or receiving investment

.182842.1

underscored material = new
[bracketed material] = delete

1 advice to waive compliance with the New Mexico Uniform
2 Securities Act, or a rule adopted or order issued pursuant to
3 that act, is void.

4 M. The rights and remedies provided by the New
5 Mexico Uniform Securities Act are in addition to any other
6 rights or remedies that may exist, but that act does not create
7 a cause of action not specified in this section or Subsection E
8 of Section [~~411 of that act~~] 58-13C-411 NMSA 1978."

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

11 "58-13C-602. INVESTIGATIONS AND SUBPOENAS.--

12 A. The director or attorney general may:

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

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

.182842.1

underscored material = new
[bracketed material] = delete

1 (3) publish a record concerning an action,
2 proceeding or an investigation pursuant to or a violation of
3 the New Mexico Uniform Securities Act or a rule adopted or
4 order issued pursuant to that act if the director or attorney
5 general determines it is necessary or appropriate in the public
6 interest and for the protection of investors.

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

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

25 (1) hold the person in contempt;

.182842.1

underscored material = new
[bracketed material] = delete

1 (2) order the person to appear before the
2 director;

3 (3) order the person to testify about the
4 matter under investigation or in question;

5 (4) order the production of records;

6 (5) grant injunctive relief, including
7 restricting or prohibiting the offer or sale of securities or
8 the providing of investment advice;

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

11 (7) grant any other necessary or appropriate
12 relief.

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

17 E. An individual is not excused from attending,
18 testifying, filing a statement, producing a record or other
19 evidence or obeying a subpoena of the director or attorney
20 general pursuant to the New Mexico Uniform Securities Act or in
21 an action or proceeding instituted by the director or attorney
22 general pursuant to that act on the grounds that the required
23 testimony, statement, record or other evidence, directly or
24 indirectly, may tend to incriminate the individual or subject
25 the individual to a criminal fine, penalty or forfeiture. If

.182842.1

underscoring material = new
~~[bracketed material] = delete~~

1 the individual refuses to testify, file a statement or produce
2 a record or other evidence on the basis of the individual's
3 privilege against self-incrimination, the director or attorney
4 general may apply to the district court of Santa Fe county or
5 other appropriate district court or to a court of another
6 state, a federal court or a court of a foreign jurisdiction to
7 compel the testimony, the filing of the statement, the
8 production of the record or the giving of other evidence. The
9 testimony, record or other evidence compelled pursuant to such
10 an order shall not be used, directly or indirectly, against the
11 individual in a criminal case, except in a prosecution for
12 perjury or contempt or otherwise failing to comply with the
13 order.

14 F. At the request of the securities regulator of
15 another state or a foreign jurisdiction, the director or
16 attorney general may provide assistance if the requesting
17 regulator states that it is conducting an investigation to
18 determine whether a person has violated, is violating or is
19 about to violate a law or rule of the other state or foreign
20 jurisdiction relating to securities matters that the requesting
21 regulator administers or enforces. The director or attorney
22 general may provide the assistance by using the authority to
23 investigate and the powers conferred by this section as the
24 director or attorney general determines is necessary or
25 appropriate. The assistance may be provided without regard to

.182842.1

underscoring material = new
[bracketed material] = delete

1 whether the conduct described in the request would also
2 constitute a violation of the New Mexico Uniform Securities Act
3 or other law of New Mexico if occurring in New Mexico. In
4 deciding whether to provide the assistance, the director or
5 attorney general may consider whether the requesting regulator
6 is permitted and has agreed to provide assistance reciprocally
7 within its state or foreign jurisdiction to the director or
8 attorney general on securities matters when requested; whether
9 compliance with the request would violate or prejudice the
10 public policy of New Mexico; and the availability of resources
11 and employees of the director or attorney general to carry out
12 the request for assistance."

13 SECTION 6. Section 58-13C-603 NMSA 1978 (being Laws 2009,
14 Chapter 82, Section 603) is amended to read:

15 "58-13C-603. CIVIL ENFORCEMENT.--

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

.182842.1

underscoring material = new
~~[bracketed material] = delete~~

1 enforce compliance with the New Mexico Uniform Securities Act
2 or a rule adopted or order issued pursuant to that act.

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

5 (1) issue a permanent or temporary injunction,
6 restraining order or declaratory judgment;

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

9 (a) an asset freeze, accounting, writ of
10 attachment, writ of general or specific execution and
11 appointment of a receiver or conservator, that may be the
12 director or attorney general, for the defendant or the
13 defendant's assets;

14 (b) ordering the director or attorney
15 general to take charge and control of a defendant's property,
16 including investment accounts and accounts in a depository
17 institution, rents and profits; to collect debts; and to
18 acquire and dispose of property;

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

21 (d) an order of rescission, restitution
22 or disgorgement directed to a person that has engaged in an
23 act, practice or course of business constituting a violation of
24 the New Mexico Uniform Securities Act or the predecessor act or
25 a rule adopted or order issued pursuant to the New Mexico

.182842.1

underscored material = new
[bracketed material] = delete

1 Uniform Securities Act or the predecessor act;
2 (e) ordering the payment of prejudgment
3 and postjudgment interest; and
4 (f) ordering the payment of litigation
5 expenses of the director or attorney general; and
6 (3) order such other relief as the court
7 considers appropriate.

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

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

20 SECTION 7. Section 58-13C-608 NMSA 1978 (being Laws 2009,
21 Chapter 82, Section 608) is amended to read:

22 "58-13C-608. UNIFORMITY AND COOPERATION WITH OTHER
23 AGENCIES.--

24 A. The director or attorney general may, in the
25 director's or attorney general's discretion, cooperate,

underscored material = new
[bracketed material] = delete

1 coordinate, consult and, subject to Section [~~607 of the New~~
2 ~~Mexico Uniform Securities Act~~] 58-13C-607 NMSA 1978, share
3 records and information with the securities regulator of
4 another state, Canada, a Canadian province or territory, a
5 foreign jurisdiction, the securities and exchange commission,
6 the United States department of justice, the commodity futures
7 trading commission, the federal trade commission, the
8 securities investor protection corporation, a self-regulatory
9 organization, a national or international organization of
10 securities regulators, a federal or state banking and insurance
11 regulator and a governmental law enforcement agency to
12 effectuate greater uniformity in securities matters among the
13 federal government, self-regulatory organizations, states and
14 foreign governments.

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

22 (1) maximizing effectiveness of regulation for
23 the protection of investors;

24 (2) maximizing uniformity in federal and state
25 regulatory standards; and

.182842.1

underscored material = new
[bracketed material] = delete

1 (3) minimizing burdens on the business of
2 capital formation, without adversely affecting essentials of
3 investor protection.

4 C. The cooperation, coordination, consultation and
5 sharing of records and information authorized by this section
6 includes:

7 (1) establishing or employing one or more
8 designees as a central depository for registration and notice
9 filings pursuant to the New Mexico Uniform Securities Act and
10 for records required or allowed to be maintained pursuant to
11 that act;

12 (2) developing and maintaining uniform forms;

13 (3) conducting a joint examination or
14 investigation;

15 (4) holding a joint administrative hearing;

16 (5) instituting and prosecuting a joint civil
17 or administrative proceeding;

18 (6) sharing and exchanging personnel;

19 (7) coordinating registrations pursuant to
20 Sections [~~301 and 401 through 404 of the New Mexico Uniform~~
21 ~~Securities Act~~] 58-13C-301 and 58-13C-401 through 58-13C-404
22 NMSA 1978 and exemptions pursuant to Section [~~203 of that act~~]
23 58-13C-203 NMSA 1978;

24 (8) sharing and exchanging records, subject to
25 Section [~~607 of the New Mexico Uniform Securities Act~~]

.182842.1

underscored material = new
[bracketed material] = delete

1 58-13C-607 NMSA 1978;

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

4 (10) formulating common systems and
5 procedures;

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

8 (12) attending conferences and other meetings
9 among securities regulators, which may include representatives
10 of governmental and private sector organizations involved in
11 capital formation, deemed necessary or appropriate to promote
12 or achieve uniformity; and

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

17 **SECTION 8. EFFECTIVE DATE.**--The effective date of the
18 provisions of this act is July 1, 2011.