

AN ACT  
RELATING TO COMMERCIAL LAW; AMENDING THE DEFINITION OF  
LIMITED LIABILITY COMPANY; PROVIDING AN EXEMPTION FOR CERTAIN  
SECURITIES TRANSACTIONS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 53-19-2 NMSA 1978 (being Laws 1993, Chapter 280, Section 2) is amended to read:

"53-19-2. DEFINITIONS. --As used in the Limited Liability Company Act:

A. "articles of organization" means the original or restated articles filed pursuant to the Limited Liability Company Act and any amendments to those articles, including articles of merger or consolidation;

B. "corporation" means an organization incorporated under the laws of New Mexico or a foreign corporation;

C. "commission" means the state corporation commission or its designee;

D. "court" means a court having jurisdiction in the case;

E. "event of dissociation" means an event that causes a person to cease to be a member of a limited liability company;

F. "foreign corporation" means a corporation that

is organized under the laws of another state or a foreign country;

G. "foreign limited liability company" means an entity that is:

(1) an unincorporated association;

(2) organized under the laws of another state or foreign country;

(3) organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(4) is not required to be registered or organized under the laws of New Mexico other than the Limited Liability Company Act;

H. "foreign limited partnership" means a limited partnership formed under the laws of another state or a foreign country;

I. "limited liability company" or "domestic limited liability company" means an unincorporated organization of one or more persons formed pursuant to the provisions of the Limited Liability Company Act;

J. "limited liability company interest" means a member's or assignee's right to receive distributions and a return of capital from the limited liability company. A member's or assignee's limited liability company interest

does not include rights the member or assignee has on account of other matters, such as a right to receive accrued salary for services the member or assignee rendered to, repayment of a loan the member or assignee made to or indemnification by the limited liability company;

K. "limited partnership" means a limited partnership under the laws of New Mexico or a foreign limited partnership;

L. "manager" means, with respect to a limited liability company that has included a statement in its articles of organization that it is to be managed by a manager, the person designated as manager in accordance with the articles of organization or an operating agreement;

M. "member" means a person who has been admitted to membership in a limited liability company and who has not dissociated from that company;

N. "membership interest" or "interest" means a member's limited liability company interest and his rights to participate in management and control of the limited liability company;

O. "operating agreement" means a written agreement providing for the conduct of the business and affairs of a limited liability company and that agreement as amended in writing;

P. "person" means an individual, a general

partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity; and

Q. "state" means a state, territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico. "

Section 2. Section 58-13B-27 NMSA 1978 (being Laws 1986, Chapter 7, Section 27, as amended by Laws 1993, Chapter 280, Section 80 and also by Laws 1993, Chapter 323, Section 1) is amended to read:

"58-13B-27. EXEMPT TRANSACTIONS. --The following transactions are exempted from Section 58-13B-20 NMSA 1978 and, unless otherwise noted, Section 58-13B-29 NMSA 1978:

A. an isolated non-issuer transaction, whether or not effected through a broker-dealer;

B. a non-issuer transaction in a security by a registered broker-dealer if:

(1) the issuer of the security has a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934;

(2) the issuer has filed reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the ninety-day period immediately preceding the date of the offer or sale or is an issuer of a security covered by Section 12(g)(2)(B) or (G) of that 1934 act;

(3) the broker-dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to the provisions of Section 13 or Section 15(d), as the case may be, of the Securities Exchange Act of 1934 or in the case of insurance companies exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(G)(2)(G)(i) of the Securities Exchange Act of 1934; and

(4) the broker-dealer has in its records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the securities, the issuer's most recent annual report filed pursuant to Section 13 or 15(d), as the case may be, of the Securities Exchange Act of 1934 or the annual statement in the case of an insurance company exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(G)(2)(G) thereof, together with any other reports required to be filed at regular intervals under the Securities Exchange Act of 1934 by the issuer after such annual report or annual statement; provided that the making available of such reports pursuant to this paragraph, unless otherwise represented, shall not constitute a representation by the broker-dealer that the information is true and correct but shall constitute a representation by the broker-dealer that

the information is reasonably current; or

(5) the issuer has filed and maintained with the director, for not less than ninety days before the transaction, information in such form as the director by rule specifies, substantially comparable to the information which the issuer would be required to file under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 were the issuer to have a class of its securities registered under Section 12 of the Securities Exchange Act of 1934, and under either Subparagraph (1) or (2), the issuer has paid a fee of five hundred dollars (\$500);

C. a non-issuer transaction in a security:

(1) of a class outstanding in the hands of the public for not less than one hundred eighty days before the transaction if a nationally recognized securities manual designated by the director by rule or order contains the names of the issuer's officers and directors, a statement of financial condition of the issuer as of a date within the last eighteen months and a statement of income or operations for either the last fiscal year before the date or the most recent year of operation; or

(2) if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding years, or during the existence of the issuer and

any predecessors if less than three years, in the payment of principal, interest or dividends on the security; provided that the director may impose additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors and shall promulgate rules specifying application of this exemption;

D. any non-issuer transaction effected by or through a registered broker-dealer registered in this state pursuant to an unsolicited order or offer to buy; provided that the director by rule shall require that the broker-dealer have the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of that form be preserved by the broker-dealer for a specified period;

E. a transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter or a transaction among underwriters;

F. a transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

G. a transaction by an executor, administrator,

sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

H. a transaction executed by a bona fide secured party without a purpose of evading the New Mexico Securities Act of 1986;

I. an offer to sell or sale of a security to a financial or institutional investor or to a broker-dealer;

J. the issuance and offer and sale of securities by any corporation or limited liability company or any offer or sale of limited partnership interests by a limited partnership if:

(1) in the case of a corporation or limited liability company, its principal office and a majority of its full-time employees are located in this state or, in the case of a limited partnership, its principal place of business and eighty percent of its assets are located in this state;

(2) at least eighty percent of the proceeds from the offering shall be used by the issuer in operations of the issuer in this state;

(3) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986;

(4) an offering document is delivered to



each purchaser or prospective purchaser prior to the sale of the securities disclosing such information as the director by rule or order may require;

(5) the total offering, including interest on installment payments, does not exceed one million five hundred thousand dollars (\$1,500,000); and

(6) the issuer claiming this exemption files notice with the director on a form prescribed by the director prior to the first offer and pays a fee of three hundred fifty dollars (\$350). The director may require any issuer using this exemption to file periodic reports not more often than quarterly to keep reasonably current the information contained in the notice and to disclose the progress of the offering. The director may impose conditions by rule or order with respect to issuers, broker-dealers or affiliates who by reason of prior misconduct will not be eligible to utilize this exemption. The issuance and offer and sale of securities pursuant to this subsection shall be subject to Section

58-13B-29 NMSA 1978;

K. the issuance and offer and sale of securities by any corporation or limited liability company or any offer or sale of limited partnership interests by a limited partnership if:

(1) in the case of a corporation or limited

liability company, the total number of security holders does not and will not in consequence of the sale exceed twenty-five or, in the case of a limited partnership, the number of limited partners does not and will not in consequence of the sale exceed twenty-five;

(2) the issuer reasonably believes that all buyers are purchasing for investment;

(3) no public advertising or general solicitation is used in connection with the offer or sale; and

(4) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986.

The director by rule or order may impose additional requirements as a condition of the exemption established in this subsection as necessary for the protection of investors and to specify its application. Any notice filing that may be imposed pursuant to Subsection C of Section 58-13B-28 NMSA 1978 shall not be deemed a condition of this exemption;

L. any offer or sale of a preorganization certificate or subscription if:

(1) such sale or offer is made by an agent, the agent shall be licensed pursuant to the New Mexico

Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act;

(2) no public advertising or general solicitation is used in connection with the offer or sale;

(3) the number of subscribers does not exceed ten; and

(4) either no payment is made by any subscriber or any payment made by a subscriber is put into escrow until the entire issue is subscribed;

M an offer or sale of a preorganization certificate or subscription agreement issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of any state or of the United States which has and exercises the authority to regulate and supervise the depository institution. For the purpose of this subsection, supervision of an organization by an official or agency means that the official or agency by law has authority to:

(1) require disclosures to prospective investors similar to that required under Section 58-13B-23 NMSA 1978;

(2) impound proceeds from the sale of preorganization certificates or subscription agreements until organization of the depository institution is completed; and

(3) require a refund to investors if the

depository institution does not obtain a grant of authority from the appropriate official or agency except that the official or agency with the authority to require a refund need not include such amounts as the official or agency has by law determined to be proper organizational expenditures;

N. a transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of the transaction are holders of transferable warrants exercisable within not more than ninety days of their issuance, convertible securities or nontransferable warrants, if:

(1) no commission or other similar compensation, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state; or

(2) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

O. a transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(1) a registration or offering statement or similar document as required under the Securities Act of 1933 has been filed but is not effective;

(2) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(3) no stop order has been entered by the director, the securities and exchange commission or other state's securities agency, and no proceeding or examination that may culminate in that kind of order is pending;

P. a transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(1) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(2) no stop order has been entered by the director, other state securities agencies or the securities and exchange commission and no proceeding or examination that may culminate in that kind of order being issued by the director is pending;

Q. a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent and subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(1) the securities to be distributed are registered under the Securities Act of 1933 and written notice of the transaction is given to the director prior to the consummation of the transaction; or

(2) if the securities to be distributed are not required to be registered under the Securities Act of 1933, and written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the director at least ten days before the consummation of the transaction and the director does not disallow by order the exemption within the next ten days;

R.

(1) a transaction involving the offer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price paid by each purchaser may not be less than two hundred fifty thousand dollars (\$250,000);

(b) each purchaser must pay cash

either at the time of the sale or within sixty days after the sale; and

(c) each purchaser may buy for that person's own account only;

(2) a transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participation interests in the notes, if the notes and participation interests are originated by a mortgagee approved by the secretary of housing and urban development under Sections 203 and 211 of the National Housing Act and are offered or sold, subject to the conditions specified in Paragraph (1) of this subsection, to a depository institution or insurance company, the federal home loan mortgage corporation, the federal national mortgage association or the government national mortgage association; and

(3) a transaction between any of the persons described in Paragraph (2) of this subsection involving a nonassignable contract to buy or sell the securities described in Paragraph (1) of this subsection, which contract is to be completed within two years, if:

(a) the seller of the securities pursuant to the contract is one of the parties described in Paragraph (1) or (2) of this subsection who may originate securities;

(b) the purchaser of securities pursuant to any contract is any other institution described in Paragraph (2) of this subsection; and

(c) the three conditions described in Paragraph (1) of this subsection are fulfilled;

S. any transaction involving leases or interests in leases in oil, gas or other mineral rights between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business. For purposes of this subsection, a party "engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business" means:

(1) any corporation, limited liability company, partnership or other business entity that is directly engaged in and derives at least eighty percent of its annual gross income from the exploration or production of oil, gas or other valuable minerals;

(2) any general partner or any employee who spends at least eighty percent of his work time in the daily management of a business entity that is directly engaged in and derives at least eighty percent of its gross annual income from the exploration or production of oil, gas or other valuable minerals; or

(3) any corporation, limited liability



company, partnership or other business entity that is directly engaged in the business of exploration and production of oil, gas or other valuable minerals and derives at least five million dollars (\$5,000,000) of annual gross income from such business;

T. any transaction involving the sale or offer of interests in and under oil, gas or mining rights located in New Mexico or fees, titles or contracts relating thereto, or such sale or offer of such interests, wherever located, made by an entity principally operating in New Mexico where:

(1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided, in any oil, gas or mineral lease, fee or title or contract relating thereto, shall not exceed twenty-five, provided that such sales shall be made only to persons meeting suitability standards established by rule or order of the director and that investors are provided with such disclosure documents and other information as the director may require by rule or order;

(2) no use is made of advertisement or public solicitation; and

(3) if such sale or offer is made by an agent for such owner or owners, such agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to

that act; and

U. a transaction pursuant to an offer to sell securities of an issuer if:

(1) the transaction is part of an issue in which there are no more than ten purchasers in this state during any twelve consecutive months;

(2) no general solicitation or general advertising is used in connection with the offer to sell or the sale of the securities;

(3) no commission or other remuneration is paid or given, directly or indirectly, to a person other than a broker-dealer licensed or not required to be licensed pursuant to the New Mexico Securities Act of 1986 for soliciting a prospective purchaser in this state; and either

(4) the seller reasonably believes that all of the purchasers in this state are purchasing for investment; or

(5) immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by fifty or fewer beneficial owners and the transaction is part of an aggregate offering that does not exceed five hundred thousand dollars (\$500,000) during any twelve consecutive months; but the director, by rule or order as to a security or transaction or a type of security or transaction, may withdraw or further

condition this exemption or may waive one or more of the conditions of this subsection.

For the purposes of Subsection T of this section, "principally operating in New Mexico" means a corporation or limited liability company organized under the law of this state, a corporation in which a majority in interest of the shareholders are residents of this state, a limited liability company in which a majority in interest of the members are residents of this state, a partnership in which a majority in interest of the partners are residents of this state, a trust in which a majority in interest of the beneficiaries are residents of this state or a sole proprietorship in which the owner is a resident of this state. "

Section 3. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1998. \_\_\_\_\_