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SENATE BILL 193

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

STUART INGLE

AN ACT

RELATING TO SECURITIES; AMENDING SECTION 58-13B-24 NMSA 1978
(BEING LAWS 1986, CHAPTER 7, SECTION 24, AS AMENDED) TO CHANGE
REGISTRATION REQUIREMENTS.

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

Section 1. Section 58-13B-24 NMSA 1978 (being Laws 1986,
Chapter 7, Section 24, as amended) is amended to read:

"58-13B-24. PROVISIONS APPLICABLE TO REGISTRATION
GENERALLY. - -

A. A registration statement may be filed by the
issuer, any other person on whose behalf the offering is to be
made or a registered broker-dealer.

B. If a registration statement is withdrawn before
the effective date or a pre-effective stop order is entered
pursuant to Section 58-13B-25 NMSA 1978, the director shall

Underscored material = new
[bracketed material] = delete

1 retain the fee set forth in this subsection. [~~Except as~~
2 ~~provided in Subsection C of this section~~] A person filing a
3 registration statement shall pay a filing fee of:

4 (1) one-tenth of one percent of the maximum
5 aggregate offering price at which the registered securities
6 are to be offered in New Mexico, but not less than three
7 hundred fifty dollars (\$350) or more than two thousand five
8 hundred dollars (\$2,500); or

9 (2) three hundred fifty dollars (\$350) if the
10 person is a corporate issuer or a person acting on behalf of a
11 corporate issuer and is claiming an exemption from the
12 registration requirements of federal law regarding small
13 corporate offerings pursuant to Rule 504 of Regulation D (17
14 CFR 230.504).

15 [~~C. An open end management company or a face~~
16 ~~amount certificate company as defined in the federal~~
17 ~~Investment Company Act of 1940 may register an indefinite~~
18 ~~amount of securities under a registration statement. The~~
19 ~~registrant shall pay:~~

20 (1) ~~a fee of five hundred dollars (\$500) at~~
21 ~~the time of filing; and~~

22 (2) ~~within sixty days after the registrant's~~
23 ~~fiscal year during which its registration statement is~~
24 ~~effective, a fee of two thousand dollars (\$2,000) or file a~~
25 ~~report on a form the director by rule adopts, specifying its~~

Underscored material = new
[bracketed material] = delete

1 ~~sale of securities to persons in this state during the fiscal~~
2 ~~year and pay a fee of one tenth of one percent of the~~
3 ~~aggregate sale price of the securities sold to persons in the~~
4 ~~state, but the latter fee shall not be less than three hundred~~
5 ~~fifty dollars (\$350) or more than two thousand five hundred~~
6 ~~dollars (\$2,500).~~

7 ~~D. Except as permitted otherwise by Subsection C~~
8 ~~of this section]~~

9 C. A registration statement must specify the
10 amount of securities to be offered in New Mexico and:

11 (1) the states in which a registration
12 statement or similar document in connection with the offering
13 has been or is to be filed; and

14 (2) any adverse order, judgment or decree
15 entered by the securities agency or administrator in any state
16 or by a court or the securities and exchange commission in
17 connection with the offering.

18 ~~[E.]~~ D. A document filed [~~under~~] pursuant to the
19 New Mexico Securities Act of 1986 or a predecessor act, within
20 five years before the filing of a registration statement, ~~may~~
21 be incorporated by reference in the registration statement if
22 the document is currently accurate.

23 ~~[F.]~~ E. The director by rule or order ~~may~~ permit
24 the omission of an item of information or document from a
25 registration statement.

Underscored material = new
[bracketed material] = delete

1 ~~[G.]~~ F. In the case of a non-issuer offering, the
2 director may not require information [~~under~~] pursuant to
3 Section 58-13B-23 NMSA 1978 or Subsection [~~M~~] L of this
4 section unless it is known to the person filing the
5 registration statement or to the persons on whose behalf the
6 offering is to be made, or can be furnished by them without
7 unreasonable effort or expense.

8 ~~[H.]~~ G. In the case of a registration [~~under~~]
9 pursuant to Section 58-13B-22 or 58-13B-23 NMSA 1978 by an
10 issuer who has no public market for its shares and no
11 significant earnings from continuing operations during the
12 last five years or any shorter period of its existence, the
13 director by rule or order may require as a condition of
14 registration that the following securities be deposited in
15 escrow for not more than three years:

16 (1) a security issued to a promoter, control
17 person or affiliate within the three years immediately before
18 the offering or to be issued to such persons for a
19 consideration substantially less than the offering price; and

20 (2) a security issued to a promoter, control
21 person or affiliate for a consideration other than cash,
22 unless the registrant demonstrates that the value of the
23 noncash consideration received in exchange for the security is
24 substantially equal to the offering price for the security.

25 The director by rule or order may determine the

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[bracketed material] = delete

1 conditions of an escrow required [~~under~~] pursuant to this
2 subsection, but the director may not reject a depository
3 solely because of location in another state.

4 [~~H.~~] H. The director by rule or order may require
5 as a condition of registration [~~under~~] pursuant to Section
6 58-13B-22 or 58-13B-23 NMSA 1978 that the proceeds from the
7 sale of the registered security in New Mexico be impounded
8 until the issuer receives a specified amount from the sale of
9 the security. The director by rule or order may determine the
10 conditions of an impoundment arrangement required [~~under~~]
11 pursuant to this subsection, but the director may not reject a
12 depository solely because of its location in another state.

13 [~~J.~~] I. If a security is registered pursuant to
14 Section 58-13B-21 or 58-13B-22 NMSA 1978, the prospectus filed
15 [~~under~~] pursuant to the federal Securities Act of 1933 shall
16 be delivered to each purchaser in accordance with the
17 prospectus delivery requirements of the federal Securities Act
18 of 1933. With respect to a security registered [~~under~~]
19 pursuant to Section 58-13B-21 or 58-13B-22 NMSA 1978, the
20 director by rule or order may require the delivery of other
21 material documents or information to each purchaser concurrent
22 with or prior to the delivery of the prospectus.

23 [~~K.~~] J. If a security is registered pursuant to
24 Section 58-13B-23 NMSA 1978, an offering document containing
25 information the director by rule or order designates shall be

Underscored material = new
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1 delivered to each purchaser with or before the earliest of:

2 (1) the first written offer made to the
3 purchaser by or for the account of the issuer or another
4 person on whose behalf the offering is being made or by an
5 underwriter or broker-dealer who is offering part of an unsold
6 allotment or subscription taken by it as a participant in the
7 distribution;

8 (2) confirmation of a sale made by or for the
9 account of a person named in Paragraph (1) of this subsection;

10 (3) payment pursuant to a sale; or

11 (4) delivery pursuant to a sale.

12 [~~L.~~] K. A registration statement remains effective
13 for one year after its effective date unless the director by
14 rule or order extends the period of effectiveness. All
15 outstanding securities of the same class as a registered
16 security are considered to be registered for the purpose of a
17 non-issuer transaction while the registration statement is
18 effective, unless the director by rule or order provides
19 otherwise. A registration statement may not be withdrawn
20 after its effective date if any of the securities registered
21 have been sold in New Mexico, unless the director by rule or
22 order provides otherwise. No registration statement is
23 effective while a stop order is in effect [~~under~~] pursuant to
24 Subsection A of Section 58-13B-25 NMSA 1978.

25 [~~M.~~] L. During the period that an offering is

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1 being made pursuant to an effective registration statement,
2 the director by rule or order may require the person who filed
3 the registration statement to file reports, not more often
4 than quarterly, to keep reasonably current the information
5 contained in the registration statement and to disclose the
6 progress of the offering.

7 [N-] M A registration statement filed [~~under~~]
8 pursuant to Section 58-13B-21 or 58-13B-22 NMSA 1978 may be
9 amended after its effective date to increase the securities
10 specified to be offered and sold. The amendment becomes
11 effective upon filing of the amendment and payment of an
12 additional filing fee, which shall be three times the fee
13 otherwise payable, calculated in the manner specified in
14 Subsection B of this section, with respect to the additional
15 securities to be offered and sold. The effectiveness of the
16 amendment relates back to the date or dates of sale of the
17 additional securities being registered.

18 [0-] N. A registration statement filed [~~under~~]
19 pursuant to Section 58-13B-23 NMSA 1978 may be amended after
20 its effective date to increase the securities specified to be
21 offered and sold, provided that the public offering price and
22 underwriters' discounts and commissions are not changed from
23 the respective amounts of which the director was informed.
24 The amendment becomes effective when the director so orders
25 and relates back to the date of sale of the additional

Underscored material = new
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1 securities being registered. A person filing an amendment
2 shall pay an additional filing fee, which shall be three times
3 the fee otherwise payable, calculated in the manner specified
4 in Subsection B of this section, with respect to the
5 additional securities to be offered and sold.

6 ~~[P.]~~ 0. Pursuant to Section 106(c) of the federal
7 Secondary Mortgage Market Enhancement Act of 1984, any
8 securities ~~[which]~~ that are offered and sold pursuant to
9 Section 4(5) of the federal Securities Act of 1933 or that are
10 mortgage-related securities, as that term is defined in
11 Section 3(a)(41) of the federal Securities Exchange Act of
12 1934, being 15 U. S. C. 78c(a)(41), are required to comply with
13 all applicable registration and qualification requirements of
14 the New Mexico Securities Act of 1986 and the rules ~~[under]~~
15 pursuant to that act and shall not be treated as obligations
16 issued by the United States for purposes of that act.

17 ~~[0. The director, by rule or by order, may require~~
18 ~~the filing of any or all of the following items with respect~~
19 ~~to a federal covered security under Section 18(b)(2) of the~~
20 ~~Securities Act of 1933:-~~

21 ~~(1) prior to the initial offer of such~~
22 ~~federal covered security in New Mexico, all documents that are~~
23 ~~part of a current federal registration statement filed with~~
24 ~~the United States securities and exchange commission under the~~
25 ~~Securities Act of 1933, together with a consent to service of~~

Underscored material = new
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1 ~~process signed by the issuer and with a notification fee in an~~
2 ~~amount equal to that which the person would have paid to~~
3 ~~register or claim an appropriate exemption if the security~~
4 ~~were not a federal covered security;~~

5 ~~(2) after the initial offer of such federal~~
6 ~~covered security in New Mexico, all documents that are part of~~
7 ~~an amendment to a current federal registration statement filed~~
8 ~~with the United States securities and exchange commission~~
9 ~~under the Securities Act of 1933; or~~

10 ~~(3) if the person is paying a notification~~
11 ~~fee calculated according to the terms of Subsection C of this~~
12 ~~section, an annual or periodic report of the value of such~~
13 ~~federal covered securities offered or sold in New Mexico.]~~

14 P. With respect to a federal covered security, as
15 defined in Section 18(b)(2) of the federal Securities Act of
16 1993:

17 (1) prior to the offer of the security in New
18 Mexico, the following shall be filed by or on behalf of the
19 issuer:

20 (a) a notice of intent to sell the
21 security that provides: 1) the name and address of the
22 issuer; 2) a description of the securities to be offered; 3)
23 the name, address and telephone number of an authorized
24 contact person; and 4) other information that the director
25 may, by rule or by order, require;

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1 except a federal covered security [~~under~~] pursuant to Section
2 18(b)(1) of the federal Securities Act of 1933, if he finds
3 that:

- 4 (1) the order is in the public interest; and
- 5 (2) there is a failure to comply with any
- 6 condition established [~~under~~] pursuant to this section.

7 [~~U-~~] T. The director, by rule or otherwise, may
8 waive any or all of the provisions of this section."

9 Section 2. EFFECTIVE DATE. --The effective date of the
10 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 4, 1998
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8 Mr. President:
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 193
13

14 has had it under consideration and finds same to be GERMANE, in
15 accordance with constitutional provisions, and thence referred to the
16 CORPORATIONS & TRANSPORTATION COMMITTEE.
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18
19 Respectfully submitted,
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25 _____
Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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4
5 February 9, 1998

6
7 Mr. President:

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9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
10 has been referred

11
12 SENATE BILL 193

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14 has had it under consideration and reports same with recommendation
15 that it DO PASS, and thence referred to the FINANCE COMMITTEE.

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17 Respectfully submitted,

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23 Roman M. Maes, III, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Fidel, McKibben, Robinson

Absent: None

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Underscored material = new
[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 February 17, 1998

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8 Mr. President:

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10 Your FINANCE COMMITTEE, to whom has been referred

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12 SENATE BILL 193

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14 has had it under consideration and reports same with recommendation
15 that it DO PASS.

16
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18 Respectfully submitted,

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23 Ben D. Altamirano, Chairman
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Adopted _____ Not Adopted _____
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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Carraro, Eisenstadt, Ingle, Lyons, McKibben

Absent: None

S0193FC1

Underscored material = new
[bracketed material] = delete