

AN ACT

RELATING TO SECURITIES; AMENDING SECTIONS OF THE NEW MEXICO  
SECURITIES ACT OF 1986.

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

Section 1. Section 58-13B-2 NMSA 1978 (being Laws  
1986, Chapter 7, Section 2, as amended) is amended to read:

"58-13B-2. DEFINITIONS.--As used in the New Mexico  
Securities Act of 1986:

A. "affiliate" means a person who directly or  
indirectly through one or more intermediaries, controls, is  
controlled by or is under common control with another  
person;

B. "broker-dealer" means a person engaged in the  
business of effecting transactions in securities for the  
account of others or for the person's own account. Broker-  
dealer does not include:

(1) a sales representative;

(2) an issuer, except when effecting  
transactions other than with respect to its own securities;

(3) a depository institution when acting on  
its own account or when exercising trust or fiduciary powers  
permitted for a depository institution pursuant to  
applicable state or federal laws and regulations providing  
for the organization, operation, supervision and examination  
of the depository institution; or

(4) any other person as the director by  
rule or order designates;

C. "control person" means an officer, director,  
managing partner or trustee, manager of a limited liability

company or person of similar status or function or any security holder who owns beneficially or of record ten percent or more of any class of securities of an issuer;

D. "depository institution":

(1) means:

(a) a person that is organized, chartered or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to receive deposits, including a savings, share, certificate or deposit account, is regulated, supervised and examined for the protection of depositors by an official or agency of a state or the United States and is insured by the federal depository insurance corporation, the federal savings and loan insurance corporation or the national credit union share insurance fund; and

(b) a trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the comptroller of the currency and is regulated, supervised and examined by an official or agency of a state or the United States; and

(2) does not include an insurance company or other organization primarily engaged in the insurance business or a Morris plan bank, industrial loan company or a similar bank or company;

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

F. "division" means the securities division of the regulation and licensing department;

G. "federal covered security" means any security described as a "covered security" in the federal Securities Act of 1933;

H. "filed" means the receipt of a document or application by the director or by the authorized representative of the director at the principal office of the director;

I. "financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity, other than as an agent:

(1) a depository institution;

(2) an insurance company;

(3) a separate account of an insurance company;

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

(5) an employee pension, profit-sharing or benefit plan, if:

(a) the plan has total assets in excess of five million dollars (\$5,000,000); or

(b) investment decisions are made by a plan fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depository institution or an insurance company;

(6) a business development company as defined by the Investment Company Act of 1940;

(7) a small business investment company

licensed by the United States small business administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; or

(8) any other financial or institutional investor as the director by rule or order designates;

J. "fraud", "deceit" and "defraud" are not limited to common-law fraud or deceit;

K. "guaranteed" means guaranteed as to payment of principal, interest and dividends;

L. "insured" means insured as to payment of principal, interest and dividends;

M. "investment adviser":

(1) means a person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities; and

(2) does not include:

(a) an investment adviser representative;

(b) a depository institution when acting on its own account or when exercising trust or fiduciary powers permitted for such depository institutions under applicable state or federal laws and regulations providing for the organization, operation, supervision and examination of such depository institution;

(c) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of the person's profession;

(d) a broker-dealer whose performance of the investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for the investment advisory services;

(e) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication, or an owner, operator, producer or employee of a cable, radio or television network, station or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; or

(f) any other person as the director by rule or order designates;

N. "investment adviser representative" means:

(1) with respect to an investment adviser that is registered or required to register pursuant to the New Mexico Securities Act of 1986, a natural person other than an investment adviser who, whether as an employee or in the form of a professional corporation is under the direct supervision of an investment adviser and engages in the business of advising others as to the value of securities or about the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; or

(2) with respect to an investment adviser registered with the United States securities and exchange

commission, an "investment adviser representative" who has a "place of business" in the state as those terms are defined by rule pursuant to Section 203 of the Investment Advisers Act of 1940;

O. "issuer" means a person that issues or proposes to issue a security, except that:

(1) in respect to the issuer of a collateral trust certificate, voting trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or persons performing similar functions, "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(2) in respect to the issuer of an equipment trust certificate, including a conditional sales contract, or similar security serving the same purpose, "issuer" means the person to whom the equipment or property is or is to be leased or conditionally sold; and

(3) in respect to the issuer of an interest in oil, gas or other mineral rights "issuer" means the owner of an interest in such a right, whether whole or fractional, who creates interests for the purposes of sale;

P. "non-issuer transaction" means a transaction not directly or indirectly for the benefit of the issuer;

Q. "person" means a legal entity;

R. "price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if no amendment is filed, the prospectus or

prospectus supplement filed under the Securities Act of 1933, that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price;

S. "promoter" includes:

(1) a person who, acting alone or in concert with one or more other persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

(2) an officer or director or person of similar status or function owning any securities of an issuer or any security holder who owns, beneficially or of record, ten percent or more of any class of securities of the issuer if the officer, director, person of similar status or security holder acquires any of those securities in a transaction which does not possess the indicia of arm's-length bargaining or which is otherwise unfair to the issuer; or

(3) a member of the immediate family of a person described in Paragraph (1) or (2) of this subsection if the family member received the securities in a transaction that does not possess the indicia of arm's-length bargaining or which is otherwise unfair to the issuer;

T. the following words and phrases have the indicated meanings:

(1) "sale" or "sell" includes every contract of sale, contract to sell or other disposition of a security or interest in a security for value;

(2) "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value;

(3) "offer to purchase" includes every attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value;

(4) a security given or delivered with, or as a bonus on account of, a purchase of securities or other item is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(5) a gift of assessable stock is deemed to involve an offer and sale; and

(6) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, or a sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is deemed to include an offer of the other security;

U. the terms defined in Subsection T of this section do not include the creation of security interest or a loan of a security; a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend and each stockholder may elect to take the dividend in cash, property or stock; or an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in exchange and partly for cash, but the terms contained in



this subsection are within the meaning of Subsection T of this section for the purpose of Section 58-13B-30 NMSA 1978;

V. "sales representative" means an individual other than a broker-dealer, whether as an employee or in the form of a professional corporation, authorized to act and acting for a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is a sales representative only if that person otherwise comes within the definition;

W. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Investment Advisers Act of 1940", "Employee Retirement Income Security Act of 1974", "National Housing Act" and "Commodity Exchange Act" mean the federal statutes of those names as amended before or after the effective date of the New Mexico Securities Act of 1986;

X. unless the context requires otherwise, "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; any limited partnership interest; any interest in a limited liability company; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; any interest in oil, gas or other mineral rights; any put, call, straddle or option entered into on a national securities exchange relating to foreign currency; any put, call, straddle or

option on any security, certificate of deposit or group or index of securities, including any interest therein or based on the value thereof; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include landowner royalties in the production of oil, gas or other minerals created through the execution of a lease of the lessor's mineral interest;

Y. "self-regulatory organization" means a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, a national securities association of brokers and dealers registered under Section 15A of the Securities Exchange Act of 1934, a clearing agency registered under Section 17A of that act and the municipal securities rulemaking board established under Section 15B(b)(1) of that act;

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

AA. "underwriter" means any person who has purchased from an issuer with the intent to offer or sell a security or to distribute any security, or participates or has a direct or indirect participation in any the undertaking, or participates or has a participation in the direct or indirect underwriting of any the undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers'

commission. As used in this subsection, the term "issuer" includes, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

Section 2. Section 58-13B-5 NMSA 1978 (being Laws 1986, Chapter 7, Section 5, as amended) is amended to read:

"58-13B-5. INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE LICENSING.--

A. It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless:

(1) the person is licensed or exempt from licensing under the New Mexico Securities Act of 1986;

(2) the person is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 and the person has filed the documents and paid the fees described in Subsection (C) of that section;

(3) the person is an investment adviser representative employed by, supervised by or associated with an investment adviser described in Paragraph (2) of this subsection and the person has no place of business in this state;

(4) the person is excepted from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; or

(5) the person is an investment adviser representative employed by, supervised by or associated with a person described in Paragraph (4) of this subsection.

B. It is unlawful for an investment adviser to employ or contract with, in connection with any of the investment adviser's investment adviser activities in this state, any person who is suspended or barred from association with a broker-dealer or investment adviser by the director. Upon request from an investment adviser and for good cause shown, the director by order may waive the prohibition of this subsection with respect to a person who has been suspended or barred.

C. Except with respect to investment advisers whose only clients are those described in Subsection A of Section 58-13B-6 NMSA 1978, it is unlawful for any person who is registered or required to be registered under Section 203 of the Investment Advisers Act of 1940 as an investment adviser to conduct advisory business in this state unless such person files such documents filed with the United States securities and exchange commission with the director as the director may by rule or by order require, and a fee and consent to service of process, as the director, by rule or by order, may require."

Section 3. Section 58-13B-21 NMSA 1978 (being Laws 1986, Chapter 7, Section 21) is amended to read:

"58-13B-21. REGISTRATION BY FILING.--

A. Securities for which a registration statement has been filed under the Securities Act of 1933 in connection with the offering of the securities may be registered by filing, whether or not they are also eligible for registration under Section 58-13B-22 or 58-13B-23 NMSA 1978 if the following conditions are satisfied:

(1) the issuer is organized under the laws

of the United States or a state or, if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process;

(2) the issuer has actively engaged in business operations in the United States for a period of at least thirty-six consecutive calendar months immediately before the filing of the federal registration statement;

(3) the issuer has registered a class of equity securities under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, which class of securities is held of record by five hundred or more persons;

(4) the issuer has:

(a) a total net worth of four million dollars (\$4,000,000), or a total net worth of two million dollars (\$2,000,000) and net pretax income from operations before allowances for extraordinary items, for at least two of the three preceding fiscal years;

(b) not less than four hundred thousand units of the class of security registered under Section 12 of the Securities Exchange Act of 1934 held by the public, excluding securities held by officers and directors of the issuer, underwriters and persons beneficially owning ten percent or more of the class of security being registered; and

(c) outstanding warrants and options held by the underwriters and executive officers and directors of the issuer in an amount not exceeding ten percent of the total number of shares to be outstanding after completion of the offering of the securities being

registered;

(5) the issuer has been subject to the requirements of Section 12 of the Securities Exchange Act of 1934 and has filed all the material required to be filed under Sections 13 and 14 of that act for at least thirty-six calendar months immediately before the filing of the federal registration statement and the issuer has filed in a timely manner all reports required to be filed during the twelve calendar months immediately before the filing of the federal registration statement;

(6) for a period of at least thirty days during the three months preceding the offering of the securities registered, there have been at least four market makers for the class of equity securities registered under Section 12 of the Securities Exchange Act of 1934;

(7) each of the underwriters participating in the offering of the security and each broker-dealer who will offer the security in this state is a member of or is subject to the rules of fair practice of a national association of securities dealers with respect to the offering and the underwriters have contracted to purchase the securities offered in a principal capacity;

(8) the aggregate commissions or discounts to be received by the underwriters will not exceed ten percent of the aggregate price at which the securities being registered are offered to the public;

(9) neither the issuer nor any of its subsidiaries, during the last three fiscal years preceding the filing of the registration statement, have:

(a) failed to pay a dividend or

sinking fund installment on preferred stock;

(b) defaulted on indebtedness for borrowed money; or

(c) defaulted on the rental on one or more long-term leases; which defaults in the aggregate are material to the financial position of the issuer and its subsidiaries, taken as a whole; and

(10) in the case of an equity security, the price at which the security will be offered to the public is not less than five dollars (\$5.00) per share.

B. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection D of Section 58-13B-24 NMSA 1978 and the consent to service of process required by Section 58-13B-50 NMSA 1978:

(1) a statement demonstrating eligibility for registration by filing;

(2) the name, address and form of organization of the issuer;

(3) with respect to a person on whose behalf a part of the offering is to be made in a non-issuer distribution: name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; and a statement of the reasons for making the offering;

(4) a copy, specimen or description of the security being registered; and

(5) a copy of the latest prospectus filed with the registration statement under and satisfying the

requirements of Section 10 of the Securities Act of 1933.

C. If the information and documents required to be filed by Subsection B of this section have been on file with the director for at least five business days and if the applicable registration fee has been paid prior to the effectiveness of the federal registration statement and no stop order is in effect and no proceeding is pending under Section 58-13B-25 NMSA 1978, a registration statement under this section automatically becomes effective concurrently with the effectiveness of the federal registration statement. If the federal registration statement becomes effective before the conditions in this subsection are satisfied and they are not waived, the registration statement becomes effective as soon as the conditions are satisfied. The registrant shall promptly notify the director of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall file promptly a post-effective amendment containing the information and documents in the price amendment. The director shall promptly acknowledge receipt of notification and effectiveness of the registration statement as of the date and time the registration statement became effective with the securities and exchange commission."

Section 4. 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 retain the fee set forth in this subsection. A person filing a registration statement shall pay a filing fee of:

(1) one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in New Mexico, but not less than five hundred twenty-five dollars (\$525) or more than two thousand five hundred dollars (\$2,500); or

(2) five hundred twenty-five dollars (\$525) if the person is a corporate issuer or a person acting on behalf of a corporate issuer and is claiming an exemption from the registration requirements of federal law regarding small corporate offerings pursuant to Rule 504 of Regulation D (17 CFR 230.504).

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

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

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

D. A document filed pursuant to the New Mexico Securities Act of 1986 or a predecessor act, within five years before the filing of a registration statement, may be

incorporated by reference in the registration statement if the document is currently accurate.

E. The director by rule or order may permit the omission of an item of information or document from a registration statement.

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

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

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

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

the security.

The director by rule or order may determine the conditions of an escrow required pursuant to this subsection, but the director may not reject a depository solely because of location in another state.

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

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

J. If a security is registered pursuant to Section 58-13B-23 NMSA 1978, an offering document containing information the director by rule or order designates shall be delivered to each purchaser with or before the earliest of:

(1) the first written offer made to the

purchaser by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by it as a participant in the distribution;

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

(3) payment pursuant to a sale; or

(4) delivery pursuant to a sale.

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

L. During the period that an offering is being made pursuant to an effective registration statement, the director by rule or order may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

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

N. A registration statement filed pursuant to Section 58-13B-23 NMSA 1978 may be amended after its effective date to increase the securities specified to be offered and sold, provided that the public offering price and underwriters' discounts and commissions are not changed from the respective amounts of which the director was informed. The amendment becomes effective when the director so orders and relates back to the date of sale of the additional securities being registered. A person filing an amendment shall pay an additional filing fee, which shall be three times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold.

O. Pursuant to Section 106(c) of the federal Secondary Mortgage Market Enhancement Act of 1984, any securities that are offered and sold pursuant to Section 4(5) of the federal Securities Act of 1933 or that are mortgage-related securities, as that term is defined in Section 3(a)(41) of the federal Securities Exchange Act of

1934, being 15 U.S.C. 78c(a)(41), are required to comply with all applicable registration and qualification requirements of the New Mexico Securities Act of 1986 and the rules pursuant to that act and shall not be treated as obligations issued by the United States for purposes of that act.

P. With respect to a federal covered security, as defined in Section 18(b)(2) of the federal Securities Act of 1933, that is not otherwise exempt pursuant to Section 58-13B-26 or 58-13B-27 NMSA 1978:

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

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

(b) a consent to service of process;  
and

(c) a notification fee in the amount of 1) five hundred twenty-five dollars (\$525) for all investment companies other than a unit investment trust; or 2) two hundred dollars (\$200) for a unit investment trust;  
and

(2) except as otherwise provided in this paragraph, the notice of intent and fee filed pursuant to Paragraph (1) of this subsection shall be effective for a period of one year from the date of filing with the

director. A notice filing by or on behalf of a unit investment trust is effective from receipt until one year from the date of effectiveness of the offering with the United States securities and exchange commission.

Q. With respect to any security that is a federal covered security pursuant to Section 18(b)(4)(D) of the federal Securities Act of 1933, the director, by rule or by order, may require the issuer to file, no later than fifteen days after the first sale of the federal covered security in New Mexico, a notice containing the information required by SEC Form D and a consent to service of process signed by the issuer, together with a notification fee in the amount of three hundred fifty dollars (\$350).

R. The director, by rule or by order, may require the filing of any document filed with the United States securities and exchange commission pursuant to the federal Securities Act of 1933 with respect to a federal covered security pursuant to Section 18(b)(3) or (4) of the federal Securities Act of 1933, together with a fee to be determined by the director.

S. The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security pursuant to Section 18(b)(1) of the federal Securities Act of 1933, if he finds that:

(1) the order is in the public interest;

and

(2) there is a failure to comply with any condition established pursuant to this section.

T. The director, by rule or otherwise, may waive any or all of the provisions of this section."

Section 5. Section 58-13B-26 NMSA 1978 (being Laws 1986, Chapter 7, Section 26, as amended) is amended to read:

"58-13B-26. EXEMPT SECURITIES.--The following securities are exempt from Section 58-13B-20, Subsection P of Section 58-13B-24 and Section 58-13B-29 NMSA 1978:

A. a security, including a revenue obligation, issued, insured or guaranteed by the United States, an agency or corporate or other instrumentality of the United States, an international agency or corporate or other instrumentality of which the United States and one or more foreign governments are members, a state, political subdivision of a state or an agency or corporate or other instrumentality, including the New Mexico mortgage finance authority, of one or more states or their political subdivisions; or a certificate of deposit for any of the foregoing, but this exemption does not include a security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such security is directly or indirectly insured or guaranteed by, or such revenues are derived from, a person whose securities are exempt from registration by this subsection or Subsection B, C, D or E of this section; for purposes of this subsection, a nongovernmental industrial or commercial enterprise does not include the financing of student loans or single-family residential mortgage loans;

B. a security issued or guaranteed by Canada, a Canadian province or territory, a political subdivision of Canada or a Canadian province or territory, an agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government or governmental



combination or entity with which the United States maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

C. a security issued by and representing an interest in or a direct obligation of or a guarantee of a depository institution if the deposit or share accounts of the depository institution are insured by the federal deposit insurance corporation, the federal savings and loan insurance corporation, the national credit union share insurance fund or a successor to the applicable agency created by federal law;

D. a security issued by and representing an interest in or direct obligation of or a guarantee of an insurance company organized under the laws of any state and authorized to do insurance business in this state;

E. a security issued or guaranteed by a public utility or holding company which is:

(1) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of a registered holding company within the meaning of that act;

(2) regulated in respect to its rates and charges by a governmental authority of the United States or a state; or

(3) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada or a Canadian province or territory;

F. certificates of participation in real property leases or equipment trust certificates in respect of

equipment leased or conditionally sold to a person, if securities issued by the person would be exempt under this section;

G. an option issued by a clearing agency registered under the Securities Exchange Act of 1934, other than an off-exchange futures contract or substantially similar arrangement, if the security, currency, commodity or other interest underlying the option:

(1) is registered under Section 58-13B-21, 58-13B-22 or 58-13B-23 NMSA 1978;

(2) is exempt under this section; or

(3) is not otherwise required to be registered under the New Mexico Securities Act of 1986;

H. a security issued by a person organized and operated not for private profit but exclusively for a religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purpose, or a chamber of commerce or trade or professional association. The director may require by rule or order that a notice setting forth the material terms of the proposed sale and copies of any sales and advertising literature to be used be filed ten days prior to the sale of the security;

I. a promissory note, draft, bill of exchange or banker's acceptance that evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, is issued in denominations of at least fifty thousand dollars (\$50,000) and receives a rating in one of the three highest rating categories from a nationally recognized securities rating organization; or a renewal of such an obligation that is likewise limited, or a guarantee

of such an obligation or of a renewal;

J. an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

K. a security issued in connection with an employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan;

L. a membership or equity interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of any state if not traded to the public; and

M. a security listed or approved for listing upon notice of issuance on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated or approved for designation upon issuance for inclusion on the national market system by the National Association of Securities Dealers, Inc., provided that such exchange or national marketing system shall be approved by rule or order of the director and subject to any additional requirements or conditions imposed by the director."

Section 6. Section 58-13B-27 NMSA 1978 (being Laws 1986, Chapter 7, Section 27, as amended) is amended to read:

"58-13B-27. EXEMPT TRANSACTIONS.--The following transactions are exempted from Section 58-13B-20 and Subsection P of Section 58-13B-24 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 7. Section 58-13B-33 NMSA 1978 (being Laws 1986, Chapter 7, Section 33) is amended to read:

"58-13B-33. PROHIBITED TRANSACTIONS BY INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES.--

A. It is unlawful for an investment adviser or an investment adviser representative to, directly or indirectly:

(1) employ a device, scheme or artifice to defraud a client; or

(2) engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon a client.



B. It is unlawful for any investment adviser or investment adviser representative to enter into, extend or renew any written investment advisory contract unless it provides that:

(1) no share of capital gain upon or capital appreciation of the funds or portion of the funds of the client shall be used as a basis for the determination of the compensation of the investment adviser;

(2) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

C. Paragraph (1) of Subsection B of this section does not:

(1) apply to investment advisers registered pursuant to Section 203 of the Investment Advisers Act of 1940 or exempt from registration pursuant to Section 202(a)(11) of that act; or

(2) prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. As used in Paragraph (2) of Subsection B of this section, "assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the

assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business."

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. \_\_\_\_\_