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SENATE BILL 198

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Cisco McSorley

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:

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1 (1) a sales representative;

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

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

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

12 C. "control person" means an officer, director,
13 managing partner or trustee, manager of a limited liability
14 company or person of similar status or function or any
15 security holder who owns beneficially or of record ten percent
16 or more of any class of securities of an issuer;

17 D. "depository institution":

18 (1) means:

19 (a) a person that is organized,
20 chartered or holding an authorization certificate under the
21 laws of a state or of the United States that authorizes the
22 person to receive deposits, including a savings, share,
23 certificate or deposit account, is regulated, supervised and
24 examined for the protection of depositors by an official or
25 agency of a state or the United States and is insured by the

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1 federal depository insurance corporation, the federal savings
2 and loan insurance corporation or the national credit union
3 share insurance fund; and

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

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

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

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

18 G. "federal covered security" means any security
19 described as a "covered security" in the federal Securities
20 Act of 1933 [except that, prior to October 11, 1999, a
21 security that would otherwise qualify as a federal covered
22 security for which the correct fee has not been paid as
23 required by the New Mexico Securities Act of 1986 shall not be
24 a federal covered security, if such deficiency is not remedied
25 within twenty days of the date of notice of the deficiency];

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

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

8 (1) a depository institution;

9 (2) an insurance company;

10 (3) a separate account of an insurance
11 company;

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

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

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

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

25 (6) a business development company as defined

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1 by the Investment Company Act of 1940;

2 (7) a small business investment company
3 licensed by the United States small business administration
4 under Section 301(c) or (d) of the Small Business Investment
5 Act of 1958; or

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

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

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

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

14 M "investment adviser":

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

21 (2) does not include:

22 (a) an investment adviser
23 representative;

24 (b) a depository institution when
25 acting on its own account or when exercising trust or

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1 fiduciary powers permitted for such depository institutions
2 under applicable state or federal laws and regulations
3 providing for the organization, operation, supervision and
4 examination of such depository institution;

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

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

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

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

23 N. "investment adviser representative" means:

24 (1) with respect to an investment adviser
25 that is registered or required to register pursuant to the New

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1 Mexico Securities Act of 1986, a natural person other than an
2 investment adviser who, whether as an employee or in the form
3 of a professional corporation is under the direct supervision
4 of an investment adviser and engages in the business of
5 advising others as to the value of securities or about the
6 advisability of investing in, purchasing or selling
7 securities, or who, for compensation and as part of a regular
8 business, issues or promulgates analyses or reports concerning
9 securities; or

10 (2) with respect to an investment adviser
11 registered with the United States securities and exchange
12 commission, an "investment adviser" who has a "place of
13 business" in the state as those terms are defined by rule
14 pursuant to Section 203 of the Investment Advisers Act of
15 1940;

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

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

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

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

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

12 Q. "person" means a legal entity;

13 R. "price amendment" means the amendment to a
14 registration statement filed under the Securities Act of 1933
15 or, if no amendment is filed, the prospectus or prospectus
16 supplement filed under the Securities Act of 1933, that
17 includes a statement of the offering price, underwriting and
18 selling discounts or commissions, amount of proceeds,
19 conversion rates, call prices and other matters dependent upon
20 the offering price;

21 S. "promoter" includes:

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

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

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

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

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

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

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

25 (4) a security given or delivered with, or as

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1 a bonus on account of, a purchase of securities or other item
2 is considered to constitute part of the subject of the
3 purchase and to have been offered and sold for value;

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

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

12 U. the terms defined in Subsection T of this
13 section do not include the creation of security interest or a
14 loan of a security; a stock dividend, whether the corporation
15 distributing the dividend is the issuer of the stock or not,
16 if nothing of value is given by stockholders for the dividend
17 other than the surrender of a right to a cash or property
18 dividend and each stockholder may elect to take the dividend
19 in cash, property or stock; or an act incident to a judicially
20 approved reorganization in which a security is issued in
21 exchange for one or more outstanding securities, claims or
22 property interests, or partly in exchange and partly for cash,
23 but the terms contained in this subsection are within the
24 meaning of Subsection T of this section for the purpose of
25 Section 58-13B-30 NMSA 1978;

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

10 W. "Securities Act of 1933", "Securities Exchange
11 Act of 1934", "Public Utility Holding Company Act of 1935",
12 "Investment Company Act of 1940", "Investment Advisers Act of
13 1940", "Employee Retirement Income Security Act of 1974",
14 "National Housing Act" and "Commodity Exchange Act" mean the
15 federal statutes of those names as amended before or after the
16 effective date of the New Mexico Securities Act of 1986;

17 X. unless the context requires otherwise,
18 "security" means a note; stock; treasury stock; bond;
19 debenture; evidence of indebtedness; certificate of interest
20 or participation in any profit-sharing agreement; any limited
21 partnership interest; any interest in a limited liability
22 company; collateral-trust certificate; preorganization
23 certificate or subscription; transferable share; investment
24 contract; voting-trust certificate; certificate of deposit for
25 a security; any interest in oil, gas or other mineral rights;

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1 any put, call, straddle or option entered into on a national
2 securities exchange relating to foreign currency; any put,
3 call, straddle or option on any security, certificate of
4 deposit or group or index of securities, including any
5 interest therein or based on the value thereof; or, in
6 general, any interest or instrument commonly known as a
7 security or any certificate of interest or participation in,
8 temporary or interim certificate for, receipt for, guarantee
9 of or warrant or right to subscribe to or purchase any of the
10 foregoing. "Security" does not include landowner royalties in
11 the production of oil, gas or other minerals created through
12 the execution of a lease of the lessor's mineral interest;

13 Y. "self-regulatory organization" means a national
14 securities exchange registered under Section 6 of the
15 Securities Exchange Act of 1934, a national securities
16 association of brokers and dealers registered under Section
17 15A of the Securities Exchange Act of 1934, a clearing agency
18 registered under Section 17A of that act and the municipal
19 securities rulemaking board established under Section
20 15B(b)(1) of that act;

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

24 AA. "underwriter" means any person who has
25 purchased from an issuer with the intent to offer or sell a

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

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

14 "58-13B-5. INVESTMENT ADVISER AND INVESTMENT ADVISER
15 REPRESENTATIVE LICENSING. --

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

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

21 (2) the person is registered as an investment
22 adviser under Section 203 of the Investment Advisers Act of
23 1940 and the person has filed the documents and paid the fees
24 described in Subsection (C) of that section;

25 (3) the person is an investment adviser

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

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

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

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

20 C. Except with respect to investment advisers
21 whose only clients are those described in Subsection A of
22 Section 58-13B-6 NMSA 1978, it is unlawful for any person who
23 is registered or required to be registered under Section 203
24 of the Investment Advisers Act of 1940 as an investment
25 adviser to conduct advisory business in this state unless such

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1 person files such documents filed with the United States
2 securities and exchange commission with the director as the
3 director may by rule or by order require, and a fee and
4 consent to service of process, as the director, by rule or by
5 order, may require [~~until October 11, 1999 the director may~~
6 ~~require any person who is required to pay a fee pursuant to~~
7 ~~this subsection and who fails or refuses to pay such fee to be~~
8 ~~licensed as an investment adviser~~]. "

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

11 "58-13B-21. REGISTRATION BY FILING. --

12 A. Securities for which a registration statement
13 has been filed under the Securities Act of 1933 in connection
14 with the offering of the securities may be registered by
15 filing, whether or not they are also eligible for registration
16 under Section [~~22 or 23 of the New Mexico Securities Act of~~
17 ~~1986~~] 58-13B-22 or 58-13B-23 NMSA 1978 if the following
18 conditions are satisfied:

19 (1) the issuer is organized under the laws of
20 the United States or a state or, if the issuer is not
21 organized under the laws of the United States or a state, it
22 has appointed a duly authorized agent in the United States for
23 service of process;

24 (2) the issuer has actively engaged in
25 business operations in the United States for a period of at

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1 least thirty-six consecutive calendar months immediately
2 before the filing of the federal registration statement;

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

7 (4) the issuer has:

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

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

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

24 (5) the issuer has been subject to the
25 requirements of Section 12 of the Securities Exchange Act of

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1 1934 and has filed all the material required to be filed under
2 Sections 13 and 14 of that act for at least thirty-six
3 calendar months immediately before the filing of the federal
4 registration statement and the issuer has filed in a timely
5 manner all reports required to be filed during the twelve
6 calendar months immediately before the filing of the federal
7 registration statement;

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

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

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

24 (9) neither the issuer nor any of its
25 subsidiaries, during the last three fiscal years preceding the

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1 filing of the registration statement, have:

2 (a) failed to pay a dividend or sinking
3 fund installment on preferred stock;

4 (b) defaulted on indebtedness for
5 borrowed money; or

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

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

13 ~~(11) the issuer is an investment company~~
14 ~~registered under Section 8 of the Investment Company Act of~~
15 ~~1940; provided that the director may impose requirements as a~~
16 ~~condition of use of the registration provided by this~~
17 ~~paragraph if he feels such requirements are necessary for the~~
18 ~~protection of investors].~~

19 B. A registration statement under this section
20 shall contain the following information and be accompanied by
21 the following documents in addition to the information
22 specified in Subsection [E] D of Section [~~24 of the New Mexico~~
23 ~~Securities Act of 1986~~] 58-13B-24 NMSA 1978 and the consent to
24 service of process required by Section [~~50 of that act~~]
25 58-13B-50 NMSA 1978:

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

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

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

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

13 (5) a copy of the latest prospectus filed
14 with the registration statement under and satisfying the
15 requirements of Section 10 of the Securities Act of 1933.

16 C. If the information and documents required to be
17 filed by Subsection B of this section have been on file with
18 the director for at least five business days and if the
19 applicable registration fee has been paid prior to the
20 effectiveness of the federal registration statement and no
21 stop order is in effect and no proceeding is pending under
22 Section [~~25 of the New Mexico Securities Act of 1986~~]
23 58-13B-25 NMSA 1978, a registration statement under this
24 section automatically becomes effective concurrently with the
25 effectiveness of the federal registration statement. If the

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1 federal registration statement becomes effective before the
2 conditions in this subsection are satisfied and they are not
3 waived, the registration statement becomes effective as soon
4 as the conditions are satisfied. The registrant shall
5 promptly notify the director of the date and time when the
6 federal registration statement became effective and the
7 content of the price amendment, if any, and shall file
8 promptly a post-effective amendment containing the information
9 and documents in the price amendment. The director shall
10 promptly acknowledge receipt of notification and effectiveness
11 of the registration statement as of the date and time the
12 registration statement became effective with the securities
13 and exchange commission. "

14 Section 4. Section 58-13B-24 NMSA 1978 (being Laws 1986,
15 Chapter 7, Section 24, as amended) is amended to read:

16 "58-13B-24. PROVISIONS APPLICABLE TO REGISTRATION
17 GENERALLY. --

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

21 B. If a registration statement is withdrawn before
22 the effective date or a pre-effective stop order is entered
23 pursuant to Section 58-13B-25 NMSA 1978, the director shall
24 retain the fee set forth in this subsection. A person filing
25 a registration statement shall pay a filing fee of:

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

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

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

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

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

21 D. A document filed pursuant to the New Mexico
22 Securities Act of 1986 or a predecessor act, within five years
23 before the filing of a registration statement, may be
24 incorporated by reference in the registration statement if the
25 document is currently accurate.

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

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

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

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

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

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1 substantially equal to the offering price for the security.

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

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

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

25 J. If a security is registered pursuant to Section

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1 58-13B-23 NMSA 1978, an offering document containing
2 information the director by rule or order designates shall be
3 delivered to each purchaser with or before the earliest of:

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

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

12 (3) payment pursuant to a sale; or

13 (4) delivery pursuant to a sale.

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

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1 Section 58-13B-25 NMSA 1978.

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

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

20 N. A registration statement filed pursuant to
21 Section 58-13B-23 NMSA 1978 may be amended after its effective
22 date to increase the securities specified to be offered and
23 sold, provided that the public offering price and
24 underwriters' discounts and commissions are not changed from
25 the respective amounts of which the director was informed.

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1 The amendment becomes effective when the director so orders
2 and relates back to the date of sale of the additional
3 securities being registered. A person filing an amendment
4 shall pay an additional filing fee, which shall be three times
5 the fee otherwise payable, calculated in the manner specified
6 in Subsection B of this section, with respect to the
7 additional securities to be offered and sold.

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

19 P. With respect to a federal covered security, as
20 defined in Section 18(b)(2) of the federal Securities Act of
21 ~~[1993]~~ 1933, that is not otherwise exempt pursuant to Section
22 58-13B-26 or 58-13B-27 NMSA 1978:

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

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

7 (b) a consent to service of process;
8 and

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

13 (2) except as otherwise provided in this
14 paragraph, the notice of intent and fee [specified in] filed
15 pursuant to Paragraph (1) of this subsection shall be
16 effective for a period of one year from the date of filing
17 with the director. A notice filing by or on behalf of a unit
18 investment trust is effective from receipt until one year from
19 the date of effectiveness of the offering with the United
20 States securities and exchange commission.

21 Q. With respect to any security that is a federal
22 covered security pursuant to Section 18(b)(4)(D) of the
23 federal Securities Act of 1933, the director, by rule or by
24 order, may require the issuer to file, no later than fifteen
25 days after the first sale of the federal covered security in

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1 New Mexico, a notice containing the information required by
2 SEC Form D and a consent to service of process signed by the
3 issuer, together with a notification fee in the amount of
4 three hundred fifty dollars (\$350).

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

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

- 16 (1) the order is in the public interest; and
 - 17 (2) there is a failure to comply with any
- 18 condition established pursuant to this section.

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

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

23 "58-13B-26. EXEMPT SECURITIES.--The following securities
24 are exempt from ~~[Sections]~~ Section 58-13B-20, Subsection P of
25 Section 58-13B-24 and Section 58-13B-29 NMSA 1978:

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

20 B. a security issued or guaranteed by Canada, a
21 Canadian province or territory, a political subdivision of
22 Canada or a Canadian province or territory, an agency or
23 corporate or other instrumentality of one or more of the
24 foregoing or any other foreign government or governmental
25 combination or entity with which the United States maintains

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1 diplomatic relations, if the security is recognized as a valid
2 obligation by the issuer or guarantor;

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

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

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

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

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

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

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1 F. certificates of participation in real property
2 leases or equipment trust certificates in respect of equipment
3 leased or conditionally sold to a person, if securities issued
4 by the person would be exempt under this section;

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

10 (1) is registered under Section 58-13B-21,
11 58-13B-22 or 58-13B-23 NMSA 1978;

12 (2) is exempt under this section; or

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

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

24 I. a promissory note, draft, bill of exchange or
25 banker's acceptance that evidences an obligation to pay cash

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1 within nine months after the date of issuance, exclusive of
2 days of grace, is issued in denominations of at least fifty
3 thousand dollars (\$50,000) and receives a rating in one of the
4 three highest rating categories from a nationally recognized
5 securities rating organization; or a renewal of such an
6 obligation that is likewise limited, or a guarantee of such an
7 obligation or of a renewal;

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

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

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

19 ~~[M— a security issued by an issuer registered as~~
20 ~~an open-end management investment company or unit investment~~
21 ~~trust under Section 8 of the Investment Company Act of 1940~~
22 ~~if:~~

23 ~~(1)~~

24 ~~(a) the issuer is advised by an~~
25 ~~investment adviser that is a depository institution exempt~~

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1 ~~from registration under the Investment Advisers Act of 1940 or~~
2 ~~that is currently registered as an investment adviser, and has~~
3 ~~been registered, or is affiliated with an adviser that has~~
4 ~~been registered, as an investment adviser under the Investment~~
5 ~~Advisers Act of 1940 for at least three years preceding an~~
6 ~~offer or sale of a security claimed to be exempt under this~~
7 ~~paragraph; and~~

8 ~~(b) the issuer has acted, or is~~
9 ~~affiliated with an investment adviser that has acted, as~~
10 ~~investment adviser to one or more registered investment~~
11 ~~companies or unit investment trusts for at least three years~~
12 ~~preceding an offer or sale of a security claimed to be exempt~~
13 ~~under this paragraph; or~~

14 ~~(2) the issuer has a sponsor that has at all~~
15 ~~times throughout the three years before an offer or sale of a~~
16 ~~security claimed to be exempt under this paragraph sponsored~~
17 ~~one or more registered investment companies or unit investment~~
18 ~~trusts the aggregate total assets of which have exceeded one~~
19 ~~hundred million dollars (\$100,000,000); and~~

20 ~~(3) in addition to Paragraphs (1) or (2) of~~
21 ~~this subsection, the division has received prior to any sale~~
22 ~~exempted herein:~~

23 ~~(a) a notice of intention to sell~~
24 ~~executed by the issuer setting forth the name and address of~~
25 ~~the issuer and the title of the securities to be offered in~~

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1 ~~this state; and~~

2 ~~(b) a filing fee of seven hundred~~
3 ~~dollars (\$700) for open end management companies or a filing~~
4 ~~fee of two hundred dollars (\$200) for unit investment trusts;~~

5 ~~In the event any offer or sale of an open end management~~
6 ~~investment company is to be made more than twelve months after~~
7 ~~the date notice, pursuant to this subsection, is received by~~
8 ~~the director, another notice and payment of the applicable fee~~
9 ~~shall be required.~~

10 ~~For the purpose of this subsection, an investment adviser~~
11 ~~is affiliated with another investment adviser if it controls,~~
12 ~~is controlled by or is under common control of another~~
13 ~~investment adviser;]~~ and

14 ~~[N.]~~ M a security listed or approved for listing
15 upon notice of issuance on a national securities exchange
16 registered under Section 6 of the Securities Exchange Act of
17 1934 or designated or approved for designation upon issuance
18 for inclusion on the national market system by the National
19 Association of Securities Dealers, Inc., provided that such
20 exchange or national marketing system shall be approved by
21 rule or order of the director and subject to any additional
22 requirements or conditions imposed by the director."

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

25 "58-13B-27. EXEMPT TRANSACTIONS.--The following

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1 transactions are exempted from Section 58-13B-20 and
2 Subsection P of Section 58-13B-24 NMSA 1978 and, unless
3 otherwise noted, Section 58-13B-29 NMSA 1978:

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

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

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

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

16 (3) the broker-dealer has a reasonable basis
17 for believing that the issuer is current in filing the reports
18 required to be filed at regular intervals pursuant to the
19 provisions of Section 13 or Section 15(d), as the case may be,
20 of the Securities Exchange Act of 1934 or in the case of
21 insurance companies exempted from Section 12(g) of the
22 Securities Exchange Act of 1934 by Subparagraph 12(g)(2)(G)
23 thereof, the annual statement referred to in Section
24 12(G)(2)(G)(i) of the Securities Exchange Act of 1934; and

25 (4) the broker-dealer has in its records, and

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1 makes reasonably available upon request to any person
2 expressing an interest in a proposed transaction in the
3 securities, the issuer's most recent annual report filed
4 pursuant to Section 13 or 15(d), as the case may be, of the
5 Securities Exchange Act of 1934 or the annual statement in the
6 case of an insurance company exempted from Section 12(g) of
7 the Securities Exchange Act of 1934 by Subparagraph
8 12(G) (2) (G) thereof, together with any other reports required
9 to be filed at regular intervals under the Securities Exchange
10 Act of 1934 by the issuer after such annual report or annual
11 statement; provided that the making available of such reports
12 pursuant to this paragraph, unless otherwise represented,
13 shall not constitute a representation by the broker-dealer
14 that the information is true and correct but shall constitute
15 a representation by the broker-dealer that the information is
16 reasonably current; or

17 (5) the issuer has filed and maintained with
18 the director, for not less than ninety days before the
19 transaction, information in such form as the director by rule
20 specifies, substantially comparable to the information which
21 the issuer would be required to file under Section 12(b) or
22 Section 12(g) of the Securities Exchange Act of 1934 were the
23 issuer to have a class of its securities registered under
24 Section 12 of the Securities Exchange Act of 1934, and under
25 either Subparagraph (1) or (2), the issuer has paid a fee of

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1 five hundred dollars (\$500);

2 C. a non-issuer transaction in a security:

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

12 (2) if the security has a fixed maturity or a
13 fixed interest or dividend provision and there has been no
14 default during the current fiscal year or within the three
15 preceding years, or during the existence of the issuer and any
16 predecessors if less than three years, in the payment of
17 principal, interest or dividends on the security; provided
18 that the director may impose additional requirements as a
19 condition of the exemption established in this paragraph as
20 necessary for the protection of investors and shall promulgate
21 rules specifying application of this exemption;

22 D. any non-issuer transaction effected by or
23 through a registered broker-dealer registered in this state
24 pursuant to an unsolicited order or offer to buy; provided
25 that the director by rule shall require that the broker-dealer

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1 have the customer acknowledge upon a specified form that the
2 sale was unsolicited and that a signed copy of that form be
3 preserved by the broker-dealer for a specified period;

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

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

14 G. a transaction by an executor, administrator,
15 sheriff, marshal, receiver, trustee in bankruptcy, guardian or
16 conservator;

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

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

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

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

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

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

14 (4) an offering document is delivered to each
15 purchaser or prospective purchaser prior to the sale of the
16 securities disclosing such information as the director by rule
17 or order may require;

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

21 (6) the issuer claiming this exemption files
22 notice with the director on a form prescribed by the director
23 prior to the first offer and pays a fee of three hundred fifty
24 dollars (\$350). The director may require any issuer using
25 this exemption to file periodic reports not more often than

underscored material = new
[bracketed material] = delete

1 quarterly to keep reasonably current the information contained
2 in the notice and to disclose the progress of the offering.

3 The director may impose conditions by rule or order with
4 respect to issuers, broker-dealers or affiliates who by reason
5 of prior misconduct will not be eligible to utilize this
6 exemption. The issuance and offer and sale of securities
7 pursuant to this subsection shall be subject to Section
8 58-13B-29 NMSA 1978;

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

13 (1) in the case of a corporation or limited
14 liability company, the total number of security holders does
15 not and will not in consequence of the sale exceed twenty-five
16 or, in the case of a limited partnership, the number of
17 limited partners does not and will not in consequence of the
18 sale exceed twenty-five;

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

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

23 (4) no commission or other remuneration is
24 paid or given, directly or indirectly, for soliciting or
25 selling to any person in this state except to broker-dealers

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1 and sales representatives licensed pursuant to the New Mexico
2 Securities Act of 1986.

3 The director by rule or order may impose additional
4 requirements as a condition of the exemption established in
5 this subsection as necessary for the protection of investors
6 and to specify its application. Any notice filing that may be
7 imposed pursuant to Subsection C of Section 58-13B-28 NMSA
8 1978 shall not be deemed a condition of this exemption;

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

11 (1) such sale or offer is made by an agent,
12 the agent shall be licensed pursuant to the New Mexico
13 Securities Act of 1986. No commission shall be paid to an
14 agent not licensed pursuant to that act;

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

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

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

22 M an offer or sale of a preorganization
23 certificate or subscription agreement issued in connection
24 with the organization of a depository institution if that
25 organization is under the supervision of an official or agency

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[bracketed material] = delete

1 of any state or of the United States which has and exercises
2 the authority to regulate and supervise the depository
3 institution. For the purpose of this subsection, supervision
4 of an organization by an official or agency means that the
5 official or agency by law has authority to:

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

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

12 (3) require a refund to investors if the
13 depository institution does not obtain a grant of authority
14 from the appropriate official or agency except that the
15 official or agency with the authority to require a refund need
16 not include such amounts as the official or agency has by law
17 determined to be proper organizational expenditures;

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

24 (1) no commission or other similar
25 compensation, other than a standby commission, is paid or

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1 given, directly or indirectly, for soliciting a security
2 holder in this state; or

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

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

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

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

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

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

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

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

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

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

16 (2) if the securities to be distributed are
17 not required to be registered under the Securities Act of
18 1933, and written notice of the transaction and a copy of the
19 materials, if any, by which approval of the transaction will
20 be solicited is given to the director at least ten days before
21 the consummation of the transaction and the director does not
22 disallow by order the exemption within the next ten days;

23 R.

24 (1) a transaction involving the offer to sell
25 or sale of one or more promissory notes each of which is

underscored material = new
[bracketed material] = delete

1 directly secured by a first lien on a single parcel of real
2 estate, or a transaction involving the offer to sell or sale
3 of participation interests in the notes if the notes and
4 participation interests are originated by a depository
5 institution and are offered and sold subject to the following
6 conditions:

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

10 (b) each purchaser must pay cash either
11 at the time of the sale or within sixty days after the sale;
12 and

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

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

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1 mortgage association; and

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

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

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

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

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

23 (1) any corporation, limited liability
24 company, partnership or other business entity that is directly
25 engaged in and derives at least eighty percent of its annual

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1 gross income from the exploration or production of oil, gas or
2 other valuable minerals;

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

9 (3) any corporation, limited liability
10 company, partnership or other business entity that is directly
11 engaged in the business of exploration and production of oil,
12 gas or other valuable minerals and derives at least five
13 million dollars (\$5,000,000) of annual gross income from such
14 business;

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

20 (1) the total number of sales by any one
21 owner of interests, whether whole, fractional, segregated or
22 undivided, in any oil, gas or mineral lease, fee or title or
23 contract relating thereto, shall not exceed twenty-five,
24 provided that such sales shall be made only to persons meeting
25 suitability standards established by rule or order of the

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1 director and that investors are provided with such disclosure
2 documents and other information as the director may require by
3 rule or order;

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

6 (3) if such sale or offer is made by an agent
7 for such owner or owners, such agent shall be licensed
8 pursuant to the New Mexico Securities Act of 1986. No
9 commission shall be paid to an agent not licensed pursuant to
10 that act; and

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

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

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

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

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

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1 or

2 (5) immediately before and immediately after
3 the transaction, the issuer reasonably believes that the
4 securities of the issuer are held by fifty or fewer beneficial
5 owners and the transaction is part of an aggregate offering
6 that does not exceed five hundred thousand dollars (\$500,000)
7 during any twelve consecutive months; but the director, by
8 rule or order as to a security or transaction or a type of
9 security or transaction, may withdraw or further condition
10 this exemption or may waive one or more of the conditions of
11 this subsection.

12 For the purposes of Subsection T of this section,
13 "principally operating in New Mexico" means a corporation or
14 limited liability company organized under the law of this
15 state, a corporation in which a majority in interest of the
16 shareholders are residents of this state, a limited liability
17 company in which a majority in interest of the members are
18 residents of this state, a partnership in which a majority in
19 interest of the partners are residents of this state, a trust
20 in which a majority in interest of the beneficiaries are
21 residents of this state or a sole proprietorship in which the
22 owner is a resident of this state. "

23 Section 7. Section 58-13B-33 NMSA 1978 (being Laws 1986,
24 Chapter 7, Section 33) is amended to read:

25 "58-13B-33. PROHIBITED TRANSACTIONS BY INVESTMENT

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1 **ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES. --**

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

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

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

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

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

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

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

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

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(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.

1 FORTY-FOURTH LEGISLATURE

SB 198/a

2 FIRST SESSION, 1999

3
4
5
6 February 2, 1999

7
8 Mr. President:

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

12
13 SENATE BILL 198

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17
18
19 1. On page 7, line 12, strike "investment adviser" and
20 insert in lieu thereof "investment adviser representative".,

21
22 and thence referred to the JUDICIARY COMMITTEE.

23
24 Respectfully submitted,

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FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

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Page 53

Roman M. Maes, Chair man

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Maci as, Robi nson

Absent: None

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6 FORTY- FOURTH LEGI SLATURE
7 FIRST SESSI ON, 1999
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11
12 February 20, 1999
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14 Mr. President:

15
16 Your JUDI CIARY COMMI TTEE, to whom has been referred

17
18 SENATE BILL 198, as amended
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20
21 has had it under consideration and reports same with
22 recommendation that it DO PASS.
23

24 Respectfully submit ted,
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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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Page 55

Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

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FIRST SESSI ON, 1999

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Page 56

Excused: Sanchez, Tsosie

Absent: None

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 March 3, 1999

7
8 Mr. Speaker:

9
10 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
11 whom has been referred

12
13 SENATE BILL 198, as amended

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

17 Respectfully submitted,

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21 _____
22 Max Coll, Chairman
23
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25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

Page 58

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 15 For 0 Against

Yes: 15

Excused: Larrañaga, Pearce

Absent: None

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