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AN ACT
RELATING TO BUSINESS; REPEALING THE NEW MEXICO SECURITIES ACT
OF 1986; ENACTING THE NEW MEXICO UNIFORM SECURITIES ACT;
PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Article 1

GENERAL PROVISIONS

Section 101. SHORT TITLE.--Sections 101 through 701 of
this act may be cited as the "New Mexico Uniform Securities
Act".

Section 102. DEFINITIONS.--As used in the New Mexico
Uniform Securities Act, unless the context otherwise
requires:

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

1 B. "bank" means:

2 (1) a banking institution organized pursuant
3 to the laws of the United States;

4 (2) a member bank of the federal reserve
5 system;

6 (3) any other banking institution, whether
7 incorporated or not, doing business pursuant to the laws of a
8 state or of the United States, a substantial portion of the
9 business of which consists of receiving deposits or
10 exercising fiduciary powers similar to those permitted to be
11 exercised by national banks pursuant to the authority of the
12 comptroller of the currency pursuant to Section 1 of Public
13 Law 87-722 (12 U.S.C. Section 92a) and that is supervised and
14 examined by a state or federal agency having supervision over
15 banks and that is not operated for the purpose of evading the
16 New Mexico Uniform Securities Act; and

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

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

23 "Broker-dealer" does not include:

24 (1) an agent;

25 (2) an issuer;

1 (3) a bank or savings institution described
2 in Paragraph (2) of Subsection D of this section if its
3 activities as a broker-dealer are limited to those specified
4 in Subsections 3(a)(4)(B)(i) through (vi), (viii) through (x)
5 and (xi), if limited to unsolicited transactions; 3(a)(5)(B);
6 and 3(a)(5)(C) of the federal Securities Exchange Act of 1934
7 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that
8 satisfies the conditions described in Subsection 3(a)(4)(E)
9 of the federal Securities Exchange Act of 1934 (15 U.S.C.
10 Section 78c(a)(4));

11 (4) an international banking institution; or

12 (5) a person excluded by rule adopted or
13 order issued pursuant to the New Mexico Uniform Securities
14 Act;

15 D. "depository institution" means:

16 (1) a bank; or

17 (2) a savings institution, trust company,
18 credit union or similar institution that is organized or
19 chartered pursuant to the laws of a state or of the United
20 States, authorized to receive deposits and supervised and
21 examined by an official or agency of a state or the United
22 States if its deposits or share accounts are insured to the
23 maximum amount authorized by statute by the federal deposit
24 insurance corporation, the national credit union share
25 insurance fund or a successor authorized by federal law, or a

1 receiver, conservator or other liquidating agent of such
2 institutions or entities. "Depository institution" does not
3 include:

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

6 (b) a Morris plan bank; or

7 (c) an industrial loan company that is
8 not an "insured depository institution" as defined in Section
9 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C.
10 1813(c)(2), or any successor federal statute;

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

13 F. "division" means the securities division of the
14 regulation and licensing department, which for purposes of
15 administering the provisions of the New Mexico Uniform
16 Securities Act and conducting investigations of violations of
17 that act shall be considered a law enforcement agency;

18 G. "federal covered investment adviser" means a
19 person registered pursuant to the federal Investment Advisers
20 Act of 1940;

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

1 I. "filing" means the receipt pursuant to the New
2 Mexico Uniform Securities Act of a record by the director, or
3 a designee of the director, in a form and format designated
4 by the director;

5 J. "fraud", "deceit" and "defraud" are not limited
6 to common law deceit;

7 K. "guaranteed" means guaranteed as to payment of
8 all principal and all interest;

9 L. "institutional investor" means any of the
10 following, whether acting for itself or for others in a
11 fiduciary capacity:

12 (1) a depository institution or
13 international banking institution;

14 (2) an insurance company;

15 (3) a separate account of an insurance
16 company;

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

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

21 (6) an employee pension, profit-sharing or
22 benefit plan if the plan has total assets in excess of ten
23 million dollars (\$10,000,000) or its investment decisions are
24 made by a named fiduciary, as defined in the federal Employee
25 Retirement Income Security Act of 1974, that is a

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

7 (7) a plan established and maintained by a
8 state, a political subdivision of a state or an agency or
9 instrumentality of a state or a political subdivision of a
10 state for the benefit of its employees, if the plan has total
11 assets in excess of ten million dollars (\$10,000,000) or its
12 investment decisions are made by a duly designated public
13 official or by a named fiduciary, as defined in the federal
14 Employee Retirement Income Security Act of 1974, that is a
15 broker-dealer registered pursuant to the federal Securities
16 Exchange Act of 1934, an investment adviser registered or
17 exempt from registration pursuant to the federal Investment
18 Advisers Act of 1940, an investment adviser registered
19 pursuant to the New Mexico Uniform Securities Act, a
20 depository institution or an insurance company;

21 (8) a trust, if it has total assets in
22 excess of ten million dollars (\$10,000,000), its trustee is a
23 depository institution and its participants are exclusively
24 plans of the types identified in Paragraph (6) or (7) of this
25 subsection, regardless of the size of their assets, except a

1 trust that includes as participants self-directed individual
2 retirement accounts or similar self-directed plans;

3 (9) an organization described in Section
4 501(c)(3) of the federal Internal Revenue Code of 1986
5 (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts
6 trust or similar business trust, limited liability company or
7 partnership, not formed for the specific purpose of acquiring
8 the securities offered, with total assets in excess of ten
9 million dollars (\$10,000,000);

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

15 (11) a private business development company
16 as defined in Section 202(a)(22) of the federal Investment
17 Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with
18 total assets in excess of ten million dollars (\$10,000,000);

19 (12) a federal covered investment adviser
20 acting for its own account;

21 (13) a "qualified institutional buyer", as
22 defined in Rule 144A(a)(i)(1), other than Rule 144A(a)(1)(H),
23 adopted pursuant to the federal Securities Act of 1933
24 (17 C.F.R. 230.144A);

25 (14) a "major U.S. institutional investor"

1 as defined in Rule 15a-6(b)(4)(i)(17 C.F.R. 240.15a-6)
2 adopted pursuant to the federal Securities Exchange Act of
3 1934;

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

9 (16) any other person specified by rule
10 adopted or order issued pursuant to the New Mexico Uniform
11 Securities Act;

12 M. "insurance company" means a company organized
13 as an insurance company whose primary business is writing
14 insurance or reinsuring risks underwritten by insurance
15 companies and that is subject to supervision by the insurance
16 commissioner or a similar official or agency of a state;

17 N. "insured" means insured as to payment of all
18 principal and all interest;

19 O. "international banking institution" means an
20 international financial institution of which the United
21 States is a member and whose securities are exempt from
22 registration pursuant to the federal Securities Act of 1933;

23 P. "investment adviser" means a person that, for
24 compensation, engages in the business of advising others,
25 either directly or through publications or writings, as to

1 the value of securities or the advisability of investing in,
2 purchasing or selling securities or that, for compensation
3 and as a part of a regular business, issues or promulgates
4 analyses or reports concerning securities. "Investment
5 adviser" includes a financial planner or other person that,
6 as an integral component of other financially related
7 services, provides investment advice to others for
8 compensation as part of a business or that holds itself out
9 as providing investment advice to others for compensation.

10 "Investment adviser" does not include:

- 11 (1) an investment adviser representative;
- 12 (2) a lawyer, accountant, engineer or
13 teacher whose performance of investment advice is solely
14 incidental to the practice of the person's profession;
- 15 (3) a broker-dealer or its agents whose
16 performance of investment advice is solely incidental to the
17 conduct of business as a broker-dealer and that does not
18 receive special compensation for the investment advice;
- 19 (4) a publisher, employee or columnist of a
20 bona fide newspaper, news magazine or business or financial
21 publication of general and regular circulation or an owner
22 operator, producer or employee of a cable, radio or
23 television network, station or production facility, if, in
24 either case:

- 25 (a) the financial or business news or

1 advice is contained in a publication or broadcast
2 disseminated to the general public; and

3 (b) the content does not consist of
4 rendering advice on the basis of the specific investment
5 situation of each client;

6 (5) a federal covered investment adviser;

7 (6) a bank or a savings institution
8 described in Paragraph (2) of Subsection D of this section;
9 or

10 (7) any other person excluded by rule
11 adopted or order issued pursuant to the New Mexico Uniform
12 Securities Act;

13 Q. "investment adviser representative" means an
14 individual employed by or associated with an investment
15 adviser or federal covered investment adviser and who makes
16 any recommendations or otherwise gives investment advice
17 regarding securities, manages accounts or portfolios of
18 clients, determines which recommendation or advice regarding
19 securities should be given, provides investment advice or
20 holds herself or himself out as providing investment advice,
21 receives compensation to solicit, offer or negotiate for the
22 sale of or for selling investment advice or supervises
23 employees who perform any of the foregoing. "Investment
24 adviser representative" does not include an individual who:

25 (1) performs only clerical or ministerial

1 acts;

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

6 (3) is employed by or associated with a
7 federal covered investment adviser, unless the individual has
8 a place of business in New Mexico, as "place of business" is
9 defined by rule adopted pursuant to Section 203A of the
10 federal Investment Advisers Act of 1940 (15 U.S.C. Section
11 80b-3a) and is:

12 (a) an investment adviser
13 representative, as "investment adviser representative" is
14 defined by rule adopted pursuant to Section 203A of the
15 federal Investment Advisers Act of 1940 (15 U.S.C. Section
16 80b-3a); or

17 (b) not a supervised person as
18 "supervised person" is defined in Section 202(a)(25) of the
19 federal Investment Advisers Act of 1940 (15 U.S.C. Section
20 80b-2(a)(25)); or

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

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

25 (1) the issuer of a voting trust

1 certificate, collateral trust certificate, certificate of
2 deposit for a security or share in an investment company
3 without a board of directors or individuals performing
4 similar functions is the person performing the acts and
5 assuming the duties of depositor or manager pursuant to the
6 trust or other agreement or instrument under which the
7 security is issued;

8 (2) the issuer of an equipment trust
9 certificate or similar security serving the same purpose is
10 the person by which the property is or will be used or to
11 which the property or equipment is or will be leased or
12 conditionally sold or that is otherwise contractually
13 responsible for assuring payment of the certificate; and

14 (3) the issuer of a fractional undivided
15 interest in an oil, gas or other mineral lease or in payments
16 out of production pursuant to a lease, right or royalty is
17 the owner of an interest in the lease or in payments out of
18 production pursuant to a lease, right or royalty, whether
19 whole or fractional, that creates fractional interests for
20 the purpose of sale;

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

24 T. "nonissuer transaction" or "nonissuer
25 distribution" means a transaction or distribution not

1 directly or indirectly for the benefit of the issuer;

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

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

13 W. "place of business" of a broker-dealer, an
14 investment adviser or a federal covered investment adviser
15 means:

16 (1) an office at which the broker-dealer,
17 investment adviser or federal covered investment adviser
18 regularly provides brokerage or investment advice or
19 solicits, meets with or otherwise communicates with customers
20 or clients; or

21 (2) a location that is held out to the
22 general public as a location at which the broker-dealer,
23 investment adviser or federal covered investment adviser
24 provides brokerage or investment advice or solicits, meets
25 with or otherwise communicates with customers or clients;

1 X. "predecessor act" means the New Mexico
2 Securities Act of 1986;

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

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

20 AA. "record", except in the phrases "of record",
21 "official record" and "public record", means information that
22 is inscribed on a tangible medium or that is stored in an
23 electronic or other medium and is retrievable in perceivable
24 form;

25 BB. "sale" includes every contract of sale,

1 contract to sell or disposition of a security or interest in
2 a security for value, and "offer to sell" includes every
3 attempt or offer to dispose of, or solicitation of an offer
4 to purchase, a security or interest in a security for value.

5 Both terms include:

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

10 (2) a gift of assessable stock involving an
11 offer and sale; and

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

18 CC. "securities and exchange commission" means the
19 United States securities and exchange commission;

20 DD. "security" means a note; stock; treasury
21 stock; security future; bond; debenture; evidence of
22 indebtedness; certificate of interest or participation in a
23 profit-sharing agreement; collateral trust certificate;
24 preorganization certificate or subscription; transferable
25 share; investment contract; voting trust certificate;

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

13 (1) includes both a certificated and an
14 uncertificated security;

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

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

24 (4) does not include landowner royalties in
25 the production of oil, gas or other minerals created through

1 the execution of a lease of the lessor's mineral interest;

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

9 (6) includes any interest in a limited
10 partnership or a limited liability company; and

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

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

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

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

23 or

24 (2) to attach or logically associate with
25 the record an electronic symbol, sound or process;

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

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

18 Section 103. REFERENCES TO FEDERAL STATUTES.--As used
19 in the New Mexico Uniform Securities Act, "Securities Act of
20 1933" (15 U.S.C. Section 77a, et seq.), "Securities Exchange
21 Act of 1934" (15 U.S.C. Section 78a, et seq.), "Public
22 Utility Holding Company Act of 1935" (15 U.S.C. Section 79,
23 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section
24 80a-1, et seq.), "Investment Advisers Act of 1940" (15 U.S.C.
25 Section 80b-1, et seq.), "Employee Retirement Income Security

1 Act of 1974" (29 U.S.C. Section 1001, et seq.), "National
2 Housing Act" (12 U.S.C. Section 1701, et seq.), "Commodity
3 Exchange Act" (7 U.S.C. Section 1, et seq.), "Internal
4 Revenue Code of 1986" (26 U.S.C. Section 1, et seq.),
5 "Securities Investor Protection Act of 1970" (15 U.S.C.
6 Section 78aaa, et seq.), "Securities Litigation Uniform
7 Standards Act of 1998" (112 Stat. 3227), "Small Business
8 Investment Act of 1958" (15 U.S.C. Section 661, et seq.) and
9 "Electronic Signatures in Global and National Commerce Act"
10 (15 U.S.C. Section 7001, et seq.) mean those statutes and the
11 rules and regulations adopted pursuant to those statutes as
12 in effect on the date of enactment of the New Mexico Uniform
13 Securities Act, or as later amended.

14 Section 104. REFERENCES TO FEDERAL AGENCIES.--A
15 reference in the New Mexico Uniform Securities Act to an
16 agency or department of the United States is also a reference
17 to a successor agency or department.

18 Section 105. ELECTRONIC RECORDS AND SIGNATURES.--The
19 New Mexico Uniform Securities Act modifies, limits and
20 supersedes the federal Electronic Signatures in Global and
21 National Commerce Act, but does not modify, limit or
22 supersede Section 101(c) of that act (15 U.S.C. Section
23 7001(c)) or authorize electronic delivery of any of the
24 notices described in Section 103(b) of that act (15 U.S.C.
25 Section 7003(b)). The New Mexico Uniform Securities Act

1 authorizes the filing of records and signatures, when
2 specified by provisions of the New Mexico Uniform Securities
3 Act or by a rule adopted or order issued pursuant to the New
4 Mexico Uniform Securities Act, in a manner consistent with
5 Section 104(a) of the federal Electronic Signatures in Global
6 and National Commerce Act (15 U.S.C. Section 7004(a)).

7 Article 2

8 EXEMPTIONS FROM REGISTRATION OF SECURITIES

9 Section 201. EXEMPT SECURITIES.--The following
10 securities are exempt from the requirements of Sections 301
11 through 306 of the New Mexico Uniform Securities Act and,
12 unless otherwise noted, Section 504 of that act:

13 A. a security, including a revenue obligation or a
14 separate security as defined in Rule 131 (17 C.F.R. 230.131)
15 adopted pursuant to the federal Securities Act of 1933,
16 issued, insured or guaranteed by the United States, by a
17 state, by a political subdivision of a state, by a public
18 authority, agency or instrumentality of one or more states,
19 including the New Mexico mortgage finance authority, by a
20 political subdivision of one or more states or by a person
21 controlled or supervised by and acting as an instrumentality
22 of the United States pursuant to authority granted by the
23 congress or a certificate of deposit for any of the
24 foregoing; but this exemption does not include a security
25 issued by a New Mexico governmental entity, payable solely

1 from the revenues of a nongovernmental commercial or
2 industrial enterprise, unless such security is directly or
3 indirectly insured or guaranteed by, or such revenues are
4 derived from, a person whose securities are exempt from
5 registration by this subsection or Subsection B, C, D, E or G
6 of this section. For purposes of this subsection, a
7 nongovernmental commercial or industrial enterprise does not
8 include the financing of student loans or single-family
9 residential mortgage loans;

10 B. a security issued, insured or guaranteed by a
11 foreign government with which the United States maintains
12 diplomatic relations, or any of its political subdivisions,
13 if the security is recognized as a valid obligation by the
14 issuer, insurer or guarantor;

15 C. a security issued by and representing or that
16 will represent an interest in or a direct obligation of, or
17 be guaranteed by:

18 (1) an international banking institution;

19 (2) a banking institution organized pursuant
20 to the laws of the United States; a member bank of the
21 federal reserve system; or a depository institution a
22 substantial portion of the business of which consists or will
23 consist of receiving deposits or share accounts that are
24 insured to the maximum amount authorized by statute by the
25 federal deposit insurance corporation, the national credit

1 union share insurance fund or a successor authorized by
2 federal law or exercising fiduciary powers that are similar
3 to those permitted for national banks pursuant to the
4 authority of the comptroller of currency pursuant to
5 Section 1 of Public Law 87-722 (12 U.S.C. Section 92a);

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

12 (4) any other depository institution, unless
13 by rule or order the director proceeds pursuant to Section
14 204 of the New Mexico Uniform Securities Act;

15 D. a security issued by and representing an
16 interest in, or a debt of, or insured or guaranteed by, an
17 insurance company authorized to transact insurance in New
18 Mexico pursuant to the New Mexico Insurance Code;

19 E. a security issued or guaranteed by a railroad,
20 other common carrier, public utility or public utility
21 holding company that is:

22 (1) regulated in respect to its rates and
23 charges by the United States or a state;

24 (2) regulated in respect to the issuance or
25 guarantee of the security by the United States, a state,

1 Canada or a Canadian province or territory; or

2 (3) a public utility holding company
3 registered pursuant to the federal Public Utility Holding
4 Company Act of 1935 or a subsidiary of such a registered
5 holding company within the meaning of that act;

6 F. a federal covered security specified in
7 Section 18(b)(1) of the federal Securities Act of 1933
8 (15 U.S.C. Section 77r(b)(1)) or by rule adopted pursuant to
9 that provision or a security listed or approved for listing
10 on another securities market specified by rule pursuant to
11 the New Mexico Uniform Securities Act; a put or a call option
12 contract, a warrant or a subscription right on or with
13 respect to such securities; an option or similar derivative
14 security on a security or an index of securities or foreign
15 currencies issued by a clearing agency registered pursuant to
16 the federal Securities Exchange Act of 1934 and listed or
17 designated for trading on a national securities exchange, a
18 facility of a national securities exchange or a facility of a
19 national securities association registered pursuant to the
20 federal Securities Exchange Act of 1934 or an offer or sale
21 of the underlying security in connection with the offer, sale
22 or exercise of an option or other security that was exempt
23 when the option or other security was written or issued; or
24 an option or a derivative security designated by the
25 securities and exchange commission pursuant to Section 9(b)

1 of the federal Securities Exchange Act of 1934 (15 U.S.C.
2 Section 78i(b));

3 G. a security issued by a person organized and
4 operated exclusively for religious, educational, benevolent,
5 fraternal, charitable, social, athletic or reformatory
6 purposes, or as a chamber of commerce, and not for pecuniary
7 profit, no part of the net earnings of which inures to the
8 benefit of a private stockholder or other person, or a
9 security of a company that is excluded from the definition of
10 an investment company pursuant to Section 3(c)(10)(B) of the
11 federal Investment Company Act of 1940 (15 U.S.C. Section
12 80a-3(c)(10)(B)); except that with respect to the offer or
13 sale of a note, bond, debenture or other evidence of
14 indebtedness issued by such a person, a rule may be adopted
15 pursuant to the New Mexico Uniform Securities Act limiting
16 the availability of this exemption by classifying securities,
17 persons and transactions, imposing different requirements for
18 different classes, specifying with respect to Paragraph (2)
19 of this subsection the scope of the exemption and the grounds
20 for denial or suspension and requiring an issuer:

21 (1) to file a notice specifying the material
22 terms of the proposed offer or sale and copies of any
23 proposed sales and advertising literature to be used and
24 provide that the exemption becomes effective if the director
25 does not disallow the exemption within the period established

1 by the rule;

2 (2) to file a request for exemption
3 authorization for which a rule pursuant to the New Mexico
4 Uniform Securities Act may specify the scope of the
5 exemption, the requirement of an offering statement, the
6 filing of sales and advertising literature, the filing of
7 consent to service of process complying with Section 611 of
8 the New Mexico Uniform Securities Act and grounds for denial
9 or suspension of the exemption; or

10 (3) to register pursuant to Section 304 of
11 the New Mexico Uniform Securities Act;

12 H. a member's or owner's interest in, or a
13 retention certificate or like security given in lieu of a
14 cash patronage dividend issued by, a cooperative organized
15 and operated as a nonprofit membership cooperative pursuant
16 to the cooperative laws of a state, but not a member's or
17 owner's interest, retention certificate or like security sold
18 to persons other than bona fide members of the cooperative;
19 and

20 I. a certificate of participation in a real
21 property lease or an equipment trust certificate with respect
22 to equipment leased or conditionally sold to a person, if any
23 security issued by the person would be exempt pursuant to
24 this section or would be a federal covered security pursuant
25 to Section 18(b)(1) of the federal Securities Act of 1933

1 (15 U.S.C. Section 77r(b)(1)).

2 Section 202. EXEMPT TRANSACTIONS.--The following
3 transactions are exempt from the requirements of Sections 301
4 through 306 of the New Mexico Uniform Securities Act and,
5 unless otherwise noted, Section 504 of that act:

6 A. an isolated nonissuer transaction, whether
7 effected by or through a broker-dealer or not;

8 B. a nonissuer transaction by or through a
9 broker-dealer registered, or exempt from registration
10 pursuant to the New Mexico Uniform Securities Act, and a
11 resale transaction by a sponsor of a unit investment trust
12 registered pursuant to the federal Investment Company Act of
13 1940, in a security of a class that has been outstanding in
14 the hands of the public for at least ninety days if, at the
15 date of the transaction:

16 (1) the issuer of the security is engaged in
17 business, the issuer is not in the organizational stage or in
18 bankruptcy or receivership and the issuer is not a blank
19 check, blind pool or shell company that has no specific
20 business plan or purpose or has indicated that its primary
21 business plan is to engage in a merger or combination of the
22 business with, or an acquisition of, an unidentified person;

23 (2) the security is sold at a price
24 reasonably related to its current market price;

25 (3) the security does not constitute the

1 whole or part of an unsold allotment to, or a subscription or
2 participation by, the broker-dealer as an underwriter of the
3 security or a redistribution;

4 (4) a nationally recognized securities
5 manual or its electronic equivalent designated by rule
6 adopted or order issued pursuant to the New Mexico Uniform
7 Securities Act or a record filed with the securities and
8 exchange commission that is publicly available contains:

9 (a) a description of the business and
10 operations of the issuer;

11 (b) the names of the issuer's executive
12 officers and the names of the issuer's directors, if any;

13 (c) an audited balance sheet of the
14 issuer as of a date within eighteen months before the date of
15 the transaction or, in the case of a reorganization or merger
16 when the parties to the reorganization or merger each had an
17 audited balance sheet, a pro forma balance sheet for the
18 combined organization; and

19 (d) an audited income statement for
20 each of the issuer's two immediately previous fiscal years or
21 for the period of existence of the issuer, whichever is
22 shorter, or, in the case of a reorganization or merger when
23 each party to the reorganization or merger had audited income
24 statements, a pro forma income statement; and

25 (5) any one of the following requirements is

1 met:

2 (a) the issuer of the security has a
3 class of equity securities listed on a national securities
4 exchange registered pursuant to the federal Securities
5 Exchange Act of 1934 or designated for trading on the
6 national association of securities dealers automated
7 quotation system;

8 (b) the issuer of the security is a
9 unit investment trust registered pursuant to the federal
10 Investment Company Act of 1940;

11 (c) the issuer of the security,
12 including its predecessors, has been engaged in continuous
13 business for at least three years; or

14 (d) the issuer of the security has
15 total assets of at least two million dollars (\$2,000,000)
16 based on an audited balance sheet as of a date within
17 eighteen months before the date of the transaction or, in the
18 case of a reorganization or merger when the parties to the
19 reorganization or merger each had the audited balance sheet,
20 a pro forma balance sheet for the combined organization;

21 C. a nonissuer transaction by or through a
22 broker-dealer registered or exempt from registration pursuant
23 to the New Mexico Uniform Securities Act in a security or the
24 American depository receipt representing such security of a
25 foreign issuer that is a margin security defined in

1 regulations or rules adopted by the board of governors of the
2 federal reserve system;

3 D. a nonissuer transaction by or through a
4 broker-dealer registered or exempt from registration pursuant
5 to the New Mexico Uniform Securities Act in an outstanding
6 security if the guarantor of the security is required to file
7 reports with the securities and exchange commission pursuant
8 to the reporting requirements of Section 13 or 15(d) of the
9 federal Securities Exchange Act of 1934 (15 U.S.C. 78m or
10 78o(d)) and is current in such reporting;

11 E. a nonissuer transaction by or through a
12 broker-dealer registered or exempt from registration pursuant
13 to the New Mexico Uniform Securities Act in a security that:

14 (1) is rated at the time of the transaction
15 by a nationally recognized statistical rating organization in
16 one of its four highest rating categories; or

17 (2) has a fixed maturity or a fixed interest
18 or dividend if:

19 (a) a default has not occurred during
20 the current fiscal year or within the three previous fiscal
21 years or during the existence of the issuer and any
22 predecessor if less than three fiscal years in the payment of
23 principal, interest or dividends on the security;

24 (b) the issuer is engaged in business,
25 is not in the organizational stage or in bankruptcy or

1 receivership, and is not and has not been within the previous
2 twelve months a blank check, blind pool or shell company that
3 has no specific business plan or purpose or has indicated
4 that its primary business plan is to engage in a merger or
5 combination of the business with, or an acquisition of, an
6 unidentified person; and

7 (c) the transaction complies with any
8 additional requirements that the director may by rule impose
9 as a condition of this exemption;

10 F. a nonissuer transaction by or through a
11 broker-dealer registered or exempt from registration pursuant
12 to the New Mexico Uniform Securities Act effecting an
13 unsolicited order or offer to purchase;

14 G. a nonissuer transaction executed by a bona fide
15 pledgee without the purpose of evading the New Mexico Uniform
16 Securities Act;

17 H. a nonissuer transaction by a federal covered
18 investment adviser with investments under management in
19 excess of one hundred million dollars (\$100,000,000) acting
20 in the exercise of discretionary authority in a signed record
21 for the account of others;

22 I. a transaction in a security, whether or not the
23 security or transaction is otherwise exempt, in exchange for
24 one or more bona fide outstanding securities, claims or
25 property interests, or partly in such exchange and partly for

1 cash, if the terms and conditions of the issuance and
2 exchange or the delivery and exchange and the fairness of the
3 terms and conditions have been approved by the director after
4 a hearing;

5 J. a transaction between the issuer or other
6 person on whose behalf the offering is made and an
7 underwriter, or among underwriters;

8 K. a transaction in a note, bond, debenture or
9 other evidence of indebtedness secured by a mortgage or other
10 security agreement if:

11 (1) the note, bond, debenture or other
12 evidence of indebtedness is offered and sold with the
13 mortgage or other security agreement as a unit;

14 (2) a general solicitation or general
15 advertisement of the transaction is not made; and

16 (3) a commission or other remuneration is
17 not paid or given, directly or indirectly, to a person not
18 registered pursuant to the New Mexico Uniform Securities Act
19 as a broker-dealer or as an agent;

20 L. a transaction by an executor, personal
21 representative or administrator of an estate, sheriff,
22 marshal, receiver, trustee in bankruptcy, guardian or
23 conservator;

24 M. a sale or offer to sell to:

25 (1) an institutional investor;

1 (2) a federal covered investment adviser; or
2 (3) any other person exempted by rule
3 adopted or order issued pursuant to the New Mexico Uniform
4 Securities Act;

5 N. a sale or an offer to sell securities by or on
6 behalf of an issuer, if the transaction is part of a single
7 issue in which:

8 (1) there are not more than ten purchasers
9 who are New Mexico residents, other than purchasers
10 designated in Subsection M of this section during any twelve
11 consecutive months;

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

15 (3) no commission or other remuneration is
16 paid or given, directly or indirectly, to a person other than
17 a broker-dealer registered or not required to be registered
18 pursuant to the New Mexico Uniform Securities Act or an agent
19 registered pursuant to that act for soliciting a prospective
20 purchaser in New Mexico, and either:

21 (a) the seller reasonably believes that
22 all of the purchasers in New Mexico are purchasing for
23 investment; or

24 (b) immediately before and immediately
25 after the transaction, the issuer reasonably believes that

1 the securities of the issuer are held by fifty or fewer
2 beneficial owners and the transaction is part of an aggregate
3 offering that does not exceed one million dollars
4 (\$1,000,000) during any twelve consecutive months; but the
5 director, by rule or order as to a security or transaction or
6 a type of security or transaction, may withdraw or further
7 condition this exemption or may waive one or more of the
8 conditions of this subsection;

9 O. a transaction pursuant to an offer to existing
10 security holders of the issuer, including persons that at the
11 date of the transaction are holders of convertible
12 securities, options or warrants, if a commission or other
13 remuneration, other than a standby commission, is not paid or
14 given, directly or indirectly, for soliciting a security
15 holder in New Mexico;

16 P. an offer to sell, but not a sale, of a security
17 not exempt from registration pursuant to the federal
18 Securities Act of 1933 if:

19 (1) a registration or offering statement or
20 similar record as required pursuant to the federal Securities
21 Act of 1933 has been filed, but is not effective, or the
22 offer is made in compliance with Rule 165 (17 C.F.R. 230.165)
23 adopted pursuant to the federal Securities Act of 1933; and

24 (2) a stop order of which the offeror is
25 aware has not been issued against the offeror by the director

1 or the securities and exchange commission and an audit,
2 inspection or proceeding that is public and that may
3 culminate in a stop order is not known by the offeror to be
4 pending;

5 Q. an offer to sell, but not a sale, of a security
6 exempt from registration pursuant to the federal Securities
7 Act of 1933 if:

8 (1) a registration statement has been filed
9 pursuant to the New Mexico Uniform Securities Act, but is not
10 effective;

11 (2) a solicitation of interest is provided
12 in a record to offerees in compliance with a rule adopted by
13 the director pursuant to the New Mexico Uniform Securities
14 Act; and

15 (3) a stop order of which the offeror is
16 aware has not been issued by the director pursuant to the New
17 Mexico Uniform Securities Act and an audit, inspection or
18 proceeding that may culminate in a stop order is not known by
19 the offeror to be pending;

20 R. a transaction involving the distribution of the
21 securities of an issuer to the security holders of another
22 person in connection with a merger, consolidation, exchange
23 of securities, sale of assets or other reorganization or
24 conversion to which the issuer, or its parent or subsidiary,
25 and the other person, or its parent or subsidiary, are

1 parties;

2 S. a rescission offer, sale or purchase pursuant
3 to Section 510 of the New Mexico Uniform Securities Act;

4 T. an offer or sale of a security to a person not
5 a resident of New Mexico and not present in New Mexico if the
6 offer or sale does not constitute a violation of the laws of
7 the state or foreign jurisdiction in which the offeree or
8 purchaser is present and is not part of an unlawful plan or
9 scheme to evade the New Mexico Uniform Securities Act;

10 U. employees' stock purchase, savings, option,
11 profit-sharing, pension or similar employees' benefit plan,
12 including any securities, plan interests and guarantees
13 issued pursuant to a compensatory benefit plan or
14 compensation contract, contained in a record established by
15 the issuer, its parents, its majority-owned subsidiaries or
16 the majority-owned subsidiaries of the issuer's parent for
17 the participation of their employees, including offers or
18 sales of such securities to:

19 (1) bona fide directors; general partners;
20 trustees, if the issuer is a business trust; officers;
21 consultants; and advisors;

22 (2) family members who acquire such
23 securities from those persons through gifts or domestic
24 relations orders;

25 (3) former employees, directors, general

1 partners, trustees, officers, consultants and advisors if
2 those individuals were employed by or providing services to
3 the issuer when the securities were offered; and

4 (4) insurance agents who are exclusive
5 insurance agents of the issuer, or the issuer's subsidiaries
6 or parents, or who derive more than fifty percent of their
7 annual income from those organizations;

8 V. a transaction involving:

9 (1) a stock dividend or equivalent equity
10 distribution, whether the corporation or other business
11 organization distributing the dividend or equivalent equity
12 distribution is the issuer or not, if nothing of value is
13 given by stockholders or other equity holders for the
14 dividend or equivalent equity distribution other than the
15 surrender of a right to a cash or property dividend if each
16 stockholder or other equity holder may elect to take the
17 dividend or equivalent equity distribution in cash, property
18 or stock;

19 (2) an act incident to a judicially approved
20 reorganization in which a security is issued in exchange for
21 one or more outstanding securities, claims or property
22 interests, or partly in such exchange and partly for cash; or

23 (3) the solicitation of tenders of
24 securities by an offeror in a tender offer in compliance with
25 Rule 162 (17 C.F.R. 230.162) adopted pursuant to the federal

1 Securities Act of 1933;

2 W. a nonissuer transaction in an outstanding
3 security by or through a broker-dealer registered or exempt
4 from registration pursuant to the New Mexico Uniform
5 Securities Act, if the issuer is a reporting issuer in a
6 foreign jurisdiction designated by this subsection or by rule
7 adopted or order issued pursuant to that act; has been
8 subject to continuous reporting requirements in the foreign
9 jurisdiction for not less than one hundred eighty days before
10 the transaction; and the security is listed on the foreign
11 jurisdiction's securities exchange that has been designated
12 by this subsection or by rule adopted or order issued
13 pursuant to the New Mexico Uniform Securities Act, or is a
14 security of the same issuer that is of senior or
15 substantially equal rank to the listed security or is a
16 warrant or right to purchase or subscribe to any of the
17 foregoing. For purposes of this subsection, Canada, together
18 with its provinces and territories, is a designated foreign
19 jurisdiction and the Toronto stock exchange, inc., is a
20 designated securities exchange. After an administrative
21 hearing in compliance with Subsection B of Section 604 of the
22 New Mexico Uniform Securities Act, the director, by rule
23 adopted or order issued pursuant to the New Mexico Uniform
24 Securities Act, may revoke the designation of a securities
25 exchange pursuant to this subsection if the director finds

1 that revocation is necessary or appropriate in the public
2 interest and for the protection of investors;

3 X. the issuance and offer and sale of securities
4 by any issuer if:

5 (1) the issuer's principal office or
6 principal place of business or a majority of its employees or
7 assets are located in New Mexico;

8 (2) more than one-half of the proceeds from
9 the offering shall be used by the issuer in operations of the
10 issuer in New Mexico;

11 (3) no commission or other remuneration is
12 paid or given, directly or indirectly, for soliciting or
13 selling to any person in New Mexico except to broker-dealers
14 and agents registered pursuant to the New Mexico Uniform
15 Securities Act;

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

20 (5) the total offering, including interest
21 on installment payments, does not exceed two million five
22 hundred thousand dollars (\$2,500,000); and

23 (6) the issuer claiming this exemption files
24 notice with the director on a form prescribed by the director
25 prior to the first offer and pays a fee of three hundred

1 fifty dollars (\$350). The director may require any issuer
2 using this exemption to file periodic reports not more often
3 than quarterly to keep reasonably current the information
4 contained in the notice and to disclose the progress of the
5 offering. The director may impose conditions by rule or
6 order with respect to issuers, broker-dealers or affiliates
7 that by reason of prior misconduct will not be eligible to
8 utilize this exemption. The issuance and offer and sale of
9 securities pursuant to this subsection shall be subject to
10 Subsection A of Section 504 of the New Mexico Uniform
11 Securities Act;

12 Y. the issuance and offer and sale of securities
13 by any issuer if:

14 (1) the total number of security holders
15 does not and will not in consequence of the sale exceed
16 twenty-five;

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

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

22 (4) no commission or other remuneration is
23 paid or given, directly or indirectly, for soliciting or
24 selling to any person in New Mexico except to broker-dealers
25 and sales representatives registered pursuant to the New

1 Mexico Uniform Securities Act. The director by rule or order
2 may impose additional requirements as a condition of the
3 exemption established in this subsection as necessary for the
4 protection of investors and to specify its application. Any
5 notice filing that may be imposed pursuant to Section 203 of
6 the New Mexico Uniform Securities Act shall not be deemed a
7 condition of this exemption;

8 Z. any offer or sale of a preorganization
9 certificate or subscription if:

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

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

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

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

21 AA. a transaction:

22 (1) involving the offer to sell or the sale
23 of one or more promissory notes each of which is directly
24 secured by a first lien on a single parcel of real estate, or
25 a transaction involving the offer to sell or the sale of

1 participation interests in the notes if the notes and
2 participation interests are originated by a depository
3 institution and are offered and sold subject to the following
4 conditions:

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

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

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

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

25 (3) between any of the persons described in

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

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

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

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

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

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

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

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

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

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

1 disclosure documents and other information as the director
2 may require by rule or order;

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

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

10 For the purposes of this subsection, "an entity
11 principally operating in New Mexico" means a corporation or
12 limited liability company organized pursuant to the law of
13 New Mexico, a corporation in which a majority in interest of
14 the shareholders are residents of New Mexico, a limited
15 liability company in which a majority in interest of the
16 members are residents of New Mexico, any form of partnership
17 in which a majority in interest of the partners are residents
18 of New Mexico, a trust in which a majority in interest of the
19 beneficiaries are residents of New Mexico or a sole
20 proprietorship in which the owner is a resident of New
21 Mexico.

22 Section 203. ADDITIONAL EXEMPTIONS AND WAIVERS.--A rule
23 adopted or order issued pursuant to the New Mexico Uniform
24 Securities Act may exempt a security, transaction or offer; a
25 rule pursuant to the New Mexico Uniform Securities Act may

1 exempt a class of securities, transactions or offers from any
2 or all of the requirements of Sections 301 through 306 and
3 504 of that act; and an order pursuant to the New Mexico
4 Uniform Securities Act may waive, in whole or in part, any or
5 all of the conditions for an exemption or offer pursuant to
6 Sections 201 and 202 of that act. The director may by rule
7 require notice of filing for any exemption contained in
8 Section 201 or 202 of the New Mexico Uniform Securities Act
9 and may require payment of a fee not to exceed three hundred
10 fifty dollars (\$350) for any such notice of filing, except
11 that no fee shall be required for filing a notice of
12 exemption pursuant to Subsection Y of Section 202 of that
13 act.

14 Section 204. DENIAL, SUSPENSION, REVOCATION, CONDITION
15 OR LIMITATION OF EXEMPTIONS.--

16 A. Except with respect to a federal covered
17 security or a transaction involving a federal covered
18 security, an order pursuant to the New Mexico Uniform
19 Securities Act may deny, suspend application of, condition,
20 limit or revoke an exemption created pursuant to Paragraph
21 (4) of Subsection C of Section 201 of that act, Subsection G
22 or H of Section 201 of that act or Section 202 of that act or
23 an exemption or waiver created pursuant to Section 203 of
24 that act with respect to a specific security, transaction or
25 offer. An order pursuant to this section may be issued only

1 pursuant to the procedures set forth in Subsection D of
2 Section 306 or Section 604 of the New Mexico Uniform
3 Securities Act and only prospectively.

4 B. A person does not violate Section 301, 303
5 through 306, 504 or 510 of the New Mexico Uniform Securities
6 Act by an offer to sell, offer to purchase, sale or purchase
7 effected after the entry of an order issued pursuant to this
8 section if the person did not know, and in the exercise of
9 reasonable care could not have known, of the order.

10 Article 3

11 REGISTRATION OF SECURITIES AND

12 NOTICE FILING OF FEDERAL COVERED SECURITIES

13 Section 301. SECURITIES REGISTRATION REQUIREMENT.--It
14 is unlawful for a person to offer or sell a security in New
15 Mexico unless:

16 A. the security is a federal covered security;

17 B. the security, transaction or offer is exempted
18 from registration pursuant to Sections 201 through 203 of the
19 New Mexico Uniform Securities Act; or

20 C. the security is registered pursuant to the New
21 Mexico Uniform Securities Act.

22 Section 302. NOTICE FILING.--

23 A. With respect to a federal covered security, as
24 defined in Section 18(b)(2) of the federal Securities Act of
25 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise

1 exempt pursuant to Sections 201 through 203 of the New Mexico
2 Uniform Securities Act, a rule adopted or order issued
3 pursuant to the New Mexico Uniform Securities Act may require
4 the filing of any or all of the following records:

5 (1) before the initial offer of a federal
6 covered security in New Mexico, all records that are part of
7 a federal registration statement filed with the securities
8 and exchange commission pursuant to the federal Securities
9 Act of 1933 and a consent to service of process complying
10 with Section 611 of the New Mexico Uniform Securities Act
11 signed by the issuer and the payment of a fee of five hundred
12 twenty-five dollars (\$525) for all investment companies other
13 than a unit investment trust or two hundred dollars (\$200)
14 for a unit investment trust; and

15 (2) after the initial offer of the federal
16 covered security in New Mexico, all records that are part of
17 an amendment to a federal registration statement filed with
18 the securities and exchange commission pursuant to the
19 federal Securities Act of 1933.

20 B. A notice filing pursuant to Subsection A of
21 this section is effective for one year commencing on the
22 later of the notice filing or the effectiveness of the
23 offering filed with the securities and exchange commission.
24 On or before expiration, the issuer may renew a notice filing
25 by filing a copy of those records filed by the issuer with

1 the securities and exchange commission that are required by
2 rule or order pursuant to the New Mexico Uniform Securities
3 Act to be filed and by paying a renewal fee of five hundred
4 twenty-five dollars (\$525) for all investment companies other
5 than a unit investment trust or two hundred dollars (\$200)
6 for a unit investment trust. A previously filed consent to
7 service of process complying with Section 611 of the New
8 Mexico Uniform Securities Act may be incorporated by
9 reference in a renewal. A renewed notice filing becomes
10 effective upon the expiration of the filing being renewed.

11 C. With respect to a security that is a federal
12 covered security pursuant to Section 18(b)(4)(D) of the
13 federal Securities Act of 1933 (15 U.S.C. Section
14 77r(b)(4)(D)), including Rule 506 of Regulation D (17 C.F.R.
15 230.506), a rule pursuant to the New Mexico Uniform
16 Securities Act may require a notice filing by or on behalf of
17 an issuer to include a copy of Form D, including the
18 appendix, as promulgated by the securities and exchange
19 commission, and a consent to service of process complying
20 with Section 611 of the New Mexico Uniform Securities Act
21 signed by the issuer not later than fifteen days after the
22 first sale of the federal covered security in New Mexico and
23 the payment of a fee of three hundred fifty dollars (\$350)
24 and the payment of a fee in an amount up to one thousand
25 fifty dollars (\$1,050) as specified by the director by rule

1 for any late filing.

2 D. Except with respect to a federal security
3 pursuant to Section 18(b)(1) of the federal Securities Act of
4 1933 (15 U.S.C. Section 77r(b)(1)), if the director finds
5 that there is a failure to comply with a notice or fee
6 requirement of this section, the director may issue a stop
7 order suspending the offer and sale of a federal covered
8 security in New Mexico. If the deficiency is corrected, the
9 stop order is void as of the time of its issuance and no
10 penalty may be imposed by the director.

11 Section 303. SECURITIES REGISTRATION BY COORDINATION.--

12 A. A security for which a registration statement
13 has been filed pursuant to the federal Securities Act of 1933
14 in connection with the same offering may be registered by
15 coordination pursuant to this section.

16 B. A registration statement and accompanying
17 records pursuant to this section must contain or be
18 accompanied by the following records in addition to the
19 information specified in Section 305 of the New Mexico
20 Uniform Securities Act and a consent to service of process
21 complying with Section 611 of that act:

22 (1) a copy of the latest form of prospectus
23 filed pursuant to the federal Securities Act of 1933;

24 (2) a copy of the articles of incorporation
25 and bylaws or their substantial equivalents currently in

1 effect; a copy of any agreement with or among underwriters; a
2 copy of any indenture or other instrument governing the
3 issuance of the security to be registered; and a specimen,
4 copy or description of the security that is required by rule
5 adopted or order issued pursuant to the New Mexico Uniform
6 Securities Act;

7 (3) copies of any other information or any
8 other records filed by the issuer pursuant to the federal
9 Securities Act of 1933 requested by the director; and

10 (4) an undertaking to forward each amendment
11 to the federal prospectus, other than an amendment that
12 delays the effective date of the registration statement,
13 promptly after it is filed with the securities and exchange
14 commission.

15 C. A registration statement pursuant to this
16 section becomes effective simultaneously with or subsequent
17 to the federal registration statement when all of the
18 following conditions are satisfied:

19 (1) a stop order pursuant to Subsection D of
20 this section or Section 306 of the New Mexico Uniform
21 Securities Act or issued by the securities and exchange
22 commission is not in effect and a proceeding is not pending
23 against the issuer pursuant to Section 306 of the New Mexico
24 Uniform Securities Act; and

25 (2) the registration statement has been on

1 file for at least twenty days or a shorter period provided by
2 rule adopted or order issued pursuant to the New Mexico
3 Uniform Securities Act.

4 D. The registrant shall promptly notify the
5 director in a record of the date when the federal
6 registration statement becomes effective and of the content
7 of any price amendment and shall promptly file a record
8 containing the price amendment. If the notice is not timely
9 received, the director may issue a stop order, without prior
10 notice or hearing, retroactively denying effectiveness to the
11 registration statement or suspending its effectiveness until
12 compliance with this section. The director shall promptly
13 notify the registrant of an order by telegram, telephone or
14 electronic means and promptly confirm this notice by a
15 record. If the registrant subsequently complies with the
16 notice requirements of this section, the stop order is void
17 as of the date of its issuance.

18 E. If the federal registration statement becomes
19 effective before each of the conditions in this section is
20 satisfied or is waived by the director, the registration
21 statement is automatically effective pursuant to the New
22 Mexico Uniform Securities Act when all the conditions are
23 satisfied or waived. If the registrant notifies the director
24 of the date when the federal registration statement is
25 expected to become effective, the director shall promptly

1 notify the registrant by telegram, telephone or electronic
2 means and promptly confirm this notice by a record,
3 indicating whether all the conditions are satisfied or waived
4 and whether the director intends the institution of a
5 proceeding pursuant to Section 306 of the New Mexico Uniform
6 Securities Act. The notice by the director does not preclude
7 the institution of such a proceeding.

8 Section 304. SECURITIES REGISTRATION BY
9 QUALIFICATION.--

10 A. A security may be registered by qualification
11 pursuant to this section.

12 B. A registration statement pursuant to this
13 section shall contain the information or records specified in
14 Section 305 of the New Mexico Uniform Securities Act, a
15 consent to service of process complying with Section 611 of
16 that act and, if required by rule adopted pursuant to that
17 act, the following information or records:

18 (1) with respect to the issuer and any
19 significant subsidiary, its name, address and form of
20 organization; the state or foreign jurisdiction and date of
21 its organization; the general character and location of its
22 business; a description of its physical properties and
23 equipment; and a statement of the general competitive
24 conditions in the industry or business in which it is or will
25 be engaged;

1 (2) with respect to each director and
2 officer of the issuer, and other person having a similar
3 status or performing similar functions, the person's name,
4 address and principal occupation for the previous five years;
5 the amount of securities of the issuer held by the person as
6 of the thirtieth day before the filing of the registration
7 statement; the amount of the securities covered by the
8 registration statement to which the person has indicated an
9 intention to subscribe; and a description of any material
10 interest of the person in any material transaction with the
11 issuer or a significant subsidiary effected within the
12 previous three years or proposed to be effected;

13 (3) with respect to persons covered by
14 Paragraph (2) of this subsection, the aggregate sum of the
15 remuneration paid to those persons during the previous twelve
16 months and estimated to be paid during the next twelve
17 months, directly or indirectly, by the issuer, and all
18 predecessors, parents, subsidiaries and affiliates of the
19 issuer;

20 (4) with respect to a person owning of
21 record or owning beneficially, if known, ten percent or more
22 of the outstanding shares of any class of equity security of
23 the issuer, the information specified in Paragraph (2) of
24 this subsection other than the person's occupation;

25 (5) with respect to a promoter, if the

1 issuer was organized within the previous three years, the
2 information or records specified in Paragraph (2) of this
3 subsection, any amount paid to the promoter within that
4 period or intended to be paid to the promoter and the
5 consideration for the payment;

6 (6) with respect to a person on whose behalf
7 any part of the offering is to be made in a nonissuer
8 distribution, the person's name and address; the amount of
9 securities of the issuer held by the person as of the date of
10 the filing of the registration statement; a description of
11 any material interest of the person in any material
12 transaction with the issuer or any significant subsidiary
13 effected within the previous three years or proposed to be
14 effected; and a statement of the reasons for making the
15 offering;

16 (7) the capitalization and long-term debt,
17 on both a current and pro forma basis, of the issuer and any
18 significant subsidiary, including a description of each
19 security outstanding or being registered or otherwise
20 offered, and a statement of the amount and kind of
21 consideration, whether in the form of cash, physical assets,
22 services, patents, goodwill or anything else of value, for
23 which the issuer or any subsidiary has issued its securities
24 within the previous two years or is obligated to issue its
25 securities;

1 (8) the kind and amount of securities to be
2 offered; the proposed offering price or the method by which
3 it is to be computed; any variation at which a proportion of
4 the offering is to be made to a person or class of persons
5 other than the underwriters, with a specification of the
6 person or class; the basis on which the offering is to be
7 made if otherwise than for cash; the estimated aggregate
8 underwriting and selling discounts or commissions and
9 finder's fees, including separately cash, securities,
10 contracts or anything else of value to accrue to the
11 underwriters or finders in connection with the offering or,
12 if the selling discounts or commissions are variable, the
13 basis of determining them and their maximum and minimum
14 amounts; the estimated amounts of other selling expenses,
15 including legal, engineering and accounting charges; the name
16 and address of each underwriter and each recipient of a
17 finder's fee; a copy of any underwriting or selling group
18 agreement pursuant to which the distribution is to be made or
19 the proposed form of any such agreement whose terms have not
20 yet been determined; and a description of the plan of
21 distribution of any securities that are to be offered
22 otherwise than through an underwriter;

23 (9) the estimated monetary proceeds to be
24 received by the issuer from the offering; the purposes for
25 which the proceeds are to be used by the issuer; the

1 estimated amount to be used for each purpose; the order or
2 priority in which the proceeds will be used for the purposes
3 stated; the amounts of any funds to be raised from other
4 sources to achieve the purposes stated; the sources of the
5 funds; and, if a part of the proceeds is to be used to
6 acquire property, including goodwill, otherwise than in the
7 ordinary course of business, the names and addresses of the
8 vendors, the purchase price, the names of any persons that
9 have received commissions in connection with the acquisition
10 and the amounts of the commissions and other expenses in
11 connection with the acquisition, including the cost of
12 borrowing money to finance the acquisition;

13 (10) a description of any stock options or
14 other security options outstanding, or to be created in
15 connection with the offering, and the amount of those options
16 held or to be held by each person required to be named in
17 Paragraph (2), (4), (5), (6) or (8) of this subsection and by
18 any person that holds or will hold ten percent or more in the
19 aggregate of those options;

20 (11) the dates of, parties to and general
21 effect concisely stated of each managerial or other material
22 contract made or to be made otherwise than in the ordinary
23 course of business to be performed in whole or in part at or
24 after the filing of the registration statement or that was
25 made within the previous two years, and a copy of the

1 contract;

2 (12) a description of any pending
3 litigation, action or proceeding to which the issuer is a
4 party and that materially affects its business or assets and
5 any litigation, action or proceeding known to be contemplated
6 by governmental authorities;

7 (13) a copy of any prospectus, pamphlet,
8 circular, form letter, advertisement or other sales
9 literature intended as of the effective date to be used in
10 connection with the offering and any solicitation of interest
11 used in compliance with Paragraph (2) of Subsection Q of
12 Section 202 of the New Mexico Uniform Securities Act;

13 (14) a specimen or copy of the security
14 being registered, unless the security is uncertificated; a
15 copy of the issuer's articles of incorporation and bylaws or
16 their substantial equivalents, in effect; and a copy of any
17 indenture or other instrument covering the security to be
18 registered;

19 (15) a signed or conformed copy of an
20 opinion of counsel concerning the legality of the security
21 being registered, with an English translation if it is in a
22 language other than English, that states whether the security
23 when sold will be validly issued, fully paid and
24 nonassessable and, if a debt security, a binding obligation
25 of the issuer;

1 (16) a signed or conformed copy of a consent
2 of any accountant, engineer, appraiser or other person whose
3 profession gives authority for a statement made by the
4 person, if the person is named as having prepared or
5 certified a report or valuation, other than an official
6 record, that is public, which is used in connection with the
7 registration statement;

8 (17) a balance sheet of the issuer as of a
9 date within four months before the filing of the registration
10 statement; a statement of income and a statement of cash flow
11 for each of the three fiscal years preceding the date of the
12 balance sheet and for any period between the close of the
13 immediately previous fiscal year and the date of the balance
14 sheet, or for the period of the issuer's and any
15 predecessor's existence if less than three years; and, if any
16 part of the proceeds of the offering is to be applied to the
17 purchase of a business, the financial statements that would
18 be required if that business were the registrant; and

19 (18) any additional information or records
20 required by rule adopted or order issued pursuant to the New
21 Mexico Uniform Securities Act.

22 C. A registration statement pursuant to this
23 section becomes effective thirty days, or any shorter period
24 provided by rule adopted or order issued pursuant to the New
25 Mexico Uniform Securities Act, after the date the

1 registration statement or the last amendment other than a
2 price amendment is filed, if:

3 (1) a stop order is not in effect and a
4 proceeding is not pending pursuant to Section 306 of the New
5 Mexico Uniform Securities Act;

6 (2) the director has not issued an order
7 pursuant to Section 306 of the New Mexico Uniform Securities
8 Act delaying effectiveness; or

9 (3) the applicant or registrant has not
10 requested that effectiveness be delayed.

11 D. The director may delay effectiveness once for
12 not more than ninety days if the director determines the
13 registration statement is not complete in all material
14 respects and promptly notifies the applicant or registrant of
15 that determination. The director may also delay
16 effectiveness for a further period of not more than thirty
17 days if the director determines that the delay is necessary
18 or appropriate.

19 E. A rule adopted or order issued pursuant to the
20 New Mexico Uniform Securities Act may require as a condition
21 of registration pursuant to this section that a prospectus
22 containing a specified part of the information or record
23 specified in Subsection B of this section be sent or given to
24 each person to which an offer is made, before or
25 concurrently, with the earliest of:

1 (1) the first offer made in a record to the
2 person otherwise than by means of a public advertisement, by
3 or for the account of the issuer or another person on whose
4 behalf the offering is being made or by an underwriter or
5 broker-dealer that is offering part of an unsold allotment or
6 subscription taken by the person as a participant in the
7 distribution;

8 (2) the confirmation of a sale made by or
9 for the account of the person;

10 (3) payment pursuant to such a sale; or

11 (4) delivery of the security pursuant to
12 such a sale.

13 Section 305. SECURITIES REGISTRATION FILINGS.--

14 A. A registration statement may be filed by the
15 issuer, a person on whose behalf the offering is to be made
16 or a broker-dealer registered pursuant to the New Mexico
17 Uniform Securities Act.

18 B. A person filing a registration statement shall
19 pay a filing fee of one-tenth of one percent of the maximum
20 aggregate offering price at which the registered securities
21 are to be offered in New Mexico, but not less than five
22 hundred twenty-five dollars (\$525) nor more than two thousand
23 five hundred dollars (\$2,500) or five hundred twenty-five
24 dollars (\$525) if the person is an issuer or a person acting
25 on behalf of an issuer and is claiming an exemption from the

1 registration requirements of federal law regarding small
2 company offerings under Rule 504 of Regulation D (17 C.F.R.
3 230.504). If a registration statement is withdrawn before
4 the effective date or a preeffective stop order is issued
5 pursuant to Section 306 of the New Mexico Uniform Securities
6 Act, the director shall retain the fee set forth in this
7 subsection.

8 C. A registration statement filed pursuant to
9 Section 303 or 304 of the New Mexico Uniform Securities Act
10 shall specify:

11 (1) the amount of securities to be offered
12 in New Mexico;

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

16 (3) any adverse order, judgment or decree
17 issued in connection with the offering by a state securities
18 regulator, the securities and exchange commission or a court.

19 D. A record filed pursuant to the New Mexico
20 Uniform Securities Act or the predecessor act within five
21 years preceding the filing of a registration statement may be
22 incorporated by reference in the registration statement to
23 the extent that the record is currently accurate.

24 E. In the case of a nonissuer distribution,
25 information or a record may not be required pursuant to

1 Subsection I of this section or Section 304 of the New Mexico
2 Uniform Securities Act, unless it is known to the person
3 filing the registration statement or to the person on whose
4 behalf the distribution is to be made or unless it can be
5 furnished by those persons without unreasonable effort or
6 expense.

7 F. A rule adopted or order issued pursuant to the
8 New Mexico Uniform Securities Act may require as a condition
9 of registration that a security issued within the previous
10 five years or to be issued to a promoter for a consideration
11 substantially less than the public offering price or to a
12 person for a consideration other than cash be deposited in
13 escrow; and that the proceeds from the sale of the registered
14 security in New Mexico be impounded until the issuer receives
15 a specified amount from the sale of the security either in
16 New Mexico or elsewhere. The conditions of any escrow or
17 impoundment required pursuant to this subsection may be
18 established by rule adopted or order issued pursuant to the
19 New Mexico Uniform Securities Act, but the director shall not
20 reject a depository institution solely because of its
21 location in another state.

22 G. A rule adopted or order issued pursuant to the
23 New Mexico Uniform Securities Act may require as a condition
24 of registration that a security registered pursuant to that
25 act be sold only on a specified form of subscription or sale

1 contract and that a signed or conformed copy of each contract
2 be filed pursuant to that act or preserved for a period
3 specified by the rule or order, which shall not be longer
4 than five years.

5 H. Except while a stop order is in effect pursuant
6 to Section 306 of the New Mexico Uniform Securities Act, a
7 registration statement is effective for one year after its
8 effective date, or for any longer period designated in an
9 order pursuant to that act during which the security is being
10 offered or distributed in a nonexempted transaction by or for
11 the account of the issuer or other person on whose behalf the
12 offering is being made or by an underwriter or broker-dealer
13 that is still offering part of an unsold allotment or
14 subscription taken as a participant in the distribution. For
15 the purposes of a nonissuer transaction, all outstanding
16 securities of the same class identified in the registration
17 statement as a security registered pursuant to the New Mexico
18 Uniform Securities Act are considered to be registered while
19 the registration statement is effective. If any securities
20 of the same class are outstanding, a registration statement
21 shall not be withdrawn until one year after its effective
22 date. A registration statement may be withdrawn only with
23 the approval of the director.

24 I. While a registration statement is effective, a
25 rule adopted or order issued pursuant to the New Mexico

1 Uniform Securities Act may require the person that filed the
2 registration statement to file reports, not more often than
3 quarterly, to keep the information or other record in the
4 registration statement reasonably current and to disclose the
5 progress of the offering.

6 J. A registration statement may be amended after
7 its effective date. The posteffective amendment becomes
8 effective when the director so orders. If a posteffective
9 amendment is made to increase the number of securities
10 specified to be offered or sold, the person filing the
11 amendment shall pay an additional registration fee of three
12 times the fee otherwise payable, calculated in the manner
13 specified in Subsection B of this section, with respect to
14 the additional securities to be offered and sold, unless the
15 maximum filing fee has been paid. If the maximum filing fee
16 was paid at the time of filing the original registration
17 statement, no additional filing fee is required to be paid
18 with the amendment. A posteffective amendment relates back
19 to the date of the offering of the additional securities
20 being registered if, within one year after the date of the
21 sale, the amendment is filed and the additional registration
22 fee is paid.

23 Section 306. DENIAL, SUSPENSION AND REVOCATION OF
24 SECURITIES REGISTRATION.--

25 A. The director may issue a stop order denying

1 effectiveness to, or suspending or revoking the effectiveness
2 of, a registration statement if the director finds that the
3 order is in the public interest and that:

4 (1) the registration statement as of its
5 effective date or before the effective date in the case of an
6 order denying effectiveness, an amendment pursuant to
7 Subsection J of Section 305 of the New Mexico Uniform
8 Securities Act as of its effective date or a report pursuant
9 to Subsection I of Section 305 of that act, is incomplete in
10 a material respect or contains a statement that, in the light
11 of the circumstances under which it was made, was false or
12 misleading with respect to a material fact;

13 (2) the New Mexico Uniform Securities Act or
14 a rule adopted or order issued pursuant to that act or a
15 condition imposed pursuant to that act has been willfully
16 violated, in connection with the offering, by the person
17 filing the registration statement; by the issuer, a partner,
18 officer or director of the issuer or a person having a
19 similar status or performing a similar function; a promoter
20 of the issuer; or a person directly or indirectly controlling
21 or controlled by the issuer; but only if the person filing
22 the registration statement is directly or indirectly
23 controlled by or acting for the issuer; or by an underwriter;

24 (3) the security registered or sought to be
25 registered is the subject of a permanent or temporary

1 injunction of a court of competent jurisdiction or an
2 administrative stop order or similar order issued pursuant to
3 any federal, foreign or state law other than the New Mexico
4 Uniform Securities Act applicable to the offering, but the
5 director shall not institute a proceeding against an
6 effective registration statement pursuant to this paragraph
7 more than one year after the date of the order or injunction
8 on which it is based, and the director shall not issue an
9 order pursuant to this paragraph on the basis of an order or
10 injunction issued pursuant to the securities act of another
11 state unless the order or injunction was based on conduct
12 that would constitute, as of the date of the order, a ground
13 for a stop order pursuant to this section;

14 (4) the issuer's enterprise or method of
15 business includes or would include activities that are
16 unlawful where performed;

17 (5) with respect to a security sought to be
18 registered pursuant to Section 303 of the New Mexico Uniform
19 Securities Act, there has been a failure to comply with the
20 undertaking required by Paragraph (4) of Subsection B of
21 Section 303 of that act;

22 (6) the applicant or registrant has not paid
23 the filing fee, but the director shall void the order if the
24 deficiency is corrected; or

25 (7) the offering:

1 (a) will work or tend to work a fraud
2 upon purchasers or would so operate;

3 (b) has been or would be made with
4 unreasonable amounts of underwriters' and sellers' discounts,
5 commissions or other compensation, or promoters' profits or
6 participations or unreasonable amounts or kinds of options;
7 or

8 (c) is being made on terms that are
9 unfair, unjust or inequitable.

10 B. To the extent practicable, the director by rule
11 adopted or order issued pursuant to the New Mexico Uniform
12 Securities Act shall publish standards that provide notice of
13 conduct that violates Paragraph (7) of Subsection A of this
14 section.

15 C. The director shall not institute a stop order
16 proceeding against an effective registration statement on the
17 basis of conduct or a transaction known to the director when
18 the registration statement became effective unless the
19 proceeding is instituted within thirty days after the
20 registration statement became effective.

21 D. The director may summarily revoke, deny,
22 postpone or suspend the effectiveness of a registration
23 statement pending final determination of an administrative
24 proceeding. Upon the issuance of the order, the director
25 shall promptly notify each person specified in Subsection E

1 of this section that the order has been issued, the reasons
2 for the revocation, denial, postponement or suspension and
3 that within fifteen days after the receipt of a request in a
4 record from the person the matter will be scheduled for a
5 hearing. If a hearing is not requested and none is ordered
6 by the director within thirty days after the date of service
7 of the order, the order becomes final. If a hearing is
8 requested or ordered, the director, after notice of and
9 opportunity for hearing for each person subject to the order,
10 may modify or vacate the order or extend the order until
11 final determination.

12 E. If a hearing is requested or ordered, such
13 hearing shall be conducted pursuant to Subsection B of
14 Section 604 of the New Mexico Uniform Securities Act. A stop
15 order shall not be issued pursuant to this section, except in
16 accordance with Subsection D of this section, without:

17 (1) appropriate notice to the applicant or
18 registrant, the issuer and the person on whose behalf the
19 securities are to be or have been offered;

20 (2) opportunity for hearing; and

21 (3) findings of fact and conclusions of law
22 in a record.

23 F. The director shall modify or vacate a stop
24 order entered pursuant to this section if the director finds
25 that the conditions that prompted entry have changed or that

1 it is otherwise in the public interest or for the protection
2 of investors.

3 Section 307. WAIVER AND MODIFICATION.--The director may
4 waive or modify, in whole or in part, any or all of the
5 requirements of Sections 302 and 303 of the New Mexico
6 Uniform Securities Act and Subsection B of Section 304 of
7 that act or the requirement of any information or record in a
8 registration statement or in a periodic report filed pursuant
9 to Subsection I of Section 305 of that act.

10 Article 4

11 BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS,
12 INVESTMENT ADVISER REPRESENTATIVES AND FEDERAL
13 COVERED INVESTMENT ADVISERS

14 Section 401. BROKER-DEALER REGISTRATION REQUIREMENT AND
15 EXEMPTIONS.--

16 A. It is unlawful for a person to transact
17 business in New Mexico as a broker-dealer unless the person
18 is registered pursuant to the New Mexico Uniform Securities
19 Act as a broker-dealer or is exempt from registration as a
20 broker-dealer pursuant to Subsection B or D of this section.

21 B. The following persons are exempt from the
22 registration requirement of Subsection A of this section:

23 (1) a broker-dealer without a place of
24 business in New Mexico if its only transactions effected in
25 New Mexico are with:

1 (a) the issuer of the securities
2 involved in the transactions;

3 (b) a broker-dealer registered as a
4 broker-dealer pursuant to the New Mexico Uniform Securities
5 Act or not required to be registered as a broker-dealer
6 pursuant to that act;

7 (c) an institutional investor;

8 (d) a nonaffiliated federal covered
9 investment adviser with investments under management in
10 excess of one hundred million dollars (\$100,000,000) acting
11 for the account of others pursuant to discretionary authority
12 in a signed record;

13 (e) a bona fide preexisting customer
14 whose principal place of residence is not in New Mexico and
15 the person is registered as a broker-dealer pursuant to the
16 federal Securities Exchange Act of 1934 or not required to be
17 registered pursuant to that act and is registered pursuant to
18 the securities act of the state in which the customer
19 maintains a principal place of residence;

20 (f) a bona fide preexisting customer
21 whose principal place of residence is in New Mexico but was
22 not present in New Mexico when the customer relationship was
23 established, if: 1) the broker-dealer is registered pursuant
24 to the federal Securities Exchange Act of 1934 or not
25 required to be registered or licensed pursuant to that act

1 and is registered pursuant to the securities laws of the
2 state in which the customer relationship was established and
3 where the customer had maintained a principal place of
4 residence; and 2) within forty-five days after the
5 customer's first transaction in New Mexico, the person files
6 an application for registration as a broker-dealer in New
7 Mexico and no further transactions are effected more than
8 forty-five days after the date on which the application is
9 filed. Only unsolicited transactions are permitted pursuant
10 to this subparagraph; or

11 (g) any other person exempted by rule
12 adopted or order issued pursuant to the New Mexico Uniform
13 Securities Act; and

14 (2) a person that deals solely in United
15 States government securities and is supervised as a dealer in
16 government securities by the board of governors of the
17 federal reserve system, the comptroller of the currency, the
18 federal deposit insurance corporation or the office of thrift
19 supervision.

20 C. It is unlawful for a broker-dealer, or for an
21 issuer engaged in offering, offering to purchase, purchasing
22 or selling securities in New Mexico, directly or indirectly,
23 to employ or associate with an individual to engage in an
24 activity related to securities transactions in New Mexico if
25 the registration of the individual is suspended or revoked or

1 the individual is barred from employment or association with
2 a broker-dealer, an issuer, an investment adviser or a
3 federal covered investment adviser by an order of the
4 director pursuant to the New Mexico Uniform Securities Act,
5 the securities and exchange commission or a self-regulatory
6 organization. A broker-dealer or issuer does not violate
7 this subsection if the broker-dealer or issuer did not know,
8 and in the exercise of reasonable care could not have known,
9 of the suspension, revocation or bar. Upon request from a
10 broker-dealer or issuer and for good cause, an order pursuant
11 to the New Mexico Uniform Securities Act may modify or waive,
12 in whole or in part, the application of the prohibitions of
13 this subsection to the broker-dealer.

14 D. A rule adopted or order issued pursuant to the
15 New Mexico Uniform Securities Act may permit:

16 (1) a broker-dealer that is registered in
17 Canada or other foreign jurisdiction and that does not have a
18 place of business in New Mexico to effect transactions in
19 securities with or for, or attempt to effect the purchase or
20 sale of any securities by:

21 (a) an individual from Canada or other
22 foreign jurisdiction who is temporarily present in New Mexico
23 and with whom the broker-dealer had a bona fide customer
24 relationship before the individual entered the United States;

25 (b) an individual from Canada or other

1 foreign jurisdiction who is present in New Mexico and whose
2 transactions are in a self-directed tax advantaged retirement
3 plan of which the individual is the holder or contributor in
4 that foreign jurisdiction; or

5 (c) an individual who is present in New
6 Mexico, with whom the broker-dealer customer relationship
7 arose while the individual was temporarily or permanently a
8 resident in Canada or the other foreign jurisdiction; and

9 (2) an agent who represents a broker-dealer
10 that is exempt pursuant to this subsection to effect
11 transactions in securities or attempt to effect the purchase
12 or sale of securities in New Mexico as permitted for a
13 broker-dealer described in Paragraph (1) of this subsection.

14 Section 402. AGENT REGISTRATION REQUIREMENT AND
15 EXEMPTIONS.--

16 A. It is unlawful for an individual to transact
17 business in New Mexico as an agent unless the individual is
18 registered pursuant to the New Mexico Uniform Securities Act
19 as an agent or is exempt from registration as an agent
20 pursuant to Subsection B of this section.

21 B. The following individuals are exempt from the
22 registration requirement of Subsection A of this section:

23 (1) an individual who represents a
24 broker-dealer in effecting transactions in New Mexico limited
25 to those described in Section 15(h)(2) of the federal

1 Securities Exchange Act of 1934 (15 U.S.C. Section 78(h)(2));

2 (2) an individual who represents a
3 broker-dealer that is exempt pursuant to Subsection B or D of
4 Section 401 of the New Mexico Uniform Securities Act;

5 (3) an individual who represents an issuer
6 with respect to an offer or sale of the issuer's own
7 securities or those of the issuer's parent or any of the
8 issuer's subsidiaries, and who is not compensated in
9 connection with the individual's participation by the payment
10 of commissions or other remuneration based, directly or
11 indirectly, on transactions in those securities;

12 (4) an individual who represents a
13 broker-dealer registered in New Mexico pursuant to Subsection
14 A of Section 401 of the New Mexico Uniform Securities Act or
15 exempt from registration pursuant to Subsection B of Section
16 401 of that act in the offer and sale of securities for an
17 account of a nonaffiliated federal covered investment adviser
18 with investments under management in excess of one hundred
19 million dollars (\$100,000,000) acting for the account of
20 others pursuant to discretionary authority in a signed
21 record;

22 (5) an individual who represents an issuer
23 in connection with the purchase by the issuer of the issuer's
24 own securities;

25 (6) an individual who represents an issuer

1 and who restricts participation to performing clerical or
2 ministerial acts; or

3 (7) any other individual exempted by rule
4 adopted or order issued pursuant to the New Mexico Uniform
5 Securities Act.

6 C. The registration of an agent is effective only
7 while the agent is employed by or associated with a
8 broker-dealer registered pursuant to the New Mexico Uniform
9 Securities Act or an issuer that is offering, selling or
10 purchasing its securities in New Mexico. The registration of
11 an agent is only effective with respect to transactions
12 effected as an employee or agent on behalf of the
13 broker-dealer or issuer for whom the agent is registered.

14 D. It is unlawful for a broker-dealer, or an
15 issuer engaged in offering, selling or purchasing securities
16 in New Mexico, to employ or associate with an agent who
17 transacts business in New Mexico on behalf of broker-dealers
18 or issuers unless the agent is registered pursuant to
19 Subsection A of this section or exempt from registration
20 pursuant to Subsection B of this section.

21 E. An individual shall not act as an agent for
22 more than one broker-dealer or one issuer at a time, unless
23 the broker-dealer or the issuer for which the agent acts is
24 affiliated by direct or indirect common control or is
25 authorized by rule or order pursuant to the New Mexico

1 Uniform Securities Act.

2 Section 403. INVESTMENT ADVISER REGISTRATION
3 REQUIREMENT AND EXEMPTIONS.--

4 A. It is unlawful for a person to transact
5 business in New Mexico as an investment adviser unless the
6 person is registered pursuant to the New Mexico Uniform
7 Securities Act as an investment adviser or is exempt from
8 registration as an investment adviser pursuant to Subsection
9 B of this section.

10 B. The following persons are exempt from the
11 registration requirement of Subsection A of this section:

12 (1) a person without a place of business in
13 New Mexico that is registered pursuant to the securities act
14 of the state in which the person has its principal place of
15 business if its only clients in New Mexico are:

16 (a) federal covered investment
17 advisers, investment advisers registered pursuant to the New
18 Mexico Uniform Securities Act or broker-dealers registered
19 pursuant to that act;

20 (b) institutional investors;

21 (c) bona fide preexisting clients whose
22 principal places of residence are not in New Mexico if the
23 investment adviser is registered pursuant to the securities
24 act of the state in which the clients maintain principal
25 places of residence; or

1 (d) any other client exempted by rule
2 adopted or order issued pursuant to the New Mexico Uniform
3 Securities Act;

4 (2) a person without a place of business in
5 New Mexico if the person has had, during the preceding twelve
6 months, not more than five clients that are residents in New
7 Mexico in addition to those specified pursuant to Paragraph
8 (1) of this subsection; or

9 (3) any other person exempted by rule
10 adopted or order issued pursuant to the New Mexico Uniform
11 Securities Act.

12 C. It is unlawful for an investment adviser,
13 directly or indirectly, to employ or associate with an
14 individual to engage in an activity related to investment
15 advice in New Mexico if the registration of the individual is
16 suspended or revoked or the individual is barred from
17 employment or association with an investment adviser, federal
18 covered investment adviser or broker-dealer by an order of
19 the director pursuant to the New Mexico Uniform Securities
20 Act, the securities and exchange commission or a
21 self-regulatory organization, unless the investment adviser
22 did not know, and in the exercise of reasonable care could
23 not have known, of the suspension, revocation or bar. Upon
24 request from the investment adviser and for good cause, the
25 director, by order, may waive, in whole or in part, the

1 application of the prohibitions of this subsection to the
2 investment adviser.

3 D. It is unlawful for an investment adviser to
4 employ or associate with an individual required to be
5 registered pursuant to the New Mexico Uniform Securities Act
6 as an investment adviser representative who transacts
7 business in New Mexico on behalf of the investment adviser
8 unless the individual is registered pursuant to Subsection A
9 of Section 404 of the New Mexico Uniform Securities Act or is
10 exempt from registration pursuant to Subsection B of Section
11 404 of that act.

12 Section 404. INVESTMENT ADVISER REPRESENTATIVE
13 REGISTRATION REQUIREMENT AND EXEMPTIONS.--

14 A. It is unlawful for an individual to transact
15 business in New Mexico as an investment adviser
16 representative unless the individual is registered pursuant
17 to the New Mexico Uniform Securities Act as an investment
18 adviser representative or is exempt from registration as an
19 investment adviser.

20 B. The following individuals are exempt from the
21 registration requirement of Subsection A of this section:

22 (1) an individual who is employed by or
23 associated with an investment adviser that is exempt from
24 registration pursuant to Subsection B of Section 403 of the
25 New Mexico Uniform Securities Act or a federal covered

1 investment adviser that is excluded from the notice filing
2 requirements of Section 405 of that act; and

3 (2) any other individual exempted by rule
4 adopted or order issued pursuant to the New Mexico Uniform
5 Securities Act.

6 C. The registration of an investment adviser
7 representative is not effective while the investment adviser
8 representative is not employed by or associated with an
9 investment adviser registered pursuant to the New Mexico
10 Uniform Securities Act or a federal covered investment
11 adviser that has made or is required to make a notice filing
12 under that act.

13 D. The registration of an investment adviser
14 representative is only effective with respect to transactions
15 effected or advice rendered as an employee or agent on behalf
16 of the investment adviser for whom the investment adviser
17 representative is registered.

18 E. An individual may transact business as an
19 investment adviser representative for more than one
20 investment adviser or federal covered investment adviser
21 unless a rule adopted or order issued pursuant to the New
22 Mexico Uniform Securities Act prohibits or limits an
23 individual from acting as an investment adviser
24 representative for more than one investment adviser or
25 federal covered investment adviser.

1 F. It is unlawful for an individual acting as an
2 investment adviser representative, directly or indirectly, to
3 conduct business in New Mexico on behalf of an investment
4 adviser or a federal covered investment adviser if the
5 registration of the individual as an investment adviser
6 representative is suspended or revoked or the individual is
7 barred from employment or association with an investment
8 adviser or a federal covered investment adviser by an order
9 of the director pursuant to the New Mexico Uniform Securities
10 Act, the securities and exchange commission or a
11 self-regulatory organization. Upon request from an
12 investment adviser or a federal covered investment adviser
13 and for good cause, the director, by order issued, may waive,
14 in whole or in part, the application of the requirements of
15 this subsection to the investment adviser or the federal
16 covered investment adviser.

17 G. An investment adviser registered pursuant to
18 the New Mexico Uniform Securities Act, a federal covered
19 investment adviser that has filed a notice pursuant to
20 Section 405 of that act or a broker-dealer registered
21 pursuant to that act is not required to employ or associate
22 with an individual as an investment adviser representative if
23 the only compensation paid to the individual for a referral
24 of investment advisory clients is paid to an investment
25 adviser registered pursuant to the New Mexico Uniform

1 Securities Act, a federal covered investment adviser that has
2 filed a notice pursuant to Section 405 of that act or a
3 broker-dealer registered pursuant to that act with which the
4 individual is employed or associated as an investment adviser
5 representative, subject to such conditions as the director
6 may impose by rule or by order.

7 Section 405. FEDERAL COVERED INVESTMENT ADVISER NOTICE
8 FILING REQUIREMENT.--

9 A. Except with respect to a federal covered
10 investment adviser described in Subsection B of this section,
11 it is unlawful for a federal covered investment adviser to
12 transact business in New Mexico as a federal covered
13 investment adviser unless the federal covered investment
14 adviser complies with Subsection C of this section.

15 B. The following federal covered investment
16 advisers are not required to comply with Subsection C of this
17 section:

18 (1) a federal covered investment adviser
19 without a place of business in New Mexico if its only clients
20 in New Mexico are:

21 (a) federal covered investment
22 advisers, investment advisers registered pursuant to the New
23 Mexico Uniform Securities Act and broker-dealers registered
24 pursuant to that act;

25 (b) institutional investors;

1 (c) bona fide preexisting clients whose
2 principal places of residence are not in New Mexico; or

3 (d) other clients specified by rule
4 adopted or order issued pursuant to the New Mexico Uniform
5 Securities Act;

6 (2) a federal covered investment adviser
7 without a place of business in New Mexico if the person has
8 had, during the preceding twelve months, not more than five
9 clients that are residents in New Mexico in addition to those
10 specified pursuant to Paragraph (1) of this subsection; and

11 (3) any other person excluded by rule
12 adopted or order issued pursuant to the New Mexico Uniform
13 Securities Act.

14 C. A person acting as a federal covered investment
15 adviser not excluded pursuant to Subsection B of this section
16 shall file a notice, a consent to service of process
17 complying with Section 611 of the New Mexico Uniform
18 Securities Act and such records as have been filed with the
19 securities and exchange commission pursuant to the federal
20 Investment Advisers Act of 1940 required by rule adopted or
21 order issued pursuant to the New Mexico Uniform Securities
22 Act and pay the fees specified in Subsection E of Section 410
23 of that act.

24 D. The notice pursuant to Subsection C of this
25 section becomes effective upon its filing.

1 Section 406. REGISTRATION BY BROKER-DEALER, AGENT,
2 INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE.--

3 A. A person shall register as a broker-dealer,
4 agent, investment adviser or investment adviser
5 representative by filing an application and a consent to
6 service of process complying with Section 611 of the New
7 Mexico Uniform Securities Act and paying the fee specified in
8 Section 410 of that act and any reasonable fees charged by
9 the designee of the director for processing the filing. The
10 application shall contain:

11 (1) the information or record required for
12 the filing of a uniform application; and

13 (2) upon request by the director, any other
14 financial or other information or record that the director
15 determines is appropriate.

16 B. If the information or record contained in an
17 application filed pursuant to Subsection A of this section is
18 or becomes inaccurate or incomplete in a material respect,
19 the registrant shall promptly file a correcting amendment.

20 C. If an order is not in effect or a proceeding is
21 not pending pursuant to Section 412 of the New Mexico Uniform
22 Securities Act, registration becomes effective at noon on the
23 forty-fifth day after a completed application is filed,
24 unless the registration is denied. A rule adopted or order
25 issued pursuant to the New Mexico Uniform Securities Act may

1 set an earlier effective date or may defer the effective date
2 until noon on the forty-fifth day after the filing of any
3 amendment completing the application.

4 D. A registration is effective until midnight on
5 December 31 of the year for which the application for
6 registration is filed. Unless an order is in effect pursuant
7 to Section 412 of the New Mexico Uniform Securities Act, a
8 registration may be automatically renewed each year by filing
9 such records as are required by rule adopted or order issued
10 pursuant to that act by paying the fee specified in Section
11 410 of that act and by paying costs charged by the designee
12 of the director for processing the filings.

13 E. A rule adopted or order issued pursuant to the
14 New Mexico Uniform Securities Act may impose such other
15 conditions, not inconsistent with the federal National
16 Securities Markets Improvement Act of 1996. An order issued
17 pursuant to the New Mexico Uniform Securities Act may waive,
18 in whole or in part, specific requirements in connection with
19 registration as are in the public interest and for the
20 protection of investors.

21 Section 407. SUCCESSION AND CHANGE IN REGISTRATION OF
22 BROKER-DEALER OR INVESTMENT ADVISER.--

23 A. A broker-dealer or investment adviser may
24 succeed to the current registration of another broker-dealer
25 or investment adviser or a notice filing of a federal covered

1 investment adviser, and a federal covered investment adviser
2 may succeed to the current registration of an investment
3 adviser or notice filing of another federal covered
4 investment adviser, by filing as a successor an application
5 for registration pursuant to Section 401 or 403 of the New
6 Mexico Uniform Securities Act or a notice pursuant to Section
7 405 of that act for the unexpired portion of the current
8 registration or notice filing.

9 B. A broker-dealer or investment adviser that
10 changes its form of organization or state of incorporation or
11 organization may continue its registration by filing an
12 amendment to its registration if the change does not involve
13 a material change in its financial condition or management.
14 The amendment becomes effective when filed or on a date
15 designated by the registrant in its filing. The new
16 organization is a successor to the original registrant for
17 the purposes of the New Mexico Uniform Securities Act. If
18 there is a material change in financial condition or
19 management, the broker-dealer or investment adviser shall
20 file a new application for registration. A predecessor
21 registered pursuant to the New Mexico Uniform Securities Act
22 shall stop conducting its securities business other than
23 winding down transactions and shall file for withdrawal of
24 broker-dealer or investment adviser registration within
25 forty-five days after filing its amendment to effect

1 succession.

2 C. A broker-dealer or investment adviser that
3 changes its name may continue its registration by filing an
4 amendment to its registration. The amendment becomes
5 effective when filed or on a date designated by the
6 registrant.

7 D. A change of control of a broker-dealer or
8 investment adviser may be made in accordance with a rule
9 adopted or order issued pursuant to the New Mexico Uniform
10 Securities Act.

11 Section 408. TERMINATION OF EMPLOYMENT OR ASSOCIATION
12 OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER
13 OF EMPLOYMENT OR ASSOCIATION.--

14 A. If an agent registered pursuant to the New
15 Mexico Uniform Securities Act terminates employment by or
16 association with a broker-dealer or issuer, or if an
17 investment adviser representative registered pursuant to that
18 act terminates employment by or association with an
19 investment adviser or federal covered investment adviser, or
20 if either registrant terminates activities that require
21 registration as an agent or investment adviser
22 representative, the broker-dealer, issuer, investment adviser
23 or federal covered investment adviser shall promptly file a
24 notice of termination.

25 B. If an agent registered pursuant to the New

1 Mexico Uniform Securities Act terminates employment by or
2 association with a broker-dealer registered pursuant to that
3 act and begins employment by or association with another
4 broker-dealer registered pursuant to that act; or if an
5 investment adviser representative registered pursuant to the
6 New Mexico Uniform Securities Act terminates employment by or
7 association with an investment adviser registered pursuant to
8 that act or a federal covered investment adviser that has
9 filed a notice pursuant to Section 405 of that act and begins
10 employment by or association with another investment adviser
11 registered pursuant to that act or a federal covered
12 investment adviser that has filed a notice pursuant to
13 Section 405 of that act then, upon the filing by or on behalf
14 of the registrant, within thirty days after the filing of
15 notice of termination pursuant to Subsection A of this
16 section, of an application for registration that complies
17 with the requirement of Subsection A of Section 406 of that
18 act and payment of the filing fee required pursuant to
19 Section 410 of that act, the registration of the agent or
20 investment adviser representative is immediately effective as
21 of the date of the completed filing if the agent's central
22 registration depository record or successor record or the
23 investment adviser representative's investment adviser
24 registration depository record or successor record does not
25 contain a new or amended disciplinary disclosure within the

1 previous twelve months.

2 C. The director may prevent the effectiveness of a
3 transfer of an agent or investment adviser representative
4 pursuant to Subsection B of this section based on the public
5 interest and the protection of investors.

6 D. If the director determines that a registrant or
7 applicant for registration is no longer in existence or has
8 ceased to act as a broker-dealer, agent, investment adviser
9 or investment adviser representative, or is the subject of an
10 adjudication of incapacity or is subject to the control of a
11 committee, conservator or guardian, or cannot reasonably be
12 located, a rule adopted or order issued pursuant to the New
13 Mexico Uniform Securities Act may require the registration be
14 canceled or terminated or the application denied. The
15 director may reinstate a canceled or terminated registration,
16 with or without hearing, and may make the registration
17 retroactive.

18 Section 409. WITHDRAWAL OF REGISTRATION OF
19 BROKER-DEALER, AGENT, INVESTMENT ADVISER AND INVESTMENT
20 ADVISER REPRESENTATIVE.--Withdrawal of registration by a
21 broker-dealer, agent, investment adviser or investment
22 adviser representative becomes effective sixty days after the
23 filing of the application to withdraw or within any shorter
24 period as provided by rule adopted or order issued pursuant
25 to the New Mexico Uniform Securities Act unless a revocation

1 or suspension proceeding is pending when the application is
2 filed. If a proceeding is pending, withdrawal becomes
3 effective when and upon such conditions as required by rule
4 adopted or order issued pursuant to the New Mexico Uniform
5 Securities Act. The director may institute a revocation or
6 suspension proceeding pursuant to Section 412 of the New
7 Mexico Uniform Securities Act within one year after the
8 withdrawal became effective automatically and issue a
9 revocation or suspension order as of the last date on which
10 registration was effective if a proceeding is not pending.

11 Section 410. FILING FEES.--

12 A. A person shall pay a fee of three hundred
13 dollars (\$300) when initially filing an application for
14 registration as a broker-dealer and when filing a renewal of
15 registration as a broker-dealer.

16 B. The fee for an individual shall be fifty
17 dollars (\$50.00) when filing an application for registration
18 as an agent, when filing a renewal of registration as an
19 agent and when filing for a change of registration as an
20 agent.

21 C. A person shall pay a fee of three hundred
22 dollars (\$300) when filing an application for registration as
23 an investment adviser and when filing a renewal of
24 registration as an investment adviser.

25 D. The fee for an individual shall be fifty

1 dollars (\$50.00) when filing an application for registration
2 as an investment adviser representative, when filing a
3 renewal of registration as an investment adviser
4 representative and when filing a change of registration as an
5 investment adviser representative.

6 E. A federal covered investment adviser required
7 to file a notice pursuant to Section 405 of the New Mexico
8 Uniform Securities Act shall pay an initial fee of three
9 hundred dollars (\$300) and an annual fee of three hundred
10 dollars (\$300).

11 F. A person required to pay a filing or notice fee
12 pursuant to this section may transmit the fee through or to a
13 designee as a rule or order provides pursuant to the New
14 Mexico Uniform Securities Act.

15 G. An investment adviser representative who is
16 registered as an agent pursuant to Section 402 of the New
17 Mexico Uniform Securities Act and who represents a person
18 that is both registered as a broker-dealer pursuant to
19 Section 401 of that act and registered as an investment
20 adviser pursuant to Section 403 of that act or required as a
21 federal covered investment adviser to make a notice filing
22 pursuant to Section 405 of that act is not required to pay an
23 initial or annual registration fee for registration as an
24 investment adviser representative.

25 H. If an application made pursuant to Subsection

1 A, B, C, D or E of this section is denied or withdrawn, the
2 director shall retain any fees paid.

3 Section 411. POST-REGISTRATION REQUIREMENTS.--

4 A. Subject to Section 15(h) of the federal
5 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or
6 Section 222 of the federal Investment Advisers Act of 1940
7 (15 U.S.C. Section 80b-22), a rule adopted or order issued
8 pursuant to the New Mexico Uniform Securities Act may
9 establish minimum financial requirements for broker-dealers
10 registered or required to be registered pursuant to the New
11 Mexico Uniform Securities Act and investment advisers
12 registered or required to be registered pursuant to the New
13 Mexico Uniform Securities Act.

14 B. Subject to Section 15(h) of the federal
15 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or
16 Section 222(b) of the federal Investment Advisers Act of 1940
17 (15 U.S.C. Section 80b-22), a broker-dealer registered or
18 required to be registered pursuant to the New Mexico Uniform
19 Securities Act and an investment adviser registered or
20 required to be registered pursuant to the New Mexico Uniform
21 Securities Act shall file such financial reports as are
22 required by a rule adopted or order issued pursuant to the
23 New Mexico Uniform Securities Act. If the information
24 contained in a record filed pursuant to this subsection is or
25 becomes inaccurate or incomplete in a material respect, the

1 registrant shall promptly file a correcting amendment.

2 C. Subject to Section 15(h) of the federal
3 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or
4 Section 222 of the federal Investment Advisers Act of 1940
5 (15 U.S.C. Section 80b-22):

6 (1) a broker-dealer registered or required
7 to be registered pursuant to the New Mexico Uniform
8 Securities Act and an investment adviser registered or
9 required to be registered pursuant to the New Mexico Uniform
10 Securities Act shall make and maintain the accounts,
11 correspondence, memoranda, papers, books and other records
12 required by rule adopted or order issued pursuant to the New
13 Mexico Uniform Securities Act;

14 (2) broker-dealer records required to be
15 maintained pursuant to Paragraph (1) of this subsection may
16 be maintained in any form of data storage acceptable pursuant
17 to Section 17(a) of the federal Securities Exchange Act of
18 1934 (15 U.S.C. Section 78q(a)) if they are readily
19 accessible to the director; and

20 (3) investment adviser records required to
21 be maintained pursuant to Paragraph (1) of this subsection
22 may be maintained in any form of data storage required by
23 rule adopted or order issued pursuant to the New Mexico
24 Uniform Securities Act.

25 D. The records of a broker-dealer registered or

1 required to be registered pursuant to the New Mexico Uniform
2 Securities Act and of an investment adviser registered or
3 required to be registered pursuant to that act are subject to
4 such reasonable periodic, special or other audits or
5 inspections by a representative of the director, within or
6 without New Mexico, as the director considers necessary or
7 appropriate in the public interest and for the protection of
8 investors. An audit or inspection may be made at any time
9 and without prior notice. The director may copy, and remove
10 for audit or inspection copies of, all records the director
11 reasonably considers necessary or appropriate to conduct the
12 audit or inspection. The director may assess a reasonable
13 charge for conducting an audit or inspection pursuant to this
14 subsection.

15 E. Subject to Section 15(h) of the federal
16 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or
17 Section 222 of the federal Investment Advisers Act of 1940
18 (15 U.S.C. Section 80b-22), a rule adopted or order issued
19 pursuant to the New Mexico Uniform Securities Act may require
20 a broker-dealer or investment adviser that has custody of or
21 discretionary authority over funds or securities of a
22 customer or client to obtain insurance or post a bond or
23 other satisfactory form of security in an amount not to
24 exceed two million dollars (\$2,000,000). The director may
25 determine the requirements of the insurance, bond or other

1 satisfactory form of security. Insurance or a bond or other
2 satisfactory form of security shall not be required of a
3 broker-dealer registered pursuant to the New Mexico Uniform
4 Securities Act whose net capital exceeds, or of an investment
5 adviser registered pursuant to that act whose minimum
6 financial requirements exceed, the amounts required by rule
7 or order pursuant to that act. The insurance, bond or other
8 satisfactory form of security shall permit an action by a
9 person to enforce any liability on the insurance, bond or
10 other satisfactory form of security if instituted within the
11 time limitations in Paragraph (2) of Subsection J of Section
12 509 of the New Mexico Uniform Securities Act.

13 F. Subject to Section 15(h) of the federal
14 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or
15 Section 222 of the federal Investment Advisers Act of 1940
16 (15 U.S.C. Section 80b-22), an agent shall not have custody
17 of funds or securities of a customer except under the
18 supervision of a broker-dealer, and an investment adviser
19 representative shall not have custody of funds or securities
20 of a client except under the supervision of an investment
21 adviser or a federal covered investment adviser. A rule
22 adopted or order issued pursuant to the New Mexico Uniform
23 Securities Act may prohibit, limit or impose conditions on a
24 broker-dealer regarding custody of funds or securities of a
25 customer and on an investment adviser regarding custody of

1 securities or funds of a client.

2 G. With respect to an investment adviser
3 registered or required to be registered pursuant to the New
4 Mexico Uniform Securities Act, a rule adopted or order issued
5 pursuant to that act may require that information or other
6 records be furnished or disseminated to clients or
7 prospective clients in New Mexico as necessary or appropriate
8 in the public interest and for the protection of investors
9 and advisory clients.

10 H. A rule adopted or order issued pursuant to the
11 New Mexico Uniform Securities Act may require an individual
12 registered pursuant to Section 402 or 404 of that act to
13 participate in a continuing education program approved by the
14 securities and exchange commission and administered by a
15 self-regulatory organization, or, in the absence of such a
16 program, a rule adopted or order issued pursuant to the New
17 Mexico Uniform Securities Act may require continuing
18 education for an individual registered pursuant to Section
19 404 of that act.

20 Section 412. DENIAL, REVOCATION, SUSPENSION,
21 WITHDRAWAL, RESTRICTION, CONDITION OR LIMITATION OF
22 REGISTRATION.--

23 A. If the director finds that the order is in the
24 public interest and that Subsection C of this section
25 authorizes the action, an order issued pursuant to the New

1 Mexico Uniform Securities Act may postpone, deny, suspend or
2 revoke any registration, limit the investment advisory
3 activities that an applicant or registered person may perform
4 in New Mexico or bar an applicant or registered person or a
5 person who is a partner, officer or director or a person
6 occupying a similar status or performing a similar function
7 for an applicant or registered person from association with a
8 registered broker-dealer or investment adviser or a federal
9 covered investment adviser.

10 B. If the director finds that the order is in the
11 public interest and Subsection C of this section authorizes
12 the action, an order pursuant to the New Mexico Uniform
13 Securities Act may censure or impose a bar on a registrant.
14 If the director finds that the order is in the public
15 interest and Paragraph (1), (2), (4), (5), (6), (8), (9),
16 (10), (12) or (13) of Subsection C of this section authorizes
17 the action, the director may also impose a civil penalty on a
18 registrant in an amount not to exceed ten thousand dollars
19 (\$10,000) for each violation.

20 C. A person may be disciplined pursuant to
21 Subsection A or B of this section, or both, if the person, or
22 in the case of a broker-dealer or investment adviser, a
23 partner, officer, director or a person having a similar
24 status or performing similar functions or a person directly
25 or indirectly controlling the broker-dealer or investment

1 adviser:

2 (1) has filed an application for
3 registration in New Mexico pursuant to the New Mexico Uniform
4 Securities Act or the predecessor act within the previous ten
5 years that, as of the effective date of registration or as of
6 any date after filing in the case of an order denying
7 effectiveness, was incomplete in any material respect or
8 contained a statement that, in light of the circumstances
9 under which it was made, was false or misleading with respect
10 to a material fact;

11 (2) willfully violated or willfully failed
12 to comply with the New Mexico Uniform Securities Act or the
13 predecessor act or a rule adopted or order issued pursuant to
14 the New Mexico Uniform Securities Act or the predecessor act
15 within the previous ten years;

16 (3) has been convicted of a felony or within
17 the previous ten years has been convicted of a misdemeanor
18 involving a security, a commodity future or an option
19 contract or an aspect of a business involving securities,
20 commodities, investments, franchises, insurance, banking or
21 finance;

22 (4) is enjoined or restrained by a court of
23 competent jurisdiction in an action instituted by the
24 director pursuant to the New Mexico Uniform Securities Act or
25 the predecessor act, a state, the securities and exchange

1 commission or the United States from engaging in or
2 continuing an act, practice or course of business involving
3 an aspect of a business involving securities, commodities,
4 investments, franchises, insurance, banking or finance;

5 (5) is the subject of an order, issued after
6 notice and opportunity for hearing by:

7 (a) the securities, depository
8 institution, insurance or other financial services regulator
9 of a state or by the securities and exchange commission or
10 other federal agency denying, revoking, barring or suspending
11 registration as a broker-dealer, agent, investment adviser,
12 federal covered investment adviser or investment adviser
13 representative;

14 (b) the securities regulator of a state
15 or by the securities and exchange commission against a
16 broker-dealer, agent, investment adviser, investment adviser
17 representative or federal covered investment adviser;

18 (c) the securities and exchange
19 commission or by a self-regulatory organization suspending or
20 expelling the registrant from membership in the
21 self-regulatory organization;

22 (d) a court adjudicating a United
23 States postal service fraud order;

24 (e) the insurance regulator of a state
25 denying, suspending or revoking registration as an insurance

1 agent; or

2 (f) a depository institution or
3 financial services regulator suspending or barring the person
4 from the depository institution or other financial services
5 business;

6 (6) is the subject of an adjudication or
7 determination, after notice and opportunity for hearing, by
8 the securities and exchange commission, the commodity futures
9 trading commission, the federal trade commission, a federal
10 depository institution regulator or a depository institution,
11 insurance or other financial services regulator of a state
12 that the person willfully violated the federal Securities Act
13 of 1933, the federal Securities Exchange Act of 1934, the
14 federal Investment Advisers Act of 1940, the federal
15 Investment Company Act of 1940 or the federal Commodity
16 Exchange Act, the securities or commodities law of a state or
17 a federal or state law pursuant to which a business involving
18 investments, franchises, insurance, banking or finance is
19 regulated;

20 (7) is insolvent, either because the
21 person's liabilities exceed the person's assets or because
22 the person cannot meet the person's obligations as they
23 mature, but the director shall not enter an order against an
24 applicant or registrant pursuant to this paragraph without a
25 finding of insolvency as to the applicant or registrant;

1 (8) refuses to allow or otherwise impedes
2 the director from conducting an audit or inspection pursuant
3 to Subsection D of Section 411 of the New Mexico Uniform
4 Securities Act or refuses access to a registrant's office to
5 conduct an audit or inspection pursuant to Subsection D of
6 Section 411 of that act;

7 (9) has failed to reasonably supervise an
8 agent, investment adviser representative or other individual,
9 if the agent, investment adviser representative or other
10 individual was subject to the person's supervision and while
11 under that person's supervision committed a violation of the
12 New Mexico Uniform Securities Act or the predecessor act or a
13 rule adopted or order issued pursuant to that act or the
14 predecessor act within the previous ten years;

15 (10) has not paid the proper filing fee
16 within thirty days after having been notified by the director
17 of a deficiency, but the director shall vacate an order
18 pursuant to this paragraph when the deficiency is corrected;

19 (11) after notice and opportunity for a
20 hearing, has been found within the previous ten years:

21 (a) by a court of competent
22 jurisdiction to have willfully violated the laws of a foreign
23 jurisdiction pursuant to which the business of securities,
24 commodities, investment, franchises, insurance, banking or
25 finance is regulated;

1 (b) to have been the subject of an
2 order of a securities regulator of a foreign jurisdiction
3 denying, revoking or suspending the right to engage in the
4 business of securities as a broker-dealer, agent, investment
5 adviser, investment adviser representative or similar person;
6 or

7 (c) to have been suspended or expelled
8 from membership by or participation in a securities exchange
9 or securities association operating pursuant to the
10 securities laws of a foreign jurisdiction;

11 (12) is the subject of a cease and desist
12 order issued by the securities and exchange commission or
13 issued pursuant to the securities, commodities, investment,
14 franchise, banking, finance or insurance laws of a state;

15 (13) has engaged in dishonest or unethical
16 practices in the securities, commodities, investment,
17 franchise, banking, finance or insurance business within the
18 previous ten years; or

19 (14) is not qualified on the basis of
20 factors such as training, experience and knowledge of the
21 securities business. However, in the case of an application
22 by an agent for a broker-dealer that is a member of a
23 self-regulatory organization or by an individual for
24 registration as an investment adviser representative, a
25 denial order shall not be based on this paragraph if the

1 individual has successfully completed all examinations
2 required by Subsection D of this section. The director may
3 require an applicant for registration pursuant to Section 402
4 or 404 of the New Mexico Uniform Securities Act who has not
5 been registered in a state within the two years preceding the
6 filing of an application in New Mexico to successfully
7 complete an examination.

8 D. A rule adopted or order issued pursuant to the
9 New Mexico Uniform Securities Act may require that an
10 examination, including an examination developed or approved
11 by an organization of securities regulators, be successfully
12 completed by a class of individuals or all individuals. An
13 order issued pursuant to the New Mexico Uniform Securities
14 Act may waive, in whole or in part, an examination as to an
15 individual and a rule adopted pursuant to that act may waive,
16 in whole or in part, an examination as to a class of
17 individuals if the director determines that the examination
18 is not necessary or appropriate in the public interest and
19 for the protection of investors.

20 E. The director may postpone, suspend or deny an
21 application summarily; restrict, condition, limit or suspend
22 a registration; or censure, bar or impose a civil penalty on
23 a registrant before final determination of an administrative
24 proceeding. Upon the issuance of an order, the director
25 shall promptly notify each person subject to the order that

1 the order has been issued, the reasons for the action and
2 that within fifteen days after the receipt of a request in a
3 record from the person, the matter will be scheduled for a
4 hearing. If a hearing is not requested and none is ordered
5 by the administrator within thirty days after the date of
6 service of the order, the order becomes final by operation of
7 law. If a hearing is requested or ordered, the director,
8 after notice of and opportunity for hearing to each person
9 subject to the order, may modify or vacate the order or
10 extend the order until final determination.

11 F. If a hearing is requested or ordered, such
12 hearing shall be conducted pursuant to Subsection B of
13 Section 604 of the New Mexico Uniform Securities Act. An
14 order shall not be issued pursuant to this section, except in
15 accordance with Subsection E of this section, without:

- 16 (1) appropriate notice to the applicant or
17 registrant;
18 (2) opportunity for hearing; and
19 (3) findings of fact and conclusions of law
20 in a record.

21 G. A person that controls, directly or indirectly,
22 a person not in compliance with this section may be
23 disciplined by order of the director pursuant to Subsection A
24 or B of this section, or both, to the same extent as the
25 noncomplying person, unless the controlling person did not

1 know, and in the exercise of reasonable care could not have
2 known, of the existence of conduct that is a ground for
3 discipline pursuant to this section.

4 H. The director shall not institute a proceeding
5 pursuant to Subsection A or B of this section based solely on
6 material facts actually known by the director unless an
7 investigation or the proceeding is instituted within one year
8 after the director actually acquires knowledge of the
9 material facts.

10 Article 5

11 FRAUD AND LIABILITIES

12 Section 501. SECURITIES FRAUD.--It is unlawful for a
13 person, in connection with the offer, sale or purchase of a
14 security, directly or indirectly:

15 A. to employ a device, scheme or artifice to
16 defraud;

17 B. to make an untrue statement of a material fact
18 or to omit to state a material fact necessary in order to
19 make the statement made, in the light of the circumstances
20 pursuant to which it is made, not misleading; or

21 C. to engage in an act, practice or course of
22 business that operates or would operate as a fraud or deceit
23 upon another person.

24 Section 502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT
25 ADVICE.--

1 A. It is unlawful for a person that advises others
2 for compensation, either directly or indirectly or through
3 publications or writings, as to the value of securities or
4 the advisability of investing in, purchasing or selling
5 securities or that, for compensation and as part of a regular
6 business, issues or promulgates analyses or reports relating
7 to securities:

8 (1) to employ a device, scheme or artifice
9 to defraud another person; or

10 (2) to engage in an act, practice or course
11 of business that operates or would operate as a fraud or
12 deceit upon another person.

13 B. A rule adopted pursuant to the New Mexico
14 Uniform Securities Act may define an act, practice or course
15 of business of an investment adviser or an investment adviser
16 representative as fraudulent, deceptive or manipulative and
17 may prescribe means reasonably designed to prevent investment
18 advisers and investment adviser representatives from engaging
19 in acts, practices and courses of business defined as
20 fraudulent, deceptive or manipulative.

21 C. A rule adopted pursuant to the New Mexico
22 Uniform Securities Act may specify the contents of an
23 investment advisory contract entered into, extended or
24 renewed by an investment adviser.

1 A. In a civil action or administrative proceeding
2 pursuant to the New Mexico Uniform Securities Act, a person
3 claiming an exemption, exception, preemption or exclusion has
4 the burden to prove the applicability of the claim.

5 B. In a criminal proceeding pursuant to the New
6 Mexico Uniform Securities Act, a person claiming an
7 exemption, exception, preemption or exclusion has the burden
8 of going forward with evidence of the claim.

9 Section 504. FILING OF SALES AND ADVERTISING
10 LITERATURE.--

11 A. Except as otherwise provided in Subsection B of
12 this section, a rule adopted or order issued pursuant to the
13 New Mexico Uniform Securities Act may require the filing of a
14 prospectus, pamphlet, circular, form letter, advertisement,
15 sales literature or other advertising record relating to a
16 security or investment advice addressed or intended for
17 distribution to prospective investors, including clients or
18 prospective clients of a person registered or required to be
19 registered as an investment adviser.

20 B. This section does not apply to sales and
21 advertising literature specified in Subsection A of this
22 section that relates to a federal covered security or a
23 federal covered investment adviser or that the director
24 determines by rule or order to be excluded from the
25 requirements of Subsection A of this section.

1 Section 505. MISLEADING FILINGS.--It is unlawful for a
2 person to make or cause to be made, in a record that is used
3 in an action or proceeding or filed pursuant to the New
4 Mexico Uniform Securities Act, a statement that, at the time
5 and in the light of the circumstances pursuant to which it is
6 made, is false or misleading in a material respect or, in
7 connection with the statement, to omit to state a material
8 fact necessary to make the statement made, in the light of
9 the circumstances pursuant to which it was made, not false or
10 misleading.

11 Section 506. MISREPRESENTATIONS CONCERNING REGISTRATION
12 OR EXEMPTION.--The filing of an application for registration,
13 a registration statement, a notice filing pursuant to the New
14 Mexico Uniform Securities Act, the registration of a person,
15 the notice filing by a person or the registration of a
16 security pursuant to that act does not constitute a finding
17 by the director that a record filed pursuant to the New
18 Mexico Uniform Securities Act is true, complete and not
19 misleading. The filing or registration or the availability
20 of an exemption, exception, preemption or exclusion for a
21 security or a transaction does not mean that the director has
22 passed upon the merits or qualifications of, or recommended
23 or given approval to, a person, security or transaction. It
24 is unlawful to make, or cause to be made, to a purchaser,
25 customer, client or prospective customer or client a

1 representation inconsistent with this section.

2 Section 507. QUALIFIED IMMUNITY.--A broker-dealer,
3 agent, investment adviser, federal covered investment adviser
4 or investment adviser representative is not liable to another
5 broker-dealer, agent, investment adviser, federal covered
6 investment adviser or investment adviser representative for
7 defamation relating to a statement that is contained in a
8 record required by the director, or designee of the director,
9 the securities and exchange commission or a self-regulatory
10 organization, unless the person knew, or should have known at
11 the time that the statement was made, that it was false in a
12 material respect or the person acted in reckless disregard of
13 the statement's truth or falsity.

14 Section 508. CRIMINAL PENALTIES.--

15 A. A person who willfully violates Section 501 or
16 502 of the New Mexico Uniform Securities Act is guilty of a
17 third degree felony and, upon conviction, shall be fined not
18 more than five thousand dollars (\$5,000) or imprisoned not
19 more than three years, or both, for each violation. For
20 purposes of Subsection B of Section 31-18-13 NMSA 1978, the
21 minimum term prescribed by this subsection is three years.

22 B. A person who willfully violates Section 505 of
23 the New Mexico Uniform Securities Act knowing the statement
24 made to be false or misleading in a material respect is
25 guilty of a third degree felony and, upon conviction, shall

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

6 C. No criminal penalties apply to violations of
7 Section 504 of the New Mexico Uniform Securities Act or the
8 notice filing requirements of Section 302 or 405 of that act.

9 D. Except as provided in Subsections A through C
10 of this section, a person who willfully violates any
11 provision of the New Mexico Uniform Securities Act or a rule
12 adopted or order issued pursuant to that act is guilty of a
13 fourth degree felony and, upon conviction, shall be fined not
14 more than five thousand dollars (\$5,000) or imprisoned not
15 more than eighteen months, or both, for each violation. For
16 purposes of Subsection B of Section 31-18-13 NMSA 1978, the
17 minimum term prescribed by this subsection is eighteen
18 months.

19 E. An individual convicted of violating a rule or
20 order pursuant to the New Mexico Uniform Securities Act may
21 be fined, but shall not be imprisoned, if the individual did
22 not have knowledge of the rule or order.

23 F. For the purposes of this section, "willfully"
24 means purposely or intentionally committing the act or making
25 the omission and does not require an intent to violate the

1 law or knowledge that the act or omission is unlawful.

2 G. Each offense shall constitute a separate
3 offense, and a prosecution for any one of such offenses shall
4 not bar prosecution or conviction for any other offenses.

5 H. All persons convicted of criminal violations of
6 the New Mexico Uniform Securities Act shall be sentenced in
7 accordance with the Criminal Sentencing Act or its successor
8 statute.

9 I. No indictment or information may be brought
10 pursuant to this section more than five years after the
11 alleged violation.

12 J. The attorney general or the proper district
13 attorney, with or without a referral from the director, may
14 institute criminal proceedings pursuant to the New Mexico
15 Uniform Securities Act. The attorney general or district
16 attorney may request assistance from the director or
17 employees of the division. When so requested by the
18 director, the attorney general shall commission as a special
19 assistant attorney general any attorney employed by the
20 director or contracted with by the director and approved by
21 the attorney general to assist the director in carrying out
22 the director's duties, including providing legal advice and
23 prosecuting offenders.

24 K. The New Mexico Uniform Securities Act does not
25 limit the power of New Mexico to punish a person for conduct

1 that constitutes a crime pursuant to other laws of New
2 Mexico.

3 Section 509. CIVIL LIABILITY.--

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

8 B. A person is liable to the purchaser if the
9 person sells a security in violation of Section 301 of the
10 New Mexico Uniform Securities Act or, by means of an untrue
11 statement of a material fact or an omission to state a
12 material fact necessary in order to make the statement made,
13 in light of the circumstances pursuant to which it is made,
14 not misleading, the purchaser not knowing the untruth or
15 omission and the seller not sustaining the burden of proof
16 that the seller did not know and, in the exercise of
17 reasonable care, could not have known of the untruth or
18 omission. An action pursuant to this subsection is governed
19 by the following:

20 (1) the purchaser may maintain an action to
21 recover the consideration paid for the security, less the
22 amount of any income received on the security, and interest
23 at the legal rate of interest from the date of the purchase,
24 costs and reasonable attorney fees determined by the court,
25 upon the tender of the security, or for actual damages as

1 provided in Paragraph (3) of this subsection;

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

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

15 C. A person is liable to the seller if the person
16 buys a security by means of an untrue statement of a material
17 fact or omission to state a material fact necessary in order
18 to make the statement made, in light of the circumstances
19 pursuant to which it is made, not misleading, the seller not
20 knowing of the untruth or omission, and the purchaser not
21 sustaining the burden of proof that the purchaser did not
22 know, and in the exercise of reasonable care could not have
23 known, of the untruth or omission. An action pursuant to
24 this subsection is governed by the following:

25 (1) the seller may maintain an action to

1 recover the security, and any income received on the
2 security, costs and reasonable attorney fees determined by
3 the court, upon the tender of the purchase price, or for
4 actual damages as provided in Paragraph (3) of this
5 subsection;

6 (2) the tender referred to in Paragraph (1)
7 of this subsection may be made any time before entry of
8 judgment. Tender requires only notice in a record of the
9 present ability to pay the amount tendered and willingness to
10 take delivery of the security for the amount specified. If
11 the purchaser no longer owns the security, the seller may
12 recover actual damages as provided in Paragraph (3) of this
13 subsection; and

14 (3) actual damages in an action arising
15 pursuant to this subsection are the difference between the
16 price at which the security was sold and the value the
17 security would have had at the time of the sale in the
18 absence of the purchaser's conduct causing liability, and
19 interest at the legal rate of interest from the date of the
20 sale of the security, costs and reasonable attorney fees
21 determined by the court.

22 D. A person acting as a broker-dealer or agent
23 that sells or buys a security in violation of Subsection A of
24 Section 401 of the New Mexico Uniform Securities Act,
25 Subsection A of Section 402 of that act or Section 506 of

1 that act is liable to the customer. The customer, if a
2 purchaser, may maintain an action for recovery of actual
3 damages as specified in Paragraphs (1) through (3) of
4 Subsection B of this section, or, if a seller, for a remedy
5 as specified in Paragraphs (1) through (3) of Subsection C of
6 this section.

7 E. A person acting as an investment adviser or
8 investment adviser representative that provides investment
9 advice for compensation in violation of Subsection A of
10 Section 403 of the New Mexico Uniform Securities Act,
11 Subsection A of Section 404 of that act or Section 506 of
12 that act is liable to the client. The client may maintain an
13 action to recover the consideration paid for the advice,
14 interest at the legal rate of interest from the date of
15 payment, costs and reasonable attorney fees determined by the
16 court.

17 F. A person that receives, directly or indirectly,
18 any consideration for providing investment advice to another
19 person and that employs a device, scheme or artifice to
20 defraud the other person or engages in an act, practice or
21 course of business that operates or would operate as a fraud
22 or deceit on the other person, is liable to the other person.
23 An action pursuant to this subsection is governed by the
24 following:

25 (1) the person defrauded may maintain an

1 action to recover the consideration paid for the advice and
2 the amount of any actual damages caused by the fraudulent
3 conduct, interest at the legal rate of interest from the date
4 of the fraudulent conduct, costs and reasonable attorney fees
5 determined by the court, less the amount of any income
6 received as a result of the fraudulent conduct; and

7 (2) this subsection does not apply to a
8 broker-dealer or its agents if the investment advice provided
9 is solely incidental to transacting business as a
10 broker-dealer and no special compensation is received for the
11 investment advice.

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

15 (1) a person that directly or indirectly
16 controls a person liable pursuant to Subsections B through F
17 of this section, unless the controlling person sustains the
18 burden of proof that the person did not know, and in the
19 exercise of reasonable care could not have known, of the
20 existence of conduct by reason of which the liability is
21 alleged to exist;

22 (2) an individual who is a managing partner,
23 executive officer or director of a person liable pursuant to
24 Subsections B through F of this section, including an
25 individual having a similar status or performing similar

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

5 (3) an individual who is an employee of or
6 associated with a person liable pursuant to Subsections B
7 through F of this section and who materially aids the conduct
8 giving rise to the liability, unless the individual sustains
9 the burden of proof that the individual did not know and, in
10 the exercise of reasonable care could not have known, of the
11 existence of conduct by reason of which the liability is
12 alleged to exist; and

13 (4) a person that is a broker-dealer, agent,
14 investment adviser or investment adviser representative that
15 materially aids the conduct giving rise to the liability
16 pursuant to Subsections B through F of this section, unless
17 the person sustains the burden of proof that the person did
18 not know and, in the exercise of reasonable care could not
19 have known, of the existence of conduct by reason of which
20 liability is alleged to exist.

21 H. A person liable pursuant to this section has a
22 right of contribution as in cases of contract against any
23 other person liable pursuant to this section for the same
24 conduct.

25 I. A cause of action pursuant to this section

1 survives the death of an individual who might have been a
2 plaintiff or defendant.

3 J. A person shall not obtain relief unless the
4 suit is brought:

5 (1) within two years after discovery of the
6 violation or after discovery should have been made by the
7 exercise of reasonable diligence; and

8 (2) within five years after the act or
9 transaction constituting the violation.

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

18 L. A condition, stipulation or provision binding a
19 person purchasing or selling a security or receiving
20 investment advice to waive compliance with the New Mexico
21 Uniform Securities Act, or a rule adopted or order issued
22 pursuant to that act, is void.

23 M. The rights and remedies provided by the New
24 Mexico Uniform Securities Act are in addition to any other
25 rights or remedies that may exist, but that act does not

1 create a cause of action not specified in this section or
2 Subsection E of Section 411 of that act.

3 Section 510. RESCISSION OFFERS.--A purchaser, seller or
4 recipient of investment advice shall not maintain an action
5 pursuant to Section 509 of the New Mexico Uniform Securities
6 Act if:

7 A. the purchaser, seller or recipient of
8 investment advice receives in a record, before the action is
9 instituted:

10 (1) an offer stating the respect in which
11 liability pursuant to Section 509 of the New Mexico Uniform
12 Securities Act may have arisen and fairly advising the
13 purchaser, seller or recipient of investment advice of that
14 person's rights in connection with the offer, and any
15 financial or other information necessary to correct all
16 material misrepresentations or omissions in the information
17 that was required by the New Mexico Uniform Securities Act to
18 be furnished to that person at the time of the purchase, sale
19 or investment advice;

20 (2) if the basis for relief pursuant to this
21 section may have been a violation of Subsection B of Section
22 509 of the New Mexico Uniform Securities Act, an offer to
23 repurchase the security for cash, payable on delivery of the
24 security, equal to the consideration paid, and interest at
25 the legal rate of interest from the date of the purchase,

1 less the amount of any income received on the security; or,
2 if the purchaser no longer owns the security, an offer to pay
3 the purchaser upon acceptance of the offer damages in an
4 amount that would be recoverable upon a tender, less the
5 value of the security when the purchaser disposed of it, and
6 interest at the legal rate of interest from the date of the
7 purchase in cash equal to the damages computed in the manner
8 provided in this subsection;

9 (3) if the basis for relief pursuant to this
10 section may have been a violation of Subsection C of Section
11 509 of the New Mexico Uniform Securities Act, an offer to
12 tender the security, on payment by the seller of an amount
13 equal to the purchase price paid, less income received on the
14 security by the purchaser and interest at the legal rate of
15 interest from the date of the sale; or if the purchaser no
16 longer owns the security, an offer to pay the seller upon
17 acceptance of the offer, in cash, damages in the amount of
18 the difference between the price at which the security was
19 purchased and the value the security would have had at the
20 time of the purchase in the absence of the purchaser's
21 conduct that may have caused liability and interest at the
22 legal rate of interest from the date of the sale;

23 (4) if the basis for relief pursuant to this
24 section may have been a violation of Subsection D of Section
25 509 of the New Mexico Uniform Securities Act; and if the

1 customer is a purchaser, an offer to pay as specified in
2 Paragraph (2) of this subsection; or, if the customer is a
3 seller, an offer to tender or to pay as specified in
4 Paragraph (3) of this subsection;

5 (5) if the basis for relief pursuant to this
6 section may have been a violation of Subsection E of Section
7 509 of the New Mexico Uniform Securities Act, an offer to
8 reimburse in cash the consideration paid for the advice and
9 interest at the legal rate of interest from the date of
10 payment; or

11 (6) if the basis for relief pursuant to this
12 section may have been a violation of Subsection F of Section
13 509 of the New Mexico Uniform Securities Act, an offer to
14 reimburse in cash the consideration paid for the advice, the
15 amount of any actual damages that may have been caused by the
16 conduct and interest at the legal rate of interest from the
17 date of the violation causing the loss;

18 B. the offer pursuant to Subsection A of this
19 section states that the offer must be accepted by the
20 purchaser at any time within a specified period of not less
21 than thirty days, or such shorter or longer period as the
22 director by order prescribes, and contains such other terms
23 and conditions, if any, as the director specifies;

24 C. the offer pursuant to Subsection A of this
25 section is delivered to the purchaser, seller or recipient of

1 investment advice, or sent in a manner that ensures receipt
2 by the purchaser, seller or recipient of investment advice;

3 D. the purchaser, seller or recipient of
4 investment advice timely accepts the offer made pursuant to
5 Subsections A through C of this section in a record; and

6 E. the offer made and accepted in compliance with
7 Subsections A through D of this section is paid in accordance
8 with the terms of the offer; or

9 F. the purchaser, seller or recipient of
10 investment advice receives an offer in compliance with
11 Subsections A through C of this section but fails to accept
12 the offer in a record within the period specified in the
13 offer.

14 Article 6

15 ADMINISTRATION AND JUDICIAL REVIEW

16 Section 601. ADMINISTRATION.--

17 A. The director shall administer the New Mexico
18 Uniform Securities Act. The director shall be appointed by
19 the superintendent of regulation and licensing subject to
20 confirmation by the senate. The director shall be chosen
21 solely on the basis of fitness to perform the duties of the
22 office and shall have a minimum of five years relevant
23 experience in the securities or finance field, relevant
24 education and demonstrable knowledge of securities laws and
25 regulations. The division is under the supervision and

1 control of the superintendent of regulation and licensing,
2 subject, however, to the exemptions set forth in Section
3 9-16-11 NMSA 1978. The director shall, with the approval of
4 the superintendent of regulation and licensing, hire pursuant
5 to the Personnel Act and assign duties to employees necessary
6 to assist the director in the director's duties, and the
7 director may, with the approval of the superintendent of
8 regulation and licensing, appoint commissioned peace officers
9 who shall have the powers of police officers for the purpose
10 of investigating and enforcing the provisions of the New
11 Mexico Uniform Securities Act. Such peace officers shall
12 comply with the certification provisions of Section 29-7-6
13 NMSA 1978.

14 B. The director may by rule impose fees as
15 necessary for examination, claims of exemption, requests for
16 advisory opinions and other miscellaneous filings for which
17 no fees are specified elsewhere in the New Mexico Uniform
18 Securities Act and may also require payment of reasonable
19 costs of investigation resulting from enforcement actions
20 taken pursuant to Section 602, 603 or 604 of that act.

21 C. It is unlawful for the director or an officer,
22 employee or designee of the director to use for personal
23 benefit or the benefit of others records or other information
24 obtained by or filed with the director that are not public
25 pursuant to Subsection B of Section 607 of the New Mexico

1 Uniform Securities Act. The New Mexico Uniform Securities
2 Act does not authorize the director or an officer, employee
3 or designee of the director to disclose the record or
4 information, except in accordance with Section 602 of that
5 act, Subsection C of Section 607 of that act or Section 608
6 of that act.

7 D. Except as stated in the New Mexico Uniform
8 Securities Act, that act does not create or diminish a
9 privilege or exemption that exists at common law, by statute
10 or by rule or otherwise.

11 E. The director may develop and implement investor
12 education initiatives to inform the public about investing in
13 securities, with particular emphasis on the prevention and
14 detection of securities fraud. In developing and
15 implementing these initiatives, the director may collaborate
16 with public and nonprofit organizations with an interest in
17 investor education. The director may accept a grant or
18 donation to the securities enforcement and investor education
19 fund established in Subsection F of this section from a
20 person that is not affiliated with the securities industry or
21 from a nonprofit organization, regardless of whether the
22 organization is affiliated with the securities industry, to
23 develop and implement investor education initiatives. This
24 subsection does not authorize the director to require
25 participation or monetary contributions of a registrant in an

1 investor education program.

2 F. The "securities enforcement and investor
3 education fund" is created as a nonreverting fund in the
4 state treasury to provide money for the purposes specified in
5 Subsections E and G of this section. The division may
6 establish and adopt rules as required to administer the fund.
7 The securities enforcement and investor education fund shall
8 be administered by the division. The fund shall consist of:

9 (1) five dollars (\$5.00) of each fee
10 collected from registrants pursuant to Subsections B and D of
11 Section 410 of the New Mexico Uniform Securities Act;

12 (2) all or any portion of civil penalties,
13 costs of investigation and other administrative assessments
14 collected by the division through enforcement actions
15 pursuant to the New Mexico Uniform Securities Act;

16 (3) appropriations, grants or donations to
17 the fund; and

18 (4) income from investment of the fund.

19 G. Money in the securities enforcement and
20 investor education fund shall be appropriated by the
21 legislature to the division and shall be used for consumer
22 education and training in matters concerning securities laws
23 and investment issues; education and training of
24 investigative and prosecutorial staff of the division; and
25 costs incurred for the investigation and prosecution of civil

1 and criminal violations of the New Mexico Uniform Securities
2 Act, including expert and other consultant fees, witness
3 fees, deposition costs and travel and training expenses.
4 Money shall be disbursed from the fund only on warrant of the
5 secretary of finance and administration upon vouchers signed
6 by the director or the director's authorized representative.
7 Any unexpended or unencumbered balance remaining at the end
8 of a fiscal year shall not revert to the general fund.

9 Section 602. INVESTIGATIONS AND SUBPOENAS.--

10 A. The director may:

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

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

24 (3) publish a record concerning an action,
25 proceeding or an investigation pursuant to or a violation of

1 the New Mexico Uniform Securities Act or a rule adopted or
2 order issued pursuant to that act if the director determines
3 it is necessary or appropriate in the public interest and for
4 the protection of investors.

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

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

21 (1) hold the person in contempt;

22 (2) order the person to appear before the
23 director;

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

- 1 (4) order the production of records;
- 2 (5) grant injunctive relief, including
- 3 restricting or prohibiting the offer or sale of securities or
- 4 the providing of investment advice;
- 5 (6) impose a civil penalty of not more than
- 6 ten thousand dollars (\$10,000) for each violation; and
- 7 (7) grant any other necessary or appropriate
- 8 relief.

9 D. This section does not preclude a person from

10 applying to the appropriate district court or a court of

11 another state for relief from a request to appear, testify,

12 file a statement, produce records or obey a subpoena.

13 E. An individual is not excused from attending,

14 testifying, filing a statement, producing a record or other

15 evidence or obeying a subpoena of the director pursuant to

16 the New Mexico Uniform Securities Act or in an action or

17 proceeding instituted by the director pursuant to that act on

18 the grounds that the required testimony, statement, record or

19 other evidence, directly or indirectly, may tend to

20 incriminate the individual or subject the individual to a

21 criminal fine, penalty or forfeiture. If the individual

22 refuses to testify, file a statement or produce a record or

23 other evidence on the basis of the individual's privilege

24 against self-incrimination, the director may apply to the

25 district court of Santa Fe county or other appropriate

1 district court or to a court of another state, a federal
2 court or a court of a foreign jurisdiction to compel the
3 testimony, the filing of the statement, the production of the
4 record or the giving of other evidence. The testimony,
5 record or other evidence compelled pursuant to such an order
6 shall not be used, directly or indirectly, against the
7 individual in a criminal case, except in a prosecution for
8 perjury or contempt or otherwise failing to comply with the
9 order.

10 F. At the request of the securities regulator of
11 another state or a foreign jurisdiction, the director may
12 provide assistance if the requesting regulator states that it
13 is conducting an investigation to determine whether a person
14 has violated, is violating or is about to violate a law or
15 rule of the other state or foreign jurisdiction relating to
16 securities matters that the requesting regulator administers
17 or enforces. The director may provide the assistance by
18 using the authority to investigate and the powers conferred
19 by this section as the director determines is necessary or
20 appropriate. The assistance may be provided without regard
21 to whether the conduct described in the request would also
22 constitute a violation of the New Mexico Uniform Securities
23 Act or other law of New Mexico if occurring in New Mexico.
24 In deciding whether to provide the assistance, the director
25 may consider whether the requesting regulator is permitted

1 and has agreed to provide assistance reciprocally within its
2 state or foreign jurisdiction to the director on securities
3 matters when requested; whether compliance with the request
4 would violate or prejudice the public policy of New Mexico;
5 and the availability of resources and employees of the
6 director to carry out the request for assistance.

7 Section 603. CIVIL ENFORCEMENT.--

8 A. If the director believes that a person has
9 engaged, is engaging or is about to engage in an act,
10 practice or course of business constituting a violation of
11 the New Mexico Uniform Securities Act or a rule adopted or
12 order issued pursuant to that act or that a person has, is or
13 is about to engage in an act, practice or course of business
14 that materially aids a violation of the New Mexico Uniform
15 Securities Act or a rule adopted or order issued pursuant to
16 that act, the director may maintain an action to enjoin the
17 act, practice or course of business and to enforce compliance
18 with the New Mexico Uniform Securities Act or a rule adopted
19 or order issued pursuant to that act.

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

22 (1) issue a permanent or temporary
23 injunction, restraining order or declaratory judgment;

24 (2) order other appropriate or ancillary
25 relief, which may include:

1 (a) an asset freeze, accounting, writ
2 of attachment, writ of general or specific execution and
3 appointment of a receiver or conservator, that may be the
4 director, for the defendant or the defendant's assets;

5 (b) ordering the director to take
6 charge and control of a defendant's property, including
7 investment accounts and accounts in a depository institution,
8 rents and profits; to collect debts; and to acquire and
9 dispose of property;

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

12 (d) an order of rescission, restitution
13 or disgorgement directed to a person that has engaged in an
14 act, practice or course of business constituting a violation
15 of the New Mexico Uniform Securities Act or the predecessor
16 act or a rule adopted or order issued pursuant to the New
17 Mexico Uniform Securities Act or the predecessor act;

18 (e) ordering the payment of prejudgment
19 and postjudgment interest; and

20 (f) ordering the payment of litigation
21 expenses of the director; and

22 (3) order such other relief as the court
23 considers appropriate.

24 C. If a person violates a provision of the New
25 Mexico Uniform Securities Act and the violation is directed

1 toward, targets or is committed against a person who, at the
2 time of the violation, is sixty-two years of age or older,
3 the court, in addition to any other civil penalties provided
4 for pursuant to the New Mexico Uniform Securities Act or a
5 rule issued pursuant to that act, may impose an additional
6 civil penalty not to exceed ten thousand dollars (\$10,000)
7 for each violation.

8 D. The director shall not be required to post a
9 bond in an action or proceeding pursuant to the New Mexico
10 Uniform Securities Act.

11 Section 604. ADMINISTRATIVE ENFORCEMENT.--

12 A. If the director determines that a person has
13 engaged, is engaging or is about to engage in an act,
14 practice or course of business constituting a violation of
15 the New Mexico Uniform Securities Act or a rule adopted or
16 order issued pursuant to that act or that a person has
17 materially aided, is materially aiding or is about to
18 materially aid an act, practice or course of business
19 constituting a violation of the New Mexico Uniform Securities
20 Act or a rule adopted or order issued pursuant to that act,
21 the director may:

22 (1) issue an order directing the person to
23 cease and desist from engaging in the act, practice or course
24 of business or to take other action necessary or appropriate
25 to comply with the New Mexico Uniform Securities Act;

1 (2) issue an order denying, suspending,
2 revoking or conditioning the exemptions for a broker-dealer
3 pursuant to Subparagraph (d) or (f) of Paragraph (1) of
4 Subsection B of Section 401 the New Mexico Uniform Securities
5 Act or an investment adviser pursuant to Subparagraph (c) of
6 Paragraph (1) of Subsection B of Section 403 of that act; or

7 (3) issue an order pursuant to Section 204
8 of the New Mexico Uniform Securities Act.

9 B. For any administrative proceeding authorized by
10 the New Mexico Uniform Securities Act, including proceedings
11 related to notices and orders pursuant to Section 204 of that
12 act, Subsection E of Section 306 of that act, Subsection F of
13 Section 412 of that act or Subsection A of this section:

14 (1) the director may commence an
15 administrative proceeding by entering either a notice of
16 intent to do a contemplated act or a summary order. The
17 notice of intent or summary order may be entered without
18 notice and without opportunity for hearing and need not be
19 supported by findings of fact or conclusions of law, but
20 shall be in a record;

21 (2) upon entry of a notice of intent or
22 summary order, the director shall promptly notify in a record
23 all parties against whom action is taken or contemplated that
24 the notice or summary order has been entered and the reasons
25 for the notice or summary order. The director shall send

1 parties against whom action is taken or contemplated a notice
2 of opportunity for hearing on the matters set forth in the
3 order or notice of intent. The notice shall state that the
4 parties have fifteen days from receipt of the notice to file
5 with the director a request in a record for a hearing. The
6 director shall set the matter for hearing no more than sixty
7 nor less than fifteen days from receipt of the request for
8 hearing and shall promptly notify the parties of the time and
9 place for hearing;

10 (3) the director, whether or not a request
11 in a record for hearing is received from any interested
12 party, may set the matter down for hearing on the director's
13 own motion;

14 (4) the director may by order take the
15 action contemplated in the notice of intent or make a summary
16 order final:

17 (a) fifteen days after the parties
18 against whom action is taken or contemplated receive notice
19 of the right to request a hearing if those parties fail to
20 request a hearing; or

21 (b) one day following the date set for
22 a hearing requested by a party if the party fails to appear
23 at the hearing;

24 (5) if a hearing is requested or ordered,
25 the director, after notice of the opportunity for hearing to

1 all persons against whom action is taken or contemplated, may
2 modify or vacate the order or extend the order until final
3 determination;

4 (6) for the purpose of conducting any
5 hearing pursuant to this section, the director shall have the
6 power to call any party to testify under oath at such hearing
7 to require the attendance of witnesses and the production of
8 books, records and papers and to take the depositions of
9 witnesses; and for that purpose the director is authorized,
10 at the request of the person requesting such hearing or upon
11 the director's own initiative, to issue a subpoena for any
12 witness or a subpoena duces tecum to compel the production of
13 any books, records or papers. At the director's option or
14 when state law or court rules require such process, the
15 subpoena may be directed to the sheriff or other law
16 enforcement agency in the county where such witness resides;

17 (7) a party entitled to a hearing pursuant
18 to this section may appear on the party's own behalf or may
19 be represented by an attorney. A party has the right to
20 present all relevant evidence and to examine all opposing
21 witnesses who appear on any matter relevant to the issues;

22 (8) upon making a request in a record to
23 another party, any party is entitled to:

24 (a) obtain the names and addresses of
25 witnesses who will or may be called by the other party to

1 testify at the hearing; and

2 (b) inspect and copy any documents or
3 items that the other party will or may introduce in evidence
4 at the hearing;

5 (9) the director shall pass upon the
6 admissibility of evidence and may exclude evidence that is
7 incompetent, irrelevant, immaterial or unduly repetitious;

8 (10) the director may conduct the hearing,
9 or the director may appoint a hearing officer to conduct the
10 hearing. A hearing officer shall have the same powers and
11 authority in conducting a hearing as the director. The
12 hearing officer shall be admitted to the practice of law in
13 this state and shall be possessed of such additional
14 qualifications as the director may require. The director may
15 direct the hearing officer to submit to the director a report
16 setting forth in a record proposed findings of fact and
17 conclusions of law and a recommendation of the action to be
18 taken by the director. The director may order additional
19 testimony to be taken or permit the introduction of further
20 documentary evidence; and

21 (11) a final order or order after hearing
22 shall include entry of findings of fact and conclusions of
23 law in a record.

24 C. In a final order pursuant to Subsection B of
25 this section, the director may impose a civil penalty of up

1 to ten thousand dollars (\$10,000) for each violation. For
2 purposes of determining the amount of a civil penalty imposed
3 pursuant to this subsection, the director shall consider,
4 among other factors, the frequency and persistence of the
5 conduct constituting a violation of the New Mexico Uniform
6 Securities Act or a rule or order of the director pursuant to
7 that act, the number of persons adversely affected by the
8 conduct and the resources of the person committing the
9 violation.

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

19 E. In a final order, the director may charge the
20 actual cost of an investigation or proceeding for a violation
21 of the New Mexico Uniform Securities Act or a rule adopted or
22 order issued pursuant to that act.

23 F. If a petition for judicial review of a final
24 order is not filed in accordance with Section 609 of the New
25 Mexico Uniform Securities Act, the director may file a

1 certified copy of the final order with the clerk of the
2 appropriate district court. The order so filed has the same
3 effect as a judgment of the court and may be recorded,
4 enforced or satisfied in the same manner as a judgment of the
5 court.

6 G. If a person does not comply with an order
7 pursuant to this section, the director may petition the
8 district court of Santa Fe county or other appropriate
9 district court or a court of another state, a federal court
10 or a court of a foreign jurisdiction to enforce the order.
11 The court shall not require the director to post a bond in an
12 action or proceeding pursuant to this section. If the court
13 finds, after service and opportunity for hearing, that the
14 person was not in compliance with the order, the court may
15 adjudge the person in civil contempt of the order. The court
16 may impose a further civil penalty against the person for
17 contempt in an amount not greater than ten thousand dollars
18 (\$10,000) for each violation and may grant any other relief
19 the court determines is just and proper in the circumstances.

20 Section 605. RULES, FORMS, ORDERS, INTERPRETATIVE
21 OPINIONS AND HEARINGS.--

22 A. The director may:

23 (1) issue forms and orders and, after notice
24 and comment, may adopt and amend rules necessary or
25 appropriate to carry out the New Mexico Uniform Securities

1 Act and may repeal rules, including rules and forms governing
2 registration statements, applications, notice filings,
3 reports and other records;

4 (2) by rule, define terms, whether or not
5 used in the New Mexico Uniform Securities Act, but those
6 definitions shall not be inconsistent with that act; and

7 (3) by rule, classify securities, persons
8 and transactions and adopt different requirements for
9 different classes.

10 B. Pursuant to the New Mexico Uniform Securities
11 Act, a rule or form shall not be adopted or amended, or an
12 order issued or amended, unless the director finds that the
13 rule, form, order or amendment is necessary or appropriate in
14 the public interest or for the protection of investors and is
15 consistent with the purposes intended by the New Mexico
16 Uniform Securities Act. In adopting a rule, the director may
17 use the director's own experience, technical competence,
18 specialized knowledge and judgment. In adopting, amending
19 and repealing rules and forms, Section 608 of the New Mexico
20 Uniform Securities Act applies in order to achieve uniformity
21 among the states and coordination with federal laws in the
22 form and content of registration statements, applications,
23 reports and other records, including the adoption of uniform
24 rules, forms and procedures.

25 C. Subject to Section 15(h) of the federal

1 Securities Exchange Act and Section 222 of the federal
2 Investment Advisers Act of 1940, the director may require
3 that a financial statement filed pursuant to the New Mexico
4 Uniform Securities Act be prepared in accordance with
5 generally accepted accounting principles in the United States
6 and comply with other requirements specified by rule adopted
7 or order issued pursuant to the New Mexico Uniform Securities
8 Act. A rule adopted or order issued pursuant to the New
9 Mexico Uniform Securities Act may establish:

10 (1) subject to Section 15(h) of the federal
11 Securities Exchange Act and Section 222 of the federal
12 Investment Advisers Act of 1940, the form and content of
13 financial statements required pursuant to the New Mexico
14 Uniform Securities Act;

15 (2) whether unconsolidated financial
16 statements shall be filed; and

17 (3) whether required financial statements
18 shall be audited by an independent certified public
19 accountant.

20 D. The director may provide interpretative
21 opinions or issue determinations that the director will not
22 institute a proceeding or an action pursuant to the New
23 Mexico Uniform Securities Act against a specified person for
24 engaging in a specified act, practice or course of business
25 if the determination is consistent with that act. A rule

1 adopted or order issued pursuant to the New Mexico Uniform
2 Securities Act may establish a reasonable charge for
3 interpretative opinions or determinations that the director
4 will not institute an action or a proceeding.

5 E. A civil or administrative penalty pursuant to
6 the New Mexico Uniform Securities Act shall not be imposed
7 for, and liability does not arise from, conduct that is
8 engaged in or omitted in good faith believing that conduct
9 conforms to a rule, form or order of the director pursuant to
10 the New Mexico Uniform Securities Act.

11 F. A hearing in an administrative proceeding
12 pursuant to the New Mexico Uniform Securities Act shall be
13 conducted in public unless the director for good cause
14 consistent with that act determines that the hearing will not
15 be so conducted.

16 Section 606. ADMINISTRATIVE FILES AND OPINIONS.--

17 A. The director shall maintain, or designate a
18 person to maintain, a register of applications for
19 registration of securities; registration statements; notice
20 filings; applications for registration of broker-dealers,
21 agents, investment advisers and investment adviser
22 representatives; notice filings by federal covered investment
23 advisers that are or have been effective pursuant to the New
24 Mexico Uniform Securities Act or the predecessor act; notices
25 of claims of exemption from registration or notice filing

1 requirements contained in a record; orders issued pursuant to
2 the New Mexico Uniform Securities Act or the predecessor act;
3 and interpretative opinions or no action determinations
4 issued pursuant to the New Mexico Uniform Securities Act.

5 B. The director shall make all rules, forms,
6 interpretative opinions and orders available to the public.

7 C. The director shall furnish a copy of a record
8 that is a public record or a certification that the public
9 record does not exist to a person that so requests. A rule
10 adopted pursuant to the New Mexico Uniform Securities Act may
11 establish a reasonable charge for furnishing the record or
12 certification. A copy of the record certified or a
13 certificate by the director of a record's nonexistence is
14 prima facie evidence of a record or its nonexistence.

15 Section 607. PUBLIC RECORDS--CONFIDENTIALITY.--

16 A. Except as otherwise provided in Subsection B of
17 this section, records obtained by the director or filed
18 pursuant to the New Mexico Uniform Securities Act, including
19 a record contained in or filed with a registration statement,
20 application, notice filing or report, are public records and
21 are available for public examination.

22 B. The following records are not public records
23 and are not available for public examination pursuant to
24 Subsection A of this section:

25 (1) a record obtained by the director in

1 connection with an audit or inspection pursuant to
2 Subsection D of Section 411 of the New Mexico Uniform
3 Securities Act or an investigation pursuant to Section 602 of
4 that act, except that information that is introduced at a
5 hearing constitutes public information unless otherwise
6 ordered by the director;

7 (2) a part of a record filed in connection
8 with a registration statement pursuant to Sections 301 and
9 303 through 305 of the New Mexico Uniform Securities Act or a
10 record pursuant to Subsection D of Section 411 of that act
11 that contains trade secrets or confidential information if
12 the person filing the registration statement or report has
13 asserted a claim of confidentiality or privilege that is
14 authorized by law;

15 (3) a record that is not required to be
16 provided to the director or filed pursuant to the New Mexico
17 Uniform Securities Act and is provided to the director only
18 on the condition that the record will not be subject to
19 public examination or disclosure;

20 (4) a nonpublic record received from a
21 person specified in Subsection A of Section 608 of the New
22 Mexico Uniform Securities Act; and

23 (5) any social security number, residential
24 address unless used as a business address and residential
25 telephone number unless used as a business telephone number

1 contained in a record that is filed.

2 C. If disclosure is for the purpose of a civil,
3 administrative or criminal investigation, action or
4 proceeding or to a person specified in Subsection A of
5 Section 608 of the New Mexico Uniform Securities Act, the
6 director may disclose a record obtained in connection with an
7 audit or inspection pursuant to Subsection D of Section 411
8 of that act or a record obtained in connection with an
9 investigation pursuant to Section 602 of that act.

10 Section 608. UNIFORMITY AND COOPERATION WITH OTHER
11 AGENCIES.--

12 A. The director may, in the director's discretion,
13 cooperate, coordinate, consult and, subject to Section 607 of
14 the New Mexico Uniform Securities Act, share records and
15 information with the securities regulator of another state,
16 Canada, a Canadian province or territory, a foreign
17 jurisdiction, the securities and exchange commission, the
18 United States department of justice, the commodity futures
19 trading commission, the federal trade commission, the
20 securities investor protection corporation, a self-regulatory
21 organization, a national or international organization of
22 securities regulators, a federal or state banking and
23 insurance regulator and a governmental law enforcement agency
24 to effectuate greater uniformity in securities matters among
25 the federal government, self-regulatory organizations, states

1 and foreign governments.

2 B. In cooperating, coordinating, consulting and
3 sharing records and information pursuant to this section and
4 in acting by rule, order or waiver pursuant to the New Mexico
5 Uniform Securities Act, the director shall, in the director's
6 discretion, take into consideration in carrying out the
7 public interest the following general policies:

8 (1) maximizing effectiveness of regulation
9 for the protection of investors;

10 (2) maximizing uniformity in federal and
11 state regulatory standards; and

12 (3) minimizing burdens on the business of
13 capital formation, without adversely affecting essentials of
14 investor protection.

15 C. The cooperation, coordination, consultation and
16 sharing of records and information authorized by this section
17 includes:

18 (1) establishing or employing one or more
19 designees as a central depository for registration and notice
20 filings pursuant to the New Mexico Uniform Securities Act and
21 for records required or allowed to be maintained pursuant to
22 that act;

23 (2) developing and maintaining uniform
24 forms;

25 (3) conducting a joint examination or

1 investigation;

2 (4) holding a joint administrative hearing;

3 (5) instituting and prosecuting a joint
4 civil or administrative proceeding;

5 (6) sharing and exchanging personnel;

6 (7) coordinating registrations pursuant to
7 Sections 301 and 401 through 404 of the New Mexico Uniform
8 Securities Act and exemptions pursuant to Section 203 of that
9 act;

10 (8) sharing and exchanging records, subject
11 to Section 607 of the New Mexico Uniform Securities Act;

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

14 (10) formulating common systems and
15 procedures;

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

18 (12) attending conferences and other
19 meetings among securities regulators, which may include
20 representatives of governmental and private sector
21 organizations involved in capital formation, deemed necessary
22 or appropriate to promote or achieve uniformity; and

23 (13) developing and maintaining a uniform
24 exemption from registration for small issuers and taking
25 other steps to reduce the burden of raising investment

1 capital by small businesses.

2 Section 609. JUDICIAL REVIEW.--

3 A. A final order issued by the director pursuant
4 to the New Mexico Uniform Securities Act is subject to
5 judicial review in accordance with the provisions of Section
6 39-3-1.1 NMSA 1978.

7 B. The filing of an appeal pursuant to Subsection
8 A of this section does not, unless specifically ordered by
9 the court, operate as a stay of the director's order or rule,
10 and the director may enforce or ask the court to enforce the
11 order pending the outcome of the review proceedings.

12 Section 610. JURISDICTION.--

13 A. Sections 301 and 302 of the New Mexico Uniform
14 Securities Act, Subsection A of Section 401 of that act,
15 Subsection A of Section 402 of that act, Subsection A of
16 Section 403 of that act, Subsection A of Section 404 of that
17 act and Sections 501, 506, 509 and 510 of that act do not
18 apply to a person that sells or offers to sell a security,
19 unless the offer to sell or the sale is made in New Mexico or
20 the offer to purchase or the purchase is made and accepted in
21 New Mexico.

22 B. Subsection A of Section 401 of the New Mexico
23 Uniform Securities Act, Subsection A of Section 402 of that
24 act, Subsection A of Section 403 of that act, Subsection A of
25 Section 404 of that act and Sections 501, 506, 509 and 510 of

1 that act do not apply to a person that purchases or offers to
2 purchase a security, unless the offer to purchase or the
3 purchase is made in New Mexico or the offer to sell or the
4 sale is made and accepted in New Mexico.

5 C. For the purpose of this section, an offer to
6 sell or to purchase a security is made in New Mexico, whether
7 or not either party is then present in New Mexico, if the
8 offer:

9 (1) originates from within New Mexico; or

10 (2) is directed by the offeror to a place in
11 New Mexico and received at the place to which it is directed.

12 D. For the purpose of this section, an offer to
13 purchase or to sell is accepted in New Mexico, whether or not
14 either party is then present in New Mexico, if the
15 acceptance:

16 (1) is communicated to the offeror in New
17 Mexico and the offeree reasonably believes the offeror to be
18 present in New Mexico and the acceptance is received at the
19 place in New Mexico to which it is directed; and

20 (2) has not previously been communicated to
21 the offeror, orally or in a record, outside New Mexico.

22 E. An offer to sell or to purchase is not made in
23 New Mexico when a publisher circulates or there is circulated
24 on the publisher's behalf in New Mexico a bona fide newspaper
25 or other publication of general, regular and paid circulation

1 that is not published in New Mexico, or that is published in
2 New Mexico but has had more than two-thirds of its
3 circulation outside New Mexico during the previous twelve
4 months or when a radio or television program or other
5 electronic communication, except specifically addressed
6 electronic mail or messaging, originating outside New Mexico
7 is received in New Mexico. A radio or television program or
8 other electronic communication is considered as having
9 originated in New Mexico if either the broadcast studio or
10 the originating source of transmission is located in New
11 Mexico, unless:

12 (1) the program or communication is
13 syndicated and distributed from outside New Mexico for
14 redistribution to the general public in New Mexico;

15 (2) the program or communication is supplied
16 by a radio, television or other electronic network with the
17 electronic signal originating from outside New Mexico for
18 redistribution to the general public in New Mexico;

19 (3) the program or communication is an
20 electronic communication that originates outside New Mexico
21 and is captured for redistribution to the general public in
22 New Mexico by a community antenna or cable, radio, cable
23 television or other electronic system; or

24 (4) the program or communication consists of
25 an electronic communication that originates in New Mexico,

1 but that is not intended for distribution to the general
2 public in New Mexico.

3 F. Subsection A of Section 403 of the New Mexico
4 Uniform Securities Act, Subsection A of Section 404 of that
5 act, Subsection A of Section 405 of that act and Sections
6 502, 505 and 506 of that act apply to a person if the person
7 engages in an act, practice or course of business
8 instrumental in effecting prohibited or actionable conduct in
9 New Mexico, whether or not either party is then present in
10 New Mexico.

11 Section 611. SERVICE OF PROCESS.--

12 A. A consent to service of process complying with
13 this section shall be signed and filed in the form required
14 by a rule or order pursuant to the New Mexico Uniform
15 Securities Act. A consent appointing the director as the
16 person's agent for service of process in a noncriminal action
17 or proceeding against the person, or the person's successor
18 or personal representative pursuant to the New Mexico Uniform
19 Securities Act or a rule adopted or order issued pursuant to
20 that act after the consent is filed, has the same force and
21 validity as if the service were made personally on the person
22 filing the consent. A person that has filed a consent
23 complying with this subsection in connection with a previous
24 application for registration or notice filing need not file
25 an additional consent.

1 B. If a person, including a nonresident of New
2 Mexico, engages in an act, practice or course of business
3 prohibited or made actionable by the New Mexico Uniform
4 Securities Act or a rule adopted or order issued pursuant to
5 that act and the person has not filed a consent to service of
6 process pursuant to Subsection A of this section, the act,
7 practice or course of business constitutes the appointment of
8 the director as the person's agent for service of process in
9 a noncriminal action or proceeding against the person or the
10 person's successor or personal representative.

11 C. Service pursuant to Subsection A or B of this
12 section may be made by providing a copy of the process to the
13 office of the director, but it is not effective unless:

14 (1) the plaintiff, which may be the
15 director, promptly sends notice of the service and a copy of
16 the process, return receipt requested, to the defendant or
17 respondent at the address set forth in the consent to service
18 of process or, if a consent to service of process has not
19 been filed, at the last known address, or takes other
20 reasonable steps to give notice; and

21 (2) the plaintiff files an affidavit of
22 compliance with this subsection in the action or proceeding
23 on or before the return day of the process, if any, or within
24 the time that the court, or the director in a proceeding
25 before the director, allows.

1 Uniform Securities Act, whichever is earlier.

2 B. All effective registrations pursuant to the
3 predecessor act, all administrative orders relating to the
4 registrations, rules, statements of policy, interpretative
5 opinions, declaratory rulings, no action determinations and
6 conditions imposed on the registrations pursuant to the
7 predecessor act remain in effect while they would have
8 remained in effect if the New Mexico Uniform Securities Act
9 had not been enacted. They are considered to have been
10 filed, issued or imposed pursuant to the New Mexico Uniform
11 Securities Act, but are exclusively governed by the
12 predecessor act.

13 C. The predecessor act exclusively applies to an
14 offer or sale made within one year after the effective date
15 of the New Mexico Uniform Securities Act pursuant to an
16 offering made in good faith before the effective date of the
17 New Mexico Uniform Securities Act on the basis of an
18 exemption available pursuant to the predecessor act.

19 Section 702. TEMPORARY PROVISION--TRANSFER OF FUNDS.--
20 On the effective date of this act, all money in the
21 securities education and training fund shall be transferred
22 to the securities enforcement and investor education fund.

23 Section 703. REPEAL.--Sections 58-13B-1
24 through 58-13B-57 NMSA 1978 (being Laws 1986, Chapter 7,
25 Sections 1 through 56, and Laws 1989, Chapter 176, Section 9,

