

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 658

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MURRAY RYAN

AN ACT

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

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

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

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

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

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

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- (1) a sales representative;
- (2) an issuer, except when effecting transactions other than with respect to its own securities;
- (3) a depository institution when acting on its own account or when exercising trust or fiduciary powers permitted for ~~[such]~~ a depository ~~[institutions under]~~ institution pursuant to applicable state or federal laws and regulations providing for the organization, operation, supervision and examination of ~~[such]~~ the depository institution; or
- (4) any other person as the director by rule or order designates;

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

D. "depository institution":

(1) means:

~~[(1)]~~ (a) a person ~~[which]~~ that is organized, chartered or holding an authorization certificate under the laws of a state or of the United States ~~[which]~~ that authorizes the person to receive deposits, including a savings, share, certificate or deposit account, ~~[and which]~~ is regulated, supervised and examined for the protection of depositors by an

Underscored material = new
[bracketed material] = delete

1 official or agency of a state or the United States and is
2 insured by the federal depository insurance corporation, the
3 federal savings and loan insurance corporation or the national
4 credit union share insurance fund; and

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

11 (2) [~~"Depository institution"~~] does not include
12 an insurance company or other organization primarily engaged in
13 the insurance business or a Morris plan bank, industrial loan
14 company or a similar bank or company;

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

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

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

.113867.1

Underscored material = new
[bracketed material] = delete

1 date of notice of the deficiency:

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

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

8 (1) a depository institution;

9 (2) an insurance company;

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

11 (4) an investment company as defined in the

12 Investment Company Act of 1940;

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

15 (a) [~~if~~] the plan has total assets in
16 excess of five million dollars (\$5,000,000); or

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

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

.113867.1

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

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

7 [~~H.~~] J. "fraud", "deceit" and "defraud" are not
8 limited to common-law fraud or deceit;

9 [~~J.~~] K. "guaranteed" means guaranteed as to payment
10 of principal, interest and dividends;

11 [~~K.~~] L. "insured" means insured as to payment of
12 principal, interest and dividends;

13 [~~L.~~] M. "investment adviser":

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

20 (2) does not include:

21 [~~(1)~~] (a) an investment adviser
22 representative;

23 [~~(2)~~] (b) a depository institution when
24 acting on its own account or when exercising trust or fiduciary
25 powers permitted for such depository institutions under

Underscored material = new
[bracketed material] = delete

1 applicable state or federal laws and regulations providing for
2 the organization, operation, supervision and examination of such
3 depository institution;

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

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

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

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

23 [~~(M-)~~ N. "investment adviser representative" means a
24 natural person other than an investment adviser who, whether as
25 an employee or in the form of a professional corporation is

1 under the direct supervision of an investment adviser and
2 engages in the business of advising others as to the value of
3 securities or ~~[as to]~~ about the advisability of investing in,
4 purchasing or selling securities, or who, for compensation and
5 as part of a regular business, issues or promulgates analyses or
6 reports concerning securities;

7 [N.] 0. "issuer" means a person that issues or
8 proposes to issue a security, except that:

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

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

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

Underscored material = new
[bracketed material] = delete

1 ~~[Q.]~~ P. "non-issuer transaction" means a transaction
2 not directly or indirectly for the benefit of the issuer;

3 ~~[P.]~~ Q. "person" means a ~~[natural person,~~
4 ~~corporation, business trust, estate, trust, partnership, limited~~
5 ~~liability company, association, joint venture, government in its~~
6 ~~private or public capacity, governmental subdivision or agency~~
7 ~~or any other]~~ legal ~~[or commercial]~~ entity;

8 ~~[Q.]~~ R. "price amendment" means the amendment to a
9 registration statement filed under the Securities Act of 1933
10 or, if no amendment is filed, the prospectus or prospectus
11 supplement filed under the Securities Act of 1933, ~~[which]~~ that
12 includes a statement of the offering price, underwriting and
13 selling discounts or commissions, amount of proceeds, conversion
14 rates, call prices and other matters dependent upon the offering
15 price;

16 ~~[R.]~~ S. "promoter" includes:

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

21 (2) an officer or director or person of similar
22 status or function owning any securities of an issuer or any
23 security holder who owns, beneficially or of record, ten percent
24 or more of any class of securities of the issuer if the officer,
25 director, person of similar status or security holder acquires

Underscored material = new
[bracketed material] = delete

1 any of those securities in a transaction which does not possess
2 the indicia of arm's-length bargaining or which is otherwise
3 unfair to the issuer; or

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

9 ~~[S.]~~ T. the following words and phrases have the
10 indicated meanings:

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

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

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

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

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

Underscored material = new
[bracketed material] = delete

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

7 U. ~~[(7)]~~ the terms defined in ~~[this]~~ Subsection T of
8 this section do not include the creation of security interest or
9 a loan of a security; a stock dividend, whether the corporation
10 distributing the dividend is the issuer of the stock or not, if
11 nothing of value is given by stockholders for the dividend other
12 than the surrender of a right to a cash or property dividend and
13 each stockholder may elect to take the dividend in cash,
14 property or stock; or an act incident to a judicially approved
15 reorganization in which a security is issued in exchange for one
16 or more outstanding securities, claims or property interests, or
17 partly in exchange and partly for cash, ~~Provided, however,~~
18 ~~that]~~ but the terms contained in this ~~[paragraph]~~ subsection are
19 within the meaning of ~~[this]~~ Subsection T of this section for
20 the purpose of Section 58-13B-30 NMSA 1978;

21 ~~[T.]~~ V. "sales representative" means an individual
22 other than a broker-dealer, whether as an employee or in the
23 form of a professional corporation, authorized to act and acting
24 for a broker-dealer or issuer in effecting or attempting to
25 effect purchases or sales of securities. A partner, officer or

Underscored material = new
[bracketed material] = delete

1 director of a broker-dealer or issuer, or a person occupying a
2 similar status or performing similar functions, is a sales
3 representative only if that person otherwise comes within the
4 definition;

5 [U-] W. "Securities Act of 1933", "Securities
6 Exchange Act of 1934", "Public Utility Holding Company Act of
7 1935", "Investment Company Act of 1940", "Investment Advisers
8 Act of 1940", "Employee Retirement Income Security Act of 1974",
9 "National Housing Act" and "Commodity Exchange Act" mean the
10 federal statutes of those names as amended before or after the
11 effective date of the New Mexico Securities Act of 1986;

12 [V-] X. unless the context requires otherwise,
13 "security" means a note; stock; treasury stock; bond; debenture;
14 evidence of indebtedness; certificate of interest or
15 participation in any profit-sharing agreement; any limited
16 partnership interest; any interest in a limited liability
17 company; collateral-trust certificate; preorganization
18 certificate or subscription; transferable share; investment
19 contract; voting-trust certificate; certificate of deposit for a
20 security; any interest in oil, gas or other mineral rights; any
21 put, call, straddle or option entered into on a national
22 securities exchange relating to foreign currency; any put, call,
23 straddle or option on any security, certificate of deposit or
24 group or index of securities, including any interest therein or
25 based on the value thereof; or, in general, any interest or

.113867.1

Underscored material = new
[bracketed material] = delete

1 instrument commonly known as a security or any certificate of
2 interest or participation in, temporary or interim certificate
3 for, receipt for, guarantee of or warrant or right to subscribe
4 to or purchase any of the foregoing. "Security" does not
5 include landowner royalties in the production of oil, gas or
6 other minerals created through the execution of a lease of the
7 lessor's mineral interest;

8 [W-] Y. "self-regulatory organization" means a
9 national securities exchange registered under Section 6 of the
10 Securities Exchange Act of 1934, a national securities
11 association of brokers and dealers registered under Section 15A
12 of the Securities Exchange Act of 1934, a clearing agency
13 registered under Section 17A of [~~the Securities Exchange~~] that
14 act [~~of 1934~~] and the municipal securities rulemaking board
15 established under Section 15B(b)(1) of [~~the Securities Exchange~~]
16 that act [~~of 1934~~];

17 [X-] Z. "state" means a state, commonwealth,
18 territory or possession of the United States, the District of
19 Columbia and the commonwealth of Puerto Rico; and

20 [Y-] AA. "underwriter" means any person who has
21 purchased from an issuer with the intent to offer or sell a
22 security or to distribute any security, or participates or has a
23 direct or indirect participation in any [~~such~~] the undertaking,
24 or participates or has a participation in the direct or indirect
25 underwriting of any [~~such~~] the undertaking; but the term does

Underscored material = new
[bracketed material] = delete

1 not include a person whose interest is limited to a commission
2 from an underwriter or dealer not in excess of the usual and
3 customary distributors' or sellers' commission. As used in this
4 subsection, the term "issuer" [~~shall include~~] includes, in
5 addition to an issuer, any person directly or indirectly
6 controlling or controlled by the issuer, or any person under
7 direct or indirect common control with the issuer."

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

10 "58-13B-5. INVESTMENT ADVISER AND INVESTMENT ADVISER
11 REPRESENTATIVE LICENSING. --

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

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

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

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

25 (4) the person is excepted from the definition

Underscored material = new
[bracketed material] = delete

1 of investment adviser under Section 202(a)(11) of the Investment
2 Advisers Act of 1940; or

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

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

15 C. Except with respect to investment advisers whose
16 only clients are those described in Subsection A of Section
17 58-13B-6 NMSA 1978, it is unlawful for any person who is
18 registered or required to be registered under Section 203 of the
19 Investment Advisers Act of 1940 as an investment adviser to
20 conduct advisory business in this state unless such person files
21 such documents filed with the United States securities and
22 exchange commission with the director as the director may by
23 rule or by order require, and a fee and consent to service of
24 process, as the director, by rule or by order, may require.
25 Until October 11, 1999 the director may require any person who

.113867.1

Underscored material = new
[bracketed material] = delete

1 is required to pay a fee pursuant to this subsection and who
2 fails or refuses to pay such fee to be licensed as an investment
3 adviser."

4 Section 3. Section 58-13B-6 NMSA 1978 (being Laws 1986,
5 Chapter 7, Section 6) is amended to read:

6 "58-13B-6. EXEMPT INVESTMENT ADVISERS AND INVESTMENT
7 ADVISER REPRESENTATIVES. --The following investment advisers and
8 investment adviser representatives are exempt from the licensing
9 requirements of Section [~~5 of the New Mexico Securities Act of~~
10 ~~1986~~] 58-13B-5 NMSA 1978:

11 A. an investment adviser who is registered as an
12 investment adviser under the Investment Advisers Act of 1940 or
13 an investment adviser who is registered under the laws of the
14 state where its principal place of business is located if:

15 (1) its only clients in this state are other
16 investment advisers, broker-dealers or financial or
17 institutional investors; or

18 (2) the investment adviser has no place of
19 business in this state and the investment adviser during any
20 twelve consecutive months [~~does not direct business~~
21 ~~communications in this state to more than five present or~~
22 ~~prospective~~] has fewer than six clients other than those
23 specified in Paragraph (1) of this subsection, [~~whether or not~~
24 ~~the person or client to whom the communication is directed is~~
25 ~~present in this state~~] who are residents of New Mexico;

Underscored material = new
[bracketed material] = delete

1 B. investment adviser representatives if the
2 investment adviser by whom they are employed is exempt under
3 Subsection A of this section; and

4 C. other investment advisers and investment adviser
5 representatives the director by rule or order exempts. "

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

8 "58-13B-7. PROOF OF EXEMPTION. --

9 A. If, at any time, the director has reason to
10 believe that any person claiming to be exempt from, or otherwise
11 not subject to, licensing as a broker-dealer, sales
12 representative, investment adviser or investment adviser
13 representative under Section [~~4 or 6 of the New Mexico~~
14 ~~Securities Act of 1986~~] 58-13B-4 or 58-13B-6 NMSA 1978 is not
15 entitled to that exemption or is otherwise required to be
16 licensed, the director may, by written notice, require that
17 person to:

18 (1) file a consent to service of process in
19 accordance with Section [~~50 of that act~~] 58-13B-50 NMSA 1978;
20 and

21 (2) furnish evidence satisfactory to the
22 director confirming that the person is exempt under Section [~~4~~
23 ~~or 6 of that act~~] 58-13B-4 or 58-13B-6 NMSA 1978 or is otherwise
24 not subject to licensure or, if satisfactory evidence is not or
25 cannot be furnished, the director may require that person to be

.113867.1

Underscored material = new
[bracketed material] = delete

1 licensed as a broker-dealer, sales representative, investment
2 adviser or investment adviser representative.

3 B. It is unlawful for any person notified pursuant
4 to Subsection A of this section to initiate any further business
5 transactions in this state as a broker-dealer, sales
6 representative, investment adviser or investment adviser
7 representative until evidence satisfactory to the director is
8 furnished or the person becomes licensed as a broker-dealer,
9 sales representative, investment adviser or investment adviser
10 representative. The provisions of Section ~~[53 of the New Mexico~~
11 ~~Securities Act of 1986]~~ 58-13B-53 NMSA 1978 shall govern all
12 subsequent proceedings pursuant to this subsection.

13 C. The director may examine the records or require
14 copies to be provided to him of any broker-dealer, sales
15 representative, investment adviser or investment adviser
16 representative to whom the director proposes to issue or has
17 issued a notice pursuant to Subsection A of this section. "

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

20 "58-13B-13. POST-LICENSING REQUIREMENTS. --

21 A. The director shall by rule require:

22 (1) a licensed broker-dealer to maintain:

23 (a) minimum net capital not to exceed the
24 limitations of Section 15 of the Securities Exchange Act of
25 1934; and

.113867.1

Underscored material = new
[bracketed material] = delete

1 (b) a prescribed ratio between net
2 capital and aggregate indebtedness. The minimum net capital and
3 net capital to aggregate indebtedness ratio may vary with type
4 or class of broker-dealer; and

5 (2) a licensed investment adviser to maintain a
6 minimum net worth not to exceed the limitations of Section 222
7 of the Investment Advisers Act of 1940

8 B. If a licensed broker-dealer or investment adviser
9 knows or has reasonable cause to know that any requirement
10 imposed on it under Subsection A of this section is not being
11 met, it shall promptly notify the director of its current
12 financial condition.

13 C. The director may by rule require the furnishing
14 of a fidelity bond from a broker-dealer, sales representative,
15 investment adviser or investment adviser representative.

16 D. A licensed broker-dealer or investment adviser
17 shall file financial and other reports as the director
18 determines by rule or order are necessary.

19 E. Unless the director adopts by rule a special
20 reporting requirement, compliance with the financial reporting
21 requirements of the Securities Exchange Act of 1934, in the case
22 of a broker-dealer, or the Investment Advisers Act of 1940, in
23 the case of an investment adviser, shall satisfy the
24 requirements with regard to the filing of financial reports
25 pursuant to Subsection D of this section.

Underscored material = new
[bracketed material] = delete

1 F. A licensed broker-dealer, sales representative,
2 investment adviser or investment adviser representative shall
3 make and maintain records as the director determines by rule are
4 necessary or appropriate.

5 G. [~~Unless the director adopts by rule a special~~
6 ~~record-keeping requirement,~~] Compliance with the record-keeping
7 requirements of the Securities Exchange Act of 1934, in the case
8 of a broker-dealer, or the Investment Advisers Act of 1940, in
9 the case of an investment adviser, shall satisfy the
10 requirements of Subsection F of this section. Compliance by an
11 investment adviser, if registered or licensed pursuant to the
12 laws of the state where it maintains its principal place of
13 business, with the record-keeping requirements of that state
14 also satisfies the requirements of Subsection F of this section.

15 H. Required records may be maintained in computer or
16 microfilm format or any other form of data storage, provided
17 that the records are readily accessible to the director.

18 I. Required records shall be preserved for five
19 years unless the director by rule specifies either a longer or
20 shorter period for a particular type or class of records.

21 J. If the information contained in a document filed
22 with the director as part of the application for licensing or
23 under this section, except information the director by rule or
24 order excludes, is or becomes inaccurate or incomplete in a
25 material respect, the licensed person shall promptly file

Underscored material = new
[bracketed material] = delete

1 correcting information, unless notification of termination has
2 been given under Subsection E or G of Section ~~[11 of the New~~
3 ~~Mexico Securities Act of 1986]~~ 58-13B-11 NMSA 1978. "

4 Section 6. Section 58-13B-20 NMSA 1978 (being Laws 1986,
5 Chapter 7, Section 20) is amended to read:

6 "58-13B-20. REGISTRATION REQUIREMENT. --It is unlawful for
7 a person to offer to sell or sell any security in ~~[this state]~~
8 New Mexico unless:

9 A. the security is registered under the New Mexico
10 Securities Act of 1986; ~~[or]~~

11 B. the security or transaction is exempt under that
12 act; or

13 C. the security is a federal covered security."

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

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

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

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

Underscored material = new
[bracketed material] = delete

1 statement shall pay a filing fee of:

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

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

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

17 (1) a fee of five hundred dollars (\$500) at the
18 time of filing; and

19 (2) within sixty days after the registrant's
20 fiscal year during which its registration statement is
21 effective, a fee of two thousand dollars (\$2,000) or file a
22 report on a form the director by rule adopts, specifying its
23 sale of securities to persons in this state during the fiscal
24 year and pay a fee of one-tenth of one percent of the aggregate
25 sale price of the securities sold to persons in the state, but

Underscored material = new
[bracketed material] = delete

1 the latter fee shall not be less than three hundred fifty
2 dollars (\$350) or more than two thousand five hundred dollars
3 (\$2,500).

4 D. Except as permitted otherwise by Subsection C of
5 this section, a registration statement must specify the amount
6 of securities to be offered in [~~this state~~] New Mexico and:

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

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

14 E. A document filed under the New Mexico Securities
15 Act of 1986 or a predecessor act, within five years before the
16 filing of a registration statement, may be incorporated by
17 reference in the registration statement if the document is
18 currently accurate.

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

22 G. In the case of a non-issuer offering, the
23 director may not require information under Section 58-13B-23
24 NMSA 1978 or Subsection M of this section unless it is known to
25 the person filing the registration statement or to the persons

1 on whose behalf the offering is to be made, or can be furnished
2 by them without unreasonable effort or expense.

3 H. In the case of a registration under Section
4 58-13B-22 or 58-13B-23 NMSA 1978 by an issuer who has no public
5 market for its shares and no significant earnings from
6 continuing operations during the last five years or any shorter
7 period of its existence, the director by rule or order may
8 require as a condition of registration that the following
9 securities be deposited in escrow for not more than three years:

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

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

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

23 I. The director by rule or order may require as a
24 condition of registration under Section 58-13B-22 or 58-13B-23
25 NMSA 1978 that the proceeds from the sale of the registered

1 security in [~~this state~~] New Mexico be impounded until the
2 issuer receives a specified amount from the sale of the
3 security. The director by rule or order may determine the
4 conditions of an impoundment arrangement required under this
5 subsection, but the director may not reject a depository solely
6 because of its location in another state.

7 J. If a security is registered pursuant to Section
8 58-13B-21 or 58-13B-22 NMSA 1978, the prospectus filed under the
9 Securities Act of 1933 shall be delivered to each purchaser in
10 accordance with the prospectus delivery requirements of the
11 Securities Act of 1933. With respect to a security registered
12 under Section 58-13B-21 or 58-13B-22 NMSA 1978, the director by
13 rule or order may require the delivery of other material
14 documents or information to each purchaser concurrent with or
15 prior to the delivery of the prospectus.

16 K. If a security is registered pursuant to Section
17 58-13B-23 NMSA 1978, an offering document containing
18 information the director by rule or order designates shall be
19 delivered to each purchaser with or before the earliest of:

20 (1) the first written offer made to the
21 purchaser by or for the account of the issuer or another person
22 on whose behalf the offering is being made or by an underwriter
23 or broker-dealer who is offering part of an unsold allotment or
24 subscription taken by it as a participant in the distribution;

25 (2) confirmation of a sale made by or for the

Underscored material = new
[bracketed material] = delete

1 account of a person named in Paragraph (1) of this subsection;

2 (3) payment pursuant to a sale; or

3 (4) delivery pursuant to a sale.

4 L. A registration statement remains effective for
5 one year after its effective date unless the director by rule or
6 order extends the period of effectiveness. All outstanding
7 securities of the same class as a registered security are
8 considered to be registered for the purpose of a non-issuer
9 transaction while the registration statement is effective,
10 unless the director by rule or order provides otherwise. A
11 registration statement may not be withdrawn after its effective
12 date if any of the securities registered have been sold in ~~this~~
13 ~~state]~~ New Mexico, unless the director by rule or order provides
14 otherwise. No registration statement is effective while a stop
15 order is in effect under Subsection A of Section 58-13B-25 NMSA
16 1978.

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

24 N. A registration statement filed under Section
25 58-13B-21 or 58-13B-22 NMSA 1978 may be amended after its

Underscored material = new
[bracketed material] = delete

1 effective date to increase the securities specified to be
2 offered and sold. The amendment becomes effective upon filing
3 of the amendment and payment of an additional filing fee which
4 shall be three times the fee otherwise payable, calculated in
5 the manner specified in Subsection B of this section, with
6 respect to the additional securities to be offered and sold.
7 The effectiveness of the amendment relates back to the date or
8 dates of sale of the additional securities being registered.

9 0. A registration statement filed under Section
10 58-13B-23 NMSA 1978 may be amended after its effective date to
11 increase the securities specified to be offered and sold,
12 provided that the public offering price and underwriters'
13 discounts and commissions are not changed from the respective
14 amounts of which the director was informed. The amendment
15 becomes effective when the director so orders and relates back
16 to the date of sale of the additional securities being
17 registered. A person filing an amendment shall pay an
18 additional filing fee which shall be three times the fee
19 otherwise payable, calculated in the manner specified in
20 Subsection B of this section, with respect to the additional
21 securities to be offered and sold.

22 P. Pursuant to Section 106(c) of the federal
23 Secondary Mortgage Market Enhancement Act of 1984, any
24 securities which are offered and sold pursuant to Section 4 (5)
25 of the Securities Act of 1933 or that are mortgage-related

.113867.1

Underscored material = new
[bracketed material] = delete

1 securities, as that term is defined in Section 3 (a) (41) of the
2 Securities Exchange Act of 1934, being 15 U. S. C. 78c (a) (41),
3 are required to comply with all applicable registration and
4 qualification requirements of the New Mexico Securities Act of
5 1986 and the rules under that act and shall not be treated as
6 obligations issued by the United States for purposes of that
7 act.

8 Q. The director, by rule or by order, may require
9 the filing of any or all of the following items with respect to
10 a federal covered security under Section 18(b)(2) of the
11 Securities Act of 1933:

12 (1) prior to the initial offer of such federal
13 covered security in New Mexico, all documents that are part of a
14 current federal registration statement filed with the United
15 States securities and exchange commission under the Securities
16 Act of 1933, together with a consent to service of process
17 signed by the issuer and with a notification fee in an amount
18 equal to that which the person would have paid to register or
19 claim an appropriate exemption if the security were not a
20 federal covered security:

21 (2) after the initial offer of such federal
22 covered security in New Mexico, all documents that are part of
23 an amendment to a current federal registration statement filed
24 with the United States securities and exchange commission under
25 the Securities Act of 1933; or

.113867.1

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

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

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

20 T. The director may issue a stop order suspending
21 the offer and sale of a federal covered security, except a
22 federal covered security under Section 18(b)(1) of the
23 Securities Act of 1933, if he finds that:

- 24 (1) the order is in the public interest; and
25 (2) there is a failure to comply with any

Underscored material = new
[bracketed material] = delete

1 condition established under this section.

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

4 Section 8. Section 58-13B-28 NMSA 1978 (being Laws 1986,
5 Chapter 7, Section 28, as amended) is amended to read:

6 "58-13B-28. PROVISIONS APPLICABLE TO EXEMPTIONS
7 GENERALLY. --

8 A. The director by order may deny or revoke an
9 exemption specified in Section 58-13B-26 or 58-13B-27 NMSA 1978
10 with respect to a specific security or transaction if the
11 director reasonably believes, after inquiry, that there is about
12 to be or has been a violation of the New Mexico Securities Act
13 of 1986 and that the action is necessary or appropriate for the
14 protection of investors. Following entry of any such order, the
15 procedures set forth in Section 58-13B-53 NMSA 1978 shall be
16 followed. No order under this subsection may operate
17 retroactively.

18 B. In any civil, criminal or administrative
19 proceeding under that act, the burden of proving an exemption or
20 an exception from a definition or status as a federal covered
21 security is upon the person claiming it.

22 C. The director may by rule require notice of filing
23 for any exemption contained in Section 58-13B-26 or 58-13B-27
24 NMSA 1978, and may require payment of a fee not to exceed three
25 hundred fifty dollars (\$350) for any such notice of filing,

Underscored material = new
[bracketed material] = delete

1 except that no fee shall be required for filing a notice of
2 exemption pursuant to Subsection K of Section 58-13B-27 NMSA
3 1978 of that act.

4 D. The director is authorized to promulgate by rule
5 a limited offering transactional exemption which shall further
6 the objectives of compatibility with the exemptions from
7 securities registration authorized by Section 19(c)(3)(C) of the
8 Securities Act of 1933 and uniformity among the states. Such
9 exemption shall be subject to such restrictions as to number of
10 purchasers, investor suitability, disclosure of investment
11 information and other restrictions as the director may determine
12 are necessary for the protection of investors. The director may
13 impose conditions with respect to persons or issuers who by
14 reason of prior misconduct will not be eligible to utilize this
15 exemption. Any person claiming this exemption shall file notice
16 with the director of such claim and shall pay a fee of three
17 hundred fifty dollars (\$350).

18 E. The director by rule may exempt any other class
19 of securities or transactions from Sections 58-13B-20 and
20 58-13B-29 NMSA 1978. Exemptions shall be subject to
21 restrictions and conditions imposed by rule as the director may
22 determine are necessary for the protection of investors."

23 Section 9. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 1997.

State of New Mexico
House of Representatives

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 19, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 658

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

Respectfully submitted,

Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Alwin, King, Luna, Rios, Sanchez

Absent: None

M \H0658

Underscored material = new
[bracketed material] = delete