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SENATE BILL 362

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Peter Wirth

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

Section 102. [NEW MATERIAL] 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

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

10 B. "bank" means:

11 (1) a banking institution organized pursuant
12 to the laws of the United States;

13 (2) a member bank of the federal reserve
14 system;

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

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

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

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

- 19 (4) an international banking institution; or
- 20 (5) a person excluded by rule adopted or order
21 issued pursuant to the New Mexico Uniform Securities Act;

22 D. "depository institution" means:

- 23 (1) a bank; or
- 24 (2) a savings institution, trust company,
25 credit union or similar institution that is organized or

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1 chartered pursuant to the laws of a state or of the United
2 States, authorized to receive deposits and supervised and
3 examined by an official or agency of a state or the United
4 States if its deposits or share accounts are insured to the
5 maximum amount authorized by statute by the federal deposit
6 insurance corporation, the national credit union share
7 insurance fund or a successor authorized by federal law, or a
8 receiver, conservator or other liquidating agent of such
9 institutions or entities. "Depository institution" does not
10 include:

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

13 (b) a Morris plan bank; or

14 (c) an industrial loan company that is
15 not an "insured depository institution" as defined in Section
16 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C.
17 1813(c)(2), or any successor federal statute;

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

20 F. "division" means the securities division of the
21 regulation and licensing department, which for purposes of
22 administering the provisions of the New Mexico Uniform
23 Securities Act and conducting investigations of violations of
24 that act shall be considered a law enforcement agency;

25 G. "federal covered investment adviser" means a

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1 person registered pursuant to the federal Investment Advisers
2 Act of 1940;

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

8 I. "filing" means the receipt pursuant to the New
9 Mexico Uniform Securities Act of a record by the director, or a
10 designee of the director, in a form and format designated by
11 the director;

12 J. "fraud", "deceit" and "defraud" are not limited
13 to common law deceit;

14 K. "guaranteed" means guaranteed as to payment of
15 all principal and all interest;

16 L. "institutional investor" means any of the
17 following, whether acting for itself or for others in a
18 fiduciary capacity:

19 (1) a depository institution or international
20 banking institution;

21 (2) an insurance company;

22 (3) a separate account of an insurance
23 company;

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

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

3 (6) an employee pension, profit-sharing or
4 benefit plan if the plan has total assets in excess of ten
5 million dollars (\$10,000,000) or its investment decisions are
6 made by a named fiduciary, as defined in the federal Employee
7 Retirement Income Security Act of 1974, that is a broker-dealer
8 registered pursuant to the federal Securities Exchange Act of
9 1934, an investment adviser registered or exempt from
10 registration pursuant to the federal Investment Advisers Act of
11 1940, an investment adviser registered pursuant to the New
12 Mexico Uniform Securities Act, a depository institution or an
13 insurance company;

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

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1 to the New Mexico Uniform Securities Act, a depository
2 institution or an insurance company;

3 (8) a trust, if it has total assets in excess
4 of ten million dollars (\$10,000,000), its trustee is a
5 depository institution and its participants are exclusively
6 plans of the types identified in Paragraph (6) or (7) of this
7 subsection, regardless of the size of their assets, except a
8 trust that includes as participants self-directed individual
9 retirement accounts or similar self-directed plans;

10 (9) an organization described in Section
11 501(c)(3) of the federal Internal Revenue Code of 1986 (26
12 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or
13 similar business trust, limited liability company or
14 partnership, not formed for the specific purpose of acquiring
15 the securities offered, with total assets in excess of ten
16 million dollars (\$10,000,000);

17 (10) a small business investment company
18 licensed by the small business administration pursuant to
19 Section 301(c) of the federal Small Business Investment Act of
20 1958 (15 U.S.C. Section 681(c)) with total assets in excess of
21 ten million dollars (\$10,000,000);

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

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1 (12) a federal covered investment adviser
2 acting for its own account;

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

7 (14) a "major U.S. institutional investor" as
8 defined in Rule 15a-6(b)(4)(i)(17 C.F.R. 240.15a-6) adopted
9 pursuant to the federal Securities Exchange Act of 1934;

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

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

18 M. "insurance company" means a company organized as
19 an insurance company whose primary business is writing
20 insurance or reinsuring risks underwritten by insurance
21 companies and that is subject to supervision by the insurance
22 commissioner or a similar official or agency of a state;

23 N. "insured" means insured as to payment of all
24 principal and all interest;

25 O. "international banking institution" means an

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1 international financial institution of which the United States
2 is a member and whose securities are exempt from registration
3 pursuant to the federal Securities Act of 1933;

4 P. "investment adviser" means a person that, for
5 compensation, engages in the business of advising others,
6 either directly or through publications or writings, as to the
7 value of securities or the advisability of investing in,
8 purchasing or selling securities or that, for compensation and
9 as a part of a regular business, issues or promulgates analyses
10 or reports concerning securities. "Investment adviser"
11 includes a financial planner or other person that, as an
12 integral component of other financially related services,
13 provides investment advice to others for compensation as part
14 of a business or that holds itself out as providing investment
15 advice to others for compensation. "Investment adviser" does
16 not include:

17 (1) an investment adviser representative;
18 (2) a lawyer, accountant, engineer or teacher
19 whose performance of investment advice is solely incidental to
20 the practice of the person's profession;

21 (3) a broker-dealer or its agents whose
22 performance of investment advice is solely incidental to the
23 conduct of business as a broker-dealer and that does not
24 receive special compensation for the investment advice;

25 (4) a publisher, employee or columnist of a

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1 bona fide newspaper, news magazine or business or financial
2 publication of general and regular circulation or an owner
3 operator, producer or employee of a cable, radio or television
4 network, station or production facility, if, in either case:

5 (a) the financial or business news or
6 advice is contained in a publication or broadcast disseminated
7 to the general public; and

8 (b) the content does not consist of
9 rendering advice on the basis of the specific investment
10 situation of each client;

11 (5) a federal covered investment adviser;

12 (6) a bank or a savings institution described
13 in Paragraph (2) of Subsection D of this section; or

14 (7) any other person excluded by rule adopted
15 or order issued pursuant to the New Mexico Uniform Securities
16 Act;

17 Q. "investment adviser representative" means an
18 individual employed by or associated with an investment adviser
19 or federal covered investment adviser and who makes any
20 recommendations or otherwise gives investment advice regarding
21 securities, manages accounts or portfolios of clients,
22 determines which recommendation or advice regarding securities
23 should be given, provides investment advice or holds herself or
24 himself out as providing investment advice, receives
25 compensation to solicit, offer or negotiate for the sale of or

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1 for selling investment advice or supervises employees who
2 perform any of the foregoing. "Investment adviser
3 representative" does not include an individual who:

4 (1) performs only clerical or ministerial
5 acts;

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

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

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

20 (b) not a supervised person as
21 "supervised person" is defined in Section 202(a)(25) of the
22 federal Investment Advisers Act of 1940 (15 U.S.C. Section
23 80b-2(a)(25)); or

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

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

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

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

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

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

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1 T. "nonissuer transaction" or "nonissuer
2 distribution" means a transaction or distribution not directly
3 or indirectly for the benefit of the issuer;

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

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

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

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

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

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1 otherwise communicates with customers or clients;

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

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

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

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

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1 BB. "sale" includes every contract of sale,
2 contract to sell or disposition of a security or interest in a
3 security for value, and "offer to sell" includes every attempt
4 or offer to dispose of, or solicitation of an offer to
5 purchase, a security or interest in a security for value. Both
6 terms include:

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

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

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

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

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

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1 contract; voting trust certificate; certificate of deposit for
2 a security; fractional undivided interest in oil, gas or other
3 mineral rights; put, call, straddle, option or privilege on a
4 security, certificate of deposit or group or index of
5 securities, including an interest therein or based on the value
6 thereof; put, call, straddle, option or privilege entered into
7 on a national securities exchange relating to foreign currency;
8 or, in 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 of
11 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 endowment
16 policy or annuity contract pursuant to which an insurance
17 company promises to pay a fixed or variable sum of money either
18 in a lump sum or periodically for life or other specified
19 period;

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

23 (4) does not include landowner royalties in
24 the production of oil, gas or other minerals created through
25 the execution of a lease of the lessor's mineral interest;

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

8 (6) includes any interest in a limited
9 partnership or a limited liability company and any investment
10 in a viatical settlement or similar agreement;

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

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

20 (1) to execute or adopt a tangible symbol; or
21 (2) to attach or logically associate with the
22 record an electronic symbol, sound or process;

23 GG. "state" means a state of the United States, the
24 District of Columbia, Puerto Rico, the United States Virgin
25 Islands or any territory or insular possession subject to the

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1 jurisdiction of the United States; and

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

14 Section 103. [NEW MATERIAL] REFERENCES TO FEDERAL
15 STATUTES.--As used in the New Mexico Uniform Securities Act,
16 "Securities Act of 1933" (15 U.S.C. Section 77a, et seq.),
17 "Securities Exchange Act of 1934" (15 U.S.C. Section 78a, et
18 seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C.
19 Section 79, et seq.), "Investment Company Act of 1940" (15
20 U.S.C. Section 80a-1, et seq.), "Investment Advisers Act of
21 1940" (15 U.S.C. Section 80b-1, et seq.), "Employee Retirement
22 Income Security Act of 1974" (29 U.S.C. Section 1001, et seq.),
23 "National Housing Act" (12 U.S.C. Section 1701, et seq.),
24 "Commodity Exchange Act" (7 U.S.C. Section 1, et seq.),
25 "Internal Revenue Code of 1986" (26 U.S.C. Section 1, et seq.),

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

10 Section 104. [NEW MATERIAL] REFERENCES TO FEDERAL
11 AGENCIES.--A reference in the New Mexico Uniform Securities Act
12 to an agency or department of the United States is also a
13 reference to a successor agency or department.

14 Section 105. [NEW MATERIAL] ELECTRONIC RECORDS AND
15 SIGNATURES.--The New Mexico Uniform Securities Act modifies,
16 limits and supersedes the federal Electronic Signatures in
17 Global and National Commerce Act, but does not modify, limit or
18 supersede Section 101(c) of that act (15 U.S.C. Section
19 7001(c)) or authorize electronic delivery of any of the notices
20 described in Section 103(b) of that act (15 U.S.C. Section
21 7003(b)). The New Mexico Uniform Securities Act authorizes the
22 filing of records and signatures, when specified by provisions
23 of the New Mexico Uniform Securities Act or by a rule adopted
24 or order issued pursuant to the New Mexico Uniform Securities
25 Act, in a manner consistent with Section 104(a) of the federal

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1 Electronic Signatures in Global and National Commerce Act (15
2 U.S.C. Section 7004(a)).

3 Article 2

4 EXEMPTIONS FROM REGISTRATION OF SECURITIES

5 Section 201. [NEW MATERIAL] EXEMPT SECURITIES.--The
6 following securities are exempt from the requirements of
7 Sections 301 through 306 of the New Mexico Uniform Securities
8 Act and, unless otherwise noted, Section 504 of that act:

9 A. a security, including a revenue obligation or a
10 separate security as defined in Rule 131 (17 C.F.R. 230.131)
11 adopted pursuant to the federal Securities Act of 1933, issued,
12 insured or guaranteed by the United States, by a state, by a
13 political subdivision of a state, by a public authority, agency
14 or instrumentality of one or more states, including the New
15 Mexico mortgage finance authority, by a political subdivision
16 of one or more states or by a person controlled or supervised
17 by and acting as an instrumentality of the United States
18 pursuant to authority granted by the congress or a certificate
19 of deposit for any of the foregoing; but this exemption does
20 not include a security issued by a New Mexico governmental
21 entity, payable solely from the revenues of a nongovernmental
22 commercial or industrial enterprise, unless such security is
23 directly or indirectly insured or guaranteed by, or such
24 revenues are derived from, a person whose securities are exempt
25 from registration by this subsection or Subsection B, C, D, E

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1 or G of this section. For purposes of this subsection, a
2 nongovernmental commercial or industrial enterprise does not
3 include the financing of student loans or single-family
4 residential mortgage loans;

5 B. a security issued, insured or guaranteed by a
6 foreign government with which the United States maintains
7 diplomatic relations, or any of its political subdivisions, if
8 the security is recognized as a valid obligation by the issuer,
9 insurer or guarantor;

10 C. a security issued by and representing or that
11 will represent an interest in or a direct obligation of, or be
12 guaranteed by:

13 (1) an international banking institution;

14 (2) a banking institution organized pursuant
15 to the laws of the United States; a member bank of the federal
16 reserve system; or a depository institution a substantial
17 portion of the business of which consists or will consist of
18 receiving deposits or share accounts that are insured to the
19 maximum amount authorized by statute by the federal deposit
20 insurance corporation, the national credit union share
21 insurance fund or a successor authorized by federal law or
22 exercising fiduciary powers that are similar to those permitted
23 for national banks pursuant to the authority of the comptroller
24 of currency pursuant to Section 1 of Public Law 87-722 (12
25 U.S.C. Section 92a);

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

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

10 D. a security issued by and representing an
11 interest in, or a debt of, or insured or guaranteed by, an
12 insurance company authorized to transact insurance in New
13 Mexico pursuant to the New Mexico Insurance Code;

14 E. a security issued or guaranteed by a railroad,
15 other common carrier, public utility or public utility holding
16 company that is:

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

19 (2) regulated in respect to the issuance or
20 guarantee of the security by the United States, a state, Canada
21 or a Canadian province or territory; or

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

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1 F. a federal covered security specified in Section
2 18(b)(1) of the federal Securities Act of 1933 (15 U.S.C.
3 Section 77r(b)(1)) or by rule adopted pursuant to that
4 provision or a security listed or approved for listing on
5 another securities market specified by rule pursuant to the New
6 Mexico Uniform Securities Act; a put or a call option contract,
7 a warrant or a subscription right on or with respect to such
8 securities; an option or similar derivative security on a
9 security or an index of securities or foreign currencies issued
10 by a clearing agency registered pursuant to the federal
11 Securities Exchange Act of 1934 and listed or designated for
12 trading on a national securities exchange, a facility of a
13 national securities exchange or a facility of a national
14 securities association registered pursuant to the federal
15 Securities Exchange Act of 1934 or an offer or sale of the
16 underlying security in connection with the offer, sale or
17 exercise of an option or other security that was exempt when
18 the option or other security was written or issued; or an
19 option or a derivative security designated by the securities
20 and exchange commission pursuant to Section 9(b) of the federal
21 Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

22 G. a security issued by a person organized and
23 operated exclusively for religious, educational, benevolent,
24 fraternal, charitable, social, athletic or reformatory
25 purposes, or as a chamber of commerce, and not for pecuniary

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underscoring material = new
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1 profit, no part of the net earnings of which inures to the
2 benefit of a private stockholder or other person, or a security
3 of a company that is excluded from the definition of an
4 investment company pursuant to Section 3(c)(10)(B) of the
5 federal Investment Company Act of 1940 (15 U.S.C. Section
6 80a-3(c)(10)(B)); except that with respect to the offer or sale
7 of a note, bond, debenture or other evidence of indebtedness
8 issued by such a person, a rule may be adopted pursuant to the
9 New Mexico Uniform Securities Act limiting the availability of
10 this exemption by classifying securities, persons and
11 transactions, imposing different requirements for different
12 classes, specifying with respect to Paragraph (2) of this
13 subsection the scope of the exemption and the grounds for
14 denial or suspension and requiring an issuer:

15 (1) to file a notice specifying the material
16 terms of the proposed offer or sale and copies of any proposed
17 sales and advertising literature to be used and provide that
18 the exemption becomes effective if the director does not
19 disallow the exemption within the period established by the
20 rule;

21 (2) to file a request for exemption
22 authorization for which a rule pursuant to the New Mexico
23 Uniform Securities Act may specify the scope of the exemption,
24 the requirement of an offering statement, the filing of sales
25 and advertising literature, the filing of consent to service of

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underscored material = new
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1 process complying with Section 611 of the New Mexico Uniform
2 Securities Act and grounds for denial or suspension of the
3 exemption; or

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

6 H. a member's or owner's interest in, or a
7 retention certificate or like security given in lieu of a cash
8 patronage dividend issued by, a cooperative organized and
9 operated as a nonprofit membership cooperative pursuant to the
10 cooperative laws of a state, but not a member's or owner's
11 interest, retention certificate or like security sold to
12 persons other than bona fide members of the cooperative; and

13 I. an equipment trust certificate with respect to
14 equipment leased or conditionally sold to a person, if any
15 security issued by the person would be exempt pursuant to this
16 section or would be a federal covered security pursuant to
17 Section 18(b)(1) of the federal Securities Act of 1933 (15
18 U.S.C. Section 77r(b)(1)).

19 Section 202. [NEW MATERIAL] EXEMPT TRANSACTIONS.--The
20 following transactions are exempt from the requirements of
21 Sections 301 through 306 of the New Mexico Uniform Securities
22 Act and, unless otherwise noted, Section 504 of that act:

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

25 B. a nonissuer transaction by or through a

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[bracketed material] = delete

1 broker-dealer registered, or exempt from registration pursuant
2 to the New Mexico Uniform Securities Act, and a resale
3 transaction by a sponsor of a unit investment trust registered
4 pursuant to the federal Investment Company Act of 1940, in a
5 security of a class that has been outstanding in the hands of
6 the public for at least ninety days if, at the date of the
7 transaction:

8 (1) the issuer of the security is engaged in
9 business, the issuer is not in the organizational stage or in
10 bankruptcy or receivership and the issuer is not a blank check,
11 blind pool or shell company that has no specific business plan
12 or purpose or has indicated that its primary business plan is
13 to engage in a merger or combination of the business with, or
14 an acquisition of, an unidentified person;

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

17 (3) the security does not constitute the whole
18 or part of an unsold allotment to, or a subscription or
19 participation by, the broker-dealer as an underwriter of the
20 security or a redistribution;

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

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underscoring material = new
[bracketed material] = delete

1 (a) a description of the business and
2 operations of the issuer;

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

5 (c) an audited balance sheet of the
6 issuer as of a date within eighteen months before the date of
7 the transaction or, in the case of a reorganization or merger
8 when the parties to the reorganization or merger each had an
9 audited balance sheet, a pro forma balance sheet for the
10 combined organization; and

11 (d) an audited income statement for each
12 of the issuer's two immediately previous fiscal years or for
13 the period of existence of the issuer, whichever is shorter,
14 or, in the case of a reorganization or merger when each party
15 to the reorganization or merger had audited income statements,
16 a pro forma income statement; and

17 (5) any one of the following requirements is
18 met:

19 (a) the issuer of the security has a
20 class of equity securities listed on a national securities
21 exchange registered pursuant to the federal Securities Exchange
22 Act of 1934 or designated for trading on the national
23 association of securities dealers automated quotation system;

24 (b) the issuer of the security is a unit
25 investment trust registered pursuant to the federal Investment

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underscoring material = new
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1 Company Act of 1940;

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

5 (d) the issuer of the security has total
6 assets of at least two million dollars (\$2,000,000) based on an
7 audited balance sheet as of a date within eighteen months
8 before the date of the transaction or, in the case of a
9 reorganization or merger when the parties to the reorganization
10 or merger each had the audited balance sheet, a pro forma
11 balance sheet for the combined organization;

12 C. a nonissuer transaction by or through a
13 broker-dealer registered or exempt from registration pursuant
14 to the New Mexico Uniform Securities Act in a security or the
15 American depository receipt representing such security of a
16 foreign issuer that is a margin security defined in regulations
17 or rules adopted by the board of governors of the federal
18 reserve system;

19 D. a nonissuer transaction by or through a
20 broker-dealer registered or exempt from registration pursuant
21 to the New Mexico Uniform Securities Act in an outstanding
22 security if the guarantor of the security is required to file
23 reports with the securities and exchange commission pursuant to
24 the reporting requirements of Section 13 or 15(d) of the
25 federal Securities Exchange Act of 1934 (15 U.S.C. 78m or

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1 78o(d)) and is current in such reporting;

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

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

8 (2) has a fixed maturity or a fixed interest
9 or dividend if:

10 (a) a default has not occurred during
11 the current fiscal year or within the three previous fiscal
12 years or during the existence of the issuer and any predecessor
13 if less than three fiscal years in the payment of principal,
14 interest or dividends on the security;

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

23 (c) the transaction complies with any
24 additional requirements that the director may by rule impose as
25 a condition of this exemption;

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underscoring material = new
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1 F. a nonissuer transaction by or through a
2 broker-dealer registered or exempt from registration pursuant
3 to the New Mexico Uniform Securities Act effecting an
4 unsolicited order or offer to purchase;

5 G. a nonissuer transaction executed by a bona fide
6 pledgee without the purpose of evading the New Mexico Uniform
7 Securities Act;

8 H. a nonissuer transaction by a federal covered
9 investment adviser with investments under management in excess
10 of one hundred million dollars (\$100,000,000) acting in the
11 exercise of discretionary authority in a signed record for the
12 account of others;

13 I. a transaction in a security, whether or not the
14 security or transaction is otherwise exempt, in exchange for
15 one or more bona fide outstanding securities, claims or
16 property interests, or partly in such exchange and partly for
17 cash, if the terms and conditions of the issuance and exchange
18 or the delivery and exchange and the fairness of the terms and
19 conditions have been approved by the director after a hearing;

20 J. a transaction between the issuer or other person
21 on whose behalf the offering is made and an underwriter, or
22 among underwriters;

23 K. a transaction in a note, bond, debenture or
24 other evidence of indebtedness secured by a mortgage or other
25 security agreement if:

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[bracketed material] = delete

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

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

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

10 L. a transaction by an executor, personal
11 representative or administrator of an estate, sheriff, marshal,
12 receiver, trustee in bankruptcy, guardian or conservator;

13 M. a sale or offer to sell to:

14 (1) an institutional investor;

15 (2) a federal covered investment adviser; or

16 (3) any other person exempted by rule adopted
17 or order issued pursuant to the New Mexico Uniform Securities
18 Act;

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

22 (1) there are not more than ten purchasers who
23 are New Mexico residents, other than purchasers designated in
24 Subsection M of this section during any twelve consecutive
25 months;

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[bracketed material] = delete

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

4 (3) no commission or other remuneration is
5 paid or given, directly or indirectly, to a person other than a
6 broker-dealer registered or not required to be registered
7 pursuant to the New Mexico Uniform Securities Act or an agent
8 registered pursuant to that act for soliciting a prospective
9 purchaser in New Mexico, and either:

10 (a) the seller reasonably believes that
11 all of the purchasers in New Mexico are purchasing for
12 investment; or

13 (b) immediately before and immediately
14 after the transaction, the issuer reasonably believes that the
15 securities of the issuer are held by fifty or fewer beneficial
16 owners and the transaction is part of an aggregate offering
17 that does not exceed one million dollars (\$1,000,000) during
18 any twelve consecutive months; but the director, by rule or
19 order as to a security or transaction or a type of security or
20 transaction, may withdraw or further condition this exemption
21 or may waive one or more of the conditions of this subsection;

22 0. a transaction pursuant to an offer to existing
23 security holders of the issuer, including persons that at the
24 date of the transaction are holders of convertible securities,
25 options or warrants, if a commission or other remuneration,

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underscoring material = new
[bracketed material] = delete

1 other than a standby commission, is not paid or given, directly
2 or indirectly, for soliciting a security holder in New Mexico;

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

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

11 (2) a stop order of which the offeror is aware
12 has not been issued against the offeror by the director or the
13 securities and exchange commission and an audit, inspection or
14 proceeding that is public and that may culminate in a stop
15 order is not known by the offeror to be pending;

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

19 (1) a registration statement has been filed
20 pursuant to the New Mexico Uniform Securities Act, but is not
21 effective;

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

25 (3) a stop order of which the offeror is aware

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[bracketed material] = delete

1 has not been issued by the director pursuant to the New Mexico
2 Uniform Securities Act and an audit, inspection or proceeding
3 that may culminate in a stop order is not known by the offeror
4 to be pending;

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

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

13 T. an offer or sale of a security to a person not a
14 resident of New Mexico and not present in New Mexico if the
15 offer or sale does not constitute a violation of the laws of
16 the state or foreign jurisdiction in which the offeree or
17 purchaser is present and is not part of an unlawful plan or
18 scheme to evade the New Mexico Uniform Securities Act;

19 U. employees' stock purchase, savings, option,
20 profit-sharing, pension or similar employees' benefit plan,
21 including any securities, plan interests and guarantees issued
22 pursuant to a compensatory benefit plan or compensation
23 contract, contained in a record established by the issuer, its
24 parents, its majority-owned subsidiaries or the majority-owned
25 subsidiaries of the issuer's parent for the participation of

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1 their employees, including offers or sales of such securities
2 to:

3 (1) bona fide directors; general partners;
4 trustees, if the issuer is a business trust; officers;
5 consultants; and advisors;

6 (2) family members who acquire such securities
7 from those persons through gifts or domestic relations orders;

8 (3) former employees, directors, general
9 partners, trustees, officers, consultants and advisors if those
10 individuals were employed by or providing services to the
11 issuer when the securities were offered; and

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

16 V. a transaction involving:

17 (1) a stock dividend or equivalent equity
18 distribution, whether the corporation or other business
19 organization distributing the dividend or equivalent equity
20 distribution is the issuer or not, if nothing of value is given
21 by stockholders or other equity holders for the dividend or
22 equivalent equity distribution other than the surrender of a
23 right to a cash or property dividend if each stockholder or
24 other equity holder may elect to take the dividend or
25 equivalent equity distribution in cash, property or stock;

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

5 (3) the solicitation of tenders of securities
6 by an offeror in a tender offer in compliance with Rule 162 (17
7 C.F.R. 230.162) adopted pursuant to the federal Securities Act
8 of 1933;

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

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1 Toronto stock exchange, inc., is a designated securities
2 exchange. After an administrative hearing in compliance with
3 Subsection B of Section 604 of the New Mexico Uniform
4 Securities Act, the director, by rule adopted or order issued
5 pursuant to the New Mexico Uniform Securities Act, may revoke
6 the designation of a securities exchange pursuant to this
7 subsection if the director finds that revocation is necessary
8 or appropriate in the public interest and for the protection of
9 investors;

10 X. the issuance and offer and sale of securities by
11 any issuer if:

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

15 (2) more than one-half of the proceeds from
16 the offering shall be used by the issuer in operations of the
17 issuer in New Mexico;

18 (3) no commission or other remuneration is
19 paid or given, directly or indirectly, for soliciting or
20 selling to any person in New Mexico except to broker-dealers
21 and agents registered pursuant to the New Mexico Uniform
22 Securities Act;

23 (4) an offering document is delivered to each
24 purchaser or prospective purchaser prior to the sale of the
25 securities disclosing such information as the director by rule

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1 or order may require;

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

5 (6) the issuer claiming this exemption files
6 notice with the director on a form prescribed by the director
7 prior to the first offer and pays a fee of three hundred fifty
8 dollars (\$350). The director may require any issuer using this
9 exemption to file periodic reports not more often than
10 quarterly to keep reasonably current the information contained
11 in the notice and to disclose the progress of the offering.

12 The director may impose conditions by rule or order with
13 respect to issuers, broker-dealers or affiliates that by reason
14 of prior misconduct will not be eligible to utilize this
15 exemption. The issuance and offer and sale of securities
16 pursuant to this subsection shall be subject to Subsection A of
17 Section 504 of the New Mexico Uniform Securities Act;

18 Y. the issuance and offer and sale of securities by
19 any issuer if:

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

22 (2) the issuer reasonably believes that all
23 buyers are purchasing for investment;

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

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1 (4) no commission or other remuneration is
2 paid or given, directly or indirectly, for soliciting or
3 selling to any person in New Mexico except to broker-dealers
4 and sales representatives registered pursuant to the New Mexico
5 Uniform Securities Act. The director by rule or order may
6 impose additional requirements as a condition of the exemption
7 established in this subsection as necessary for the protection
8 of investors and to specify its application. Any notice filing
9 that may be imposed pursuant to Section 203 of the New Mexico
10 Uniform Securities Act shall not be deemed a condition of this
11 exemption;

12 Z. any offer or sale of a preorganization
13 certificate or subscription if:

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

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

20 (3) the number of subscribers does not exceed
21 ten; and

22 (4) either no payment is made by any
23 subscriber or any payment made by a subscriber is put into
24 escrow until the entire issue is subscribed;

25 AA. a transaction:

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

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

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

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

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

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1 loan mortgage corporation, the federal national mortgage
2 association or the government national mortgage association;
3 and

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

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

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

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

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

25 (1) any corporation, limited liability

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[bracketed material] = delete

1 company, partnership or other business entity that is directly
2 engaged in and derives at least eighty percent of its annual
3 gross income from the exploration or production of oil, gas or
4 other valuable minerals;

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

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

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

22 (1) the total number of sales by any one owner
23 of interests, whether whole, fractional, segregated or
24 undivided, in any oil, gas or mineral lease, fee or title, or
25 contract relating thereto, shall not exceed twenty-five,

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[bracketed material] = delete

1 provided that such sales shall be made only to persons meeting
2 suitability standards established by rule or order of the
3 director and that investors are provided with such disclosure
4 documents and other information as the director may require by
5 rule or order;

6 (2) no use is made of advertisement or public
7 solicitation; and

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

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

24 Section 203. [NEW MATERIAL] ADDITIONAL EXEMPTIONS AND
25 WAIVERS.--A rule adopted or order issued pursuant to the New
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underscoring material = new
[bracketed material] = delete

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

15 Section 204. [NEW MATERIAL] DENIAL, SUSPENSION,
16 REVOCATION, CONDITION OR LIMITATION OF EXEMPTIONS.--

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

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1 this section may be issued only pursuant to the procedures set
2 forth in Subsection D of Section 306 or Section 604 of the New
3 Mexico Uniform 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. [NEW MATERIAL] SECURITIES REGISTRATION
14 REQUIREMENT.--It is unlawful for a person to offer or sell a
15 security in New 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. [NEW MATERIAL] 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

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1 exempt pursuant to Sections 201 through 203 of the New Mexico
2 Uniform Securities Act, a rule adopted or order issued pursuant
3 to the New Mexico Uniform Securities Act may require the filing
4 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 a
7 federal registration statement filed with the securities and
8 exchange commission pursuant to the federal Securities Act of
9 1933 and a consent to service of process complying with Section
10 611 of the New Mexico Uniform Securities Act signed by the
11 issuer and the payment of a fee of five hundred twenty-five
12 dollars (\$525) for all investment companies other than a unit
13 investment trust or two hundred dollars (\$200) for a unit
14 investment trust; and

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

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

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1 and exchange commission that are required by rule or order
2 pursuant to the New Mexico Uniform Securities Act to be filed
3 and by paying a renewal fee of five hundred twenty-five dollars
4 (\$525) for all investment companies other than a unit
5 investment trust or two hundred dollars (\$200) for a unit
6 investment trust. A previously filed consent to service of
7 process complying with Section 611 of the New Mexico Uniform
8 Securities Act may be incorporated by reference in a renewal.
9 A renewed notice filing becomes effective upon the expiration
10 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 federal
13 Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)),
14 including Rule 506 of Regulation D (17 C.F.R. 230.506), a rule
15 pursuant to the New Mexico Uniform Securities Act may require a
16 notice filing by or on behalf of an issuer to include a copy of
17 Form D, including the appendix, as promulgated by the
18 securities and exchange commission, and a consent to service of
19 process complying with Section 611 of the New Mexico Uniform
20 Securities Act signed by the issuer not later than fifteen days
21 after the first sale of the federal covered security in New
22 Mexico and the payment of a fee of three hundred fifty dollars
23 (\$350) and the payment of a fee in an amount up to one thousand
24 fifty dollars (\$1,050) as specified by the director by rule for
25 any late filing.

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

10 Section 303. [NEW MATERIAL] SECURITIES REGISTRATION BY
11 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 accompanied
18 by the following records in addition to the information
19 specified in Section 305 of the New Mexico Uniform Securities
20 Act and a consent to service of process complying with Section
21 611 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

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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, copy
4 or description of the security that is required by rule adopted
5 or order issued pursuant to the New Mexico Uniform Securities
6 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 delays
12 the effective date of the registration statement, promptly
13 after it is filed with the securities and exchange commission.

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

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

24 (2) the registration statement has been on
25 file for at least twenty days or a shorter period provided by

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1 rule adopted or order issued pursuant to the New Mexico Uniform
2 Securities Act.

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

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

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

6 Section 304. [NEW MATERIAL] SECURITIES REGISTRATION BY
7 QUALIFICATION.--

8 A. A security may be registered by qualification
9 pursuant to this section.

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

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

24 (2) with respect to each director and officer
25 of the issuer, and other person having a similar status or

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

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

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

22 (5) with respect to a promoter, if the issuer
23 was organized within the previous three years, the information
24 or records specified in Paragraph (2) of this subsection, any
25 amount paid to the promoter within that period or intended to

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1 be paid to the promoter and the consideration for the payment;

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

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

20 (8) the kind and amount of securities to be
21 offered; the proposed offering price or the method by which it
22 is to be computed; any variation at which a proportion of the
23 offering is to be made to a person or class of persons other
24 than the underwriters, with a specification of the person or
25 class; the basis on which the offering is to be made if

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

16 (9) the estimated monetary proceeds to be
17 received by the issuer from the offering; the purposes for
18 which the proceeds are to be used by the issuer; the estimated
19 amount to be used for each purpose; the order or priority in
20 which the proceeds will be used for the purposes stated; the
21 amounts of any funds to be raised from other sources to achieve
22 the purposes stated; the sources of the funds; and, if a part
23 of the proceeds is to be used to acquire property, including
24 goodwill, otherwise than in the ordinary course of business,
25 the names and addresses of the vendors, the purchase price, the

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1 names of any persons that have received commissions in
2 connection with the acquisition and the amounts of the
3 commissions and other expenses in connection with the
4 acquisition, including the cost of borrowing money to finance
5 the acquisition;

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

13 (11) the dates of, parties to and general
14 effect concisely stated of each managerial or other material
15 contract made or to be made otherwise than in the ordinary
16 course of business to be performed in whole or in part at or
17 after the filing of the registration statement or that was made
18 within the previous two years, and a copy of the contract;

19 (12) a description of any pending litigation,
20 action or proceeding to which the issuer is a party and that
21 materially affects its business or assets and any litigation,
22 action or proceeding known to be contemplated by governmental
23 authorities;

24 (13) a copy of any prospectus, pamphlet,
25 circular, form letter, advertisement or other sales literature

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1 intended as of the effective date to be used in connection with
2 the offering and any solicitation of interest used in
3 compliance with Paragraph (2) of Subsection Q of Section 202 of
4 the New Mexico Uniform Securities Act;

5 (14) a specimen or copy of the security being
6 registered, unless the security is uncertificated; a copy of
7 the issuer's articles of incorporation and bylaws or their
8 substantial equivalents, in effect; and a copy of any indenture
9 or other instrument covering the security to be registered;

10 (15) a signed or conformed copy of an opinion
11 of counsel concerning the legality of the security being
12 registered, with an English translation if it is in a language
13 other than English, that states whether the security when sold
14 will be validly issued, fully paid and nonassessable and, if a
15 debt security, a binding obligation of the issuer;

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

22 (17) a balance sheet of the issuer as of a
23 date within four months before the filing of the registration
24 statement; a statement of income and a statement of cash flow
25 for each of the three fiscal years preceding the date of the

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1 balance sheet and for any period between the close of the
2 immediately previous fiscal year and the date of the balance
3 sheet, or for the period of the issuer's and any predecessor's
4 existence if less than three years; and, if any part of the
5 proceeds of the offering is to be applied to the purchase of a
6 business, the financial statements that would be required if
7 that business were the registrant; and

8 (18) any additional information or records
9 required by rule adopted or order issued pursuant to the New
10 Mexico Uniform Securities Act.

11 C. A registration statement pursuant to this
12 section becomes effective thirty days, or any shorter period
13 provided by rule adopted or order issued pursuant to the New
14 Mexico Uniform Securities Act, after the date the registration
15 statement or the last amendment other than a price amendment is
16 filed, if:

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

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

23 (3) the applicant or registrant has not
24 requested that effectiveness be delayed.

25 D. The director may delay effectiveness once for

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1 not more than ninety days if the director determines the
2 registration statement is not complete in all material respects
3 and promptly notifies the applicant or registrant of that
4 determination. The director may also delay effectiveness for a
5 further period of not more than thirty days if the director
6 determines that the delay is necessary or appropriate.

7 E. A rule adopted or order issued pursuant to the
8 New Mexico Uniform Securities Act may require as a condition of
9 registration pursuant to this section that a prospectus
10 containing a specified part of the information or record
11 specified in Subsection B of this section be sent or given to
12 each person to which an offer is made, before or concurrently,
13 with the earliest of:

14 (1) the first offer made in a record to the
15 person otherwise than by means of a public advertisement, by or
16 for the account of the issuer or another person on whose behalf
17 the offering is being made or by an underwriter or broker-
18 dealer that is offering part of an unsold allotment or
19 subscription taken by the person as a participant in the
20 distribution;

21 (2) the confirmation of a sale made by or for
22 the account of the person;

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

24 (4) delivery of the security pursuant to such
25 a sale.

1 Section 305. [NEW MATERIAL] SECURITIES REGISTRATION
2 FILINGS.--

3 A. A registration statement may be filed by the
4 issuer, a person on whose behalf the offering is to be made or
5 a broker-dealer registered pursuant to the New Mexico Uniform
6 Securities Act.

7 B. A person filing a registration statement shall
8 pay a filing fee of one-tenth of one percent of the maximum
9 aggregate offering price at which the registered securities are
10 to be offered in New Mexico, but not less than five hundred
11 twenty-five dollars (\$525) nor more than two thousand five
12 hundred dollars (\$2,500) or five hundred twenty-five dollars
13 (\$525) if the person is an issuer or a person acting on behalf
14 of an issuer and is claiming an exemption from the registration
15 requirements of federal law regarding small company offerings
16 under Rule 504 of Regulation D (17 C.F.R. 230.504). If a
17 registration statement is withdrawn before the effective date
18 or a preeffective stop order is issued pursuant to Section 306
19 of the New Mexico Uniform Securities Act, the director shall
20 retain the fee set forth in this subsection.

21 C. A registration statement filed pursuant to
22 Section 303 or 304 of the New Mexico Uniform Securities Act
23 shall specify:

24 (1) the amount of securities to be offered in
25 New Mexico;

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

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

7 D. A record filed pursuant to the New Mexico
8 Uniform Securities Act or the predecessor act within five years
9 preceding the filing of a registration statement may be
10 incorporated by reference in the registration statement to the
11 extent that the record is currently accurate.

12 E. In the case of a nonissuer distribution,
13 information or a record may not be required pursuant to
14 Subsection I of this section or Section 304 of the New Mexico
15 Uniform Securities Act, unless it is known to the person filing
16 the registration statement or to the person on whose behalf the
17 distribution is to be made or unless it can be furnished by
18 those persons without unreasonable effort or expense.

19 F. A rule adopted or order issued pursuant to the
20 New Mexico Uniform Securities Act may require as a condition of
21 registration that a security issued within the previous five
22 years or to be issued to a promoter for a consideration
23 substantially less than the public offering price or to a
24 person for a consideration other than cash be deposited in
25 escrow; and that the proceeds from the sale of the registered

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1 security in New Mexico be impounded until the issuer receives a
2 specified amount from the sale of the security either in New
3 Mexico or elsewhere. The conditions of any escrow or
4 impoundment required pursuant to this subsection may be
5 established by rule adopted or order issued pursuant to the New
6 Mexico Uniform Securities Act, but the director shall not
7 reject a depository institution solely because of its location
8 in another state.

9 G. A rule adopted or order issued pursuant to the
10 New Mexico Uniform Securities Act may require as a condition of
11 registration that a security registered pursuant to that act be
12 sold only on a specified form of subscription or sale contract
13 and that a signed or conformed copy of each contract be filed
14 pursuant to that act or preserved for a period specified by the
15 rule or order, which shall not be longer than five years.

16 H. Except while a stop order is in effect pursuant
17 to Section 306 of the New Mexico Uniform Securities Act, a
18 registration statement is effective for one year after its
19 effective date, or for any longer period designated in an order
20 pursuant to that act during which the security is being offered
21 or distributed in a nonexempted transaction by or for the
22 account of the issuer or other person on whose behalf the
23 offering is being made or by an underwriter or broker-dealer
24 that is still offering part of an unsold allotment or
25 subscription taken as a participant in the distribution. For

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1 the purposes of a nonissuer transaction, all outstanding
2 securities of the same class identified in the registration
3 statement as a security registered pursuant to the New Mexico
4 Uniform Securities Act are considered to be registered while
5 the registration statement is effective. If any securities of
6 the same class are outstanding, a registration statement shall
7 not be withdrawn until one year after its effective date. A
8 registration statement may be withdrawn only with the approval
9 of the director.

10 I. While a registration statement is effective, a
11 rule adopted or order issued pursuant to the New Mexico Uniform
12 Securities Act may require the person that filed the
13 registration statement to file reports, not more often than
14 quarterly, to keep the information or other record in the
15 registration statement reasonably current and to disclose the
16 progress of the offering.

17 J. A registration statement may be amended after
18 its effective date. The posteffective amendment becomes
19 effective when the director so orders. If a posteffective
20 amendment is made to increase the number of securities
21 specified to be offered or sold, the person filing the
22 amendment shall pay an additional registration fee of three
23 times the fee otherwise payable, calculated in the manner
24 specified in Subsection B of this section, with respect to the
25 additional securities to be offered and sold, unless the

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1 maximum filing fee has been paid. If the maximum filing fee
2 was paid at the time of filing the original registration
3 statement, no additional filing fee is required to be paid with
4 the amendment. A posteffective amendment relates back to the
5 date of the offering of the additional securities being
6 registered if, within one year after the date of the sale, the
7 amendment is filed and the additional registration fee is paid.

8 Section 306. [NEW MATERIAL] DENIAL, SUSPENSION AND
9 REVOCATION OF SECURITIES REGISTRATION.--

10 A. The director may issue a stop order denying
11 effectiveness to, or suspending or revoking the effectiveness
12 of, a registration statement if the director finds that the
13 order is in the public interest and that:

14 (1) the registration statement as of its
15 effective date or before the effective date in the case of an
16 order denying effectiveness, an amendment pursuant to
17 Subsection J of Section 305 of the New Mexico Uniform
18 Securities Act as of its effective date or a report pursuant to
19 Subsection I of Section 305 of that act, is incomplete in a
20 material respect or contains a statement that, in the light of
21 the circumstances under which it was made, was false or
22 misleading with respect to a material fact;

23 (2) the New Mexico Uniform Securities Act or a
24 rule adopted or order issued pursuant to that act or a
25 condition imposed pursuant to that act has been willfully

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1 violated, in connection with the offering, by the person filing
2 the registration statement; by the issuer, a partner, officer
3 or director of the issuer or a person having a similar status
4 or performing a similar function; a promoter of the issuer; or
5 a person directly or indirectly controlling or controlled by
6 the issuer; but only if the person filing the registration
7 statement is directly or indirectly controlled by or acting for
8 the issuer; or by an underwriter;

9 (3) the security registered or sought to be
10 registered is the subject of a permanent or temporary
11 injunction of a court of competent jurisdiction or an
12 administrative stop order or similar order issued pursuant to
13 any federal, foreign or state law other than the New Mexico
14 Uniform Securities Act applicable to the offering, but the
15 director shall not institute a proceeding against an effective
16 registration statement pursuant to this paragraph more than one
17 year after the date of the order or injunction on which it is
18 based, and the director shall not issue an order pursuant to
19 this paragraph on the basis of an order or injunction issued
20 pursuant to the securities act of another state unless the
21 order or injunction was based on conduct that would constitute,
22 as of the date of the order, a ground for a stop order pursuant
23 to this section;

24 (4) the issuer's enterprise or method of
25 business includes or would include activities that are unlawful

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1 where performed;

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

7 (6) the applicant or registrant has not paid
8 the filing fee, but the director shall void the order if the
9 deficiency is corrected; or

10 (7) the offering:

11 (a) will work or tend to work a fraud
12 upon purchasers or would so operate;

13 (b) has been or would be made with
14 unreasonable amounts of underwriters' and sellers' discounts,
15 commissions or other compensation, or promoters' profits or
16 participations or unreasonable amounts or kinds of options; or

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

19 B. To the extent practicable, the director by rule
20 adopted or order issued pursuant to the New Mexico Uniform
21 Securities Act shall publish standards that provide notice of
22 conduct that violates Paragraph (7) of Subsection A of this
23 section.

24 C. The director shall not institute a stop order
25 proceeding against an effective registration statement on the

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1 basis of conduct or a transaction known to the director when
2 the registration statement became effective unless the
3 proceeding is instituted within thirty days after the
4 registration statement became effective.

5 D. The director may summarily revoke, deny,
6 postpone or suspend the effectiveness of a registration
7 statement pending final determination of an administrative
8 proceeding. Upon the issuance of the order, the director shall
9 promptly notify each person specified in Subsection E of this
10 section that the order has been issued, the reasons for the
11 revocation, denial, postponement or suspension and that within
12 fifteen days after the receipt of a request in a record from
13 the person the matter will be scheduled for a hearing. If a
14 hearing is not requested and none is ordered by the director
15 within thirty days after the date of service of the order, the
16 order becomes final. If a hearing is requested or ordered, the
17 director, after notice of and opportunity for hearing for each
18 person subject to the order, may modify or vacate the order or
19 extend the order until final determination.

20 E. If a hearing is requested or ordered, such
21 hearing shall be conducted pursuant to Subsection B of Section
22 604 of the New Mexico Uniform Securities Act. A stop order
23 shall not be issued pursuant to this section, except in
24 accordance with Subsection D of this section, without:

25 (1) appropriate notice to the applicant or

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1 registrant, the issuer and the person on whose behalf the
2 securities are to be or have been offered;

3 (2) opportunity for hearing; and

4 (3) findings of fact and conclusions of law in
5 a record.

6 F. The director shall modify or vacate a stop order
7 entered pursuant to this section if the director finds that the
8 conditions that prompted entry have changed or that it is
9 otherwise in the public interest or for the protection of
10 investors.

11 Section 307. [NEW MATERIAL] WAIVER AND MODIFICATION.--The
12 director may waive or modify, in whole or in part, any or all
13 of the requirements of Sections 302 and 303 of the New Mexico
14 Uniform Securities Act and Subsection B of Section 304 of that
15 act or the requirement of any information or record in a
16 registration statement or in a periodic report filed pursuant
17 to Subsection I of Section 305 of that act.

18 Article 4

19 BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS,
20 INVESTMENT ADVISER REPRESENTATIVES AND FEDERAL
21 COVERED INVESTMENT ADVISERS

22 Section 401. [NEW MATERIAL] BROKER-DEALER REGISTRATION
23 REQUIREMENT AND EXEMPTIONS.--

24 A. It is unlawful for a person to transact business
25 in New Mexico as a broker-dealer unless the person is

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1 registered pursuant to the New Mexico Uniform Securities Act as
2 a broker-dealer or is exempt from registration as a
3 broker-dealer pursuant to Subsection B or D of this section.

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

6 (1) a broker-dealer without a place of
7 business in New Mexico if its only transactions effected in New
8 Mexico are with:

9 (a) the issuer of the securities
10 involved in the transactions;

11 (b) a broker-dealer registered as a
12 broker-dealer pursuant to the New Mexico Uniform Securities Act
13 or not required to be registered as a broker-dealer pursuant to
14 that act;

15 (c) an institutional investor;

16 (d) a nonaffiliated federal covered
17 investment adviser with investments under management in excess
18 of one hundred million dollars (\$100,000,000) acting for the
19 account of others pursuant to discretionary authority in a
20 signed record;

21 (e) a bona fide preexisting customer
22 whose principal place of residence is not in New Mexico and the
23 person is registered as a broker-dealer pursuant to the federal
24 Securities Exchange Act of 1934 or not required to be
25 registered pursuant to that act and is registered pursuant to

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1 the securities act of the state in which the customer maintains
2 a principal place of residence;

3 (f) a bona fide preexisting customer
4 whose principal place of residence is in New Mexico but was not
5 present in New Mexico when the customer relationship was
6 established, if: 1) the broker-dealer is registered pursuant
7 to the federal Securities Exchange Act of 1934 or not required
8 to be registered or licensed pursuant to that act and is
9 registered pursuant to the securities laws of the state in
10 which the customer relationship was established and where the
11 customer had maintained a principal place of residence; and 2)
12 within forty-five days after the customer's first transaction
13 in New Mexico, the person files an application for registration
14 as a broker-dealer in New Mexico and no further transactions
15 are effected more than forty-five days after the date on which
16 the application is filed. Only unsolicited transactions are
17 permitted pursuant to this subparagraph; or

18 (g) any other person exempted by rule
19 adopted or order issued pursuant to the New Mexico Uniform
20 Securities Act; and

21 (2) a person that deals solely in United
22 States government securities and is supervised as a dealer in
23 government securities by the board of governors of the federal
24 reserve system, the comptroller of the currency, the federal
25 deposit insurance corporation or the office of thrift

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1 supervision.

2 C. It is unlawful for a broker-dealer, or for an
3 issuer engaged in offering, offering to purchase, purchasing or
4 selling securities in New Mexico, directly or indirectly, to
5 employ or associate with an individual to engage in an activity
6 related to securities transactions in New Mexico if the
7 registration of the individual is suspended or revoked or the
8 individual is barred from employment or association with a
9 broker-dealer, an issuer, an investment adviser or a federal
10 covered investment adviser by an order of the director pursuant
11 to the New Mexico Uniform Securities Act, the securities and
12 exchange commission or a self-regulatory organization. A
13 broker-dealer or issuer does not violate this subsection if the
14 broker-dealer or issuer did not know, and in the exercise of
15 reasonable care could not have known, of the suspension,
16 revocation or bar. Upon request from a broker-dealer or issuer
17 and for good cause, an order pursuant to the New Mexico Uniform
18 Securities Act may modify or waive, in whole or in part, the
19 application of the prohibitions of this subsection to the
20 broker-dealer.

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

23 (1) a broker-dealer that is registered in
24 Canada or other foreign jurisdiction and that does not have a
25 place of business in New Mexico to effect transactions in

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1 securities with or for, or attempt to effect the purchase or
2 sale of any securities by:

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

7 (b) an individual from Canada or other
8 foreign jurisdiction who is present in New Mexico and whose
9 transactions are in a self-directed tax advantaged retirement
10 plan of which the individual is the holder or contributor in
11 that foreign jurisdiction; or

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

16 (2) an agent who represents a broker-dealer
17 that is exempt pursuant to this subsection to effect
18 transactions in securities or attempt to effect the purchase or
19 sale of securities in New Mexico as permitted for a broker-
20 dealer described in Paragraph (1) of this subsection.

21 Section 402. [NEW MATERIAL] AGENT REGISTRATION
22 REQUIREMENT AND EXEMPTIONS.--

23 A. It is unlawful for an individual to transact
24 business in New Mexico as an agent unless the individual is
25 registered pursuant to the New Mexico Uniform Securities Act as
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1 an agent or is exempt from registration as an agent pursuant to
2 Subsection B of this section.

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

5 (1) an individual who represents a broker-
6 dealer in effecting transactions in New Mexico limited to those
7 described in Section 15(h)(2) of the federal Securities
8 Exchange Act of 1934 (15 U.S.C. Section 78(h)(2));

9 (2) an individual who represents a broker-
10 dealer that is exempt pursuant to Subsection B or D of Section
11 401 of the New Mexico Uniform Securities Act;

12 (3) an individual who represents an issuer
13 with respect to an offer or sale of the issuer's own securities
14 or those of the issuer's parent or any of the issuer's
15 subsidiaries, and who is not compensated in connection with the
16 individual's participation by the payment of commissions or
17 other remuneration based, directly or indirectly, on
18 transactions in those securities;

19 (4) an individual who represents a broker-
20 dealer registered in New Mexico pursuant to Subsection A of
21 Section 401 of the New Mexico Uniform Securities Act or exempt
22 from registration pursuant to Subsection B of Section 401 of
23 that act in the offer and sale of securities for an account of
24 a nonaffiliated federal covered investment adviser with
25 investments under management in excess of one hundred million

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1 dollars (\$100,000,000) acting for the account of others
2 pursuant to discretionary authority in a signed record;

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

6 (6) an individual who represents an issuer and
7 who restricts participation to performing clerical or
8 ministerial acts; or

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

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

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

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1 this section.

2 E. An individual shall not act as an agent for more
3 than one broker-dealer or one issuer at a time, unless the
4 broker-dealer or the issuer for which the agent acts is
5 affiliated by direct or indirect common control or is
6 authorized by rule or order pursuant to the New Mexico Uniform
7 Securities Act.

8 Section 403. [NEW MATERIAL] INVESTMENT ADVISER
9 REGISTRATION REQUIREMENT AND EXEMPTIONS.--

10 A. It is unlawful for a person to transact business
11 in New Mexico as an investment adviser unless the person is
12 registered pursuant to the New Mexico Uniform Securities Act as
13 an investment adviser or is exempt from registration as an
14 investment adviser pursuant to Subsection B of this section.

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

17 (1) a person without a place of business in
18 New Mexico that is registered pursuant to the securities act of
19 the state in which the person has its principal place of
20 business if its only clients in New Mexico are:

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

25 (b) institutional investors;

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1 (c) bona fide preexisting clients whose
2 principal places of residence are not in New Mexico if the
3 investment adviser is registered pursuant to the securities act
4 of the state in which the clients maintain principal places of
5 residence; or

6 (d) any other client exempted by rule
7 adopted or order issued pursuant to the New Mexico Uniform
8 Securities Act;

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

14 (3) any other person exempted by rule adopted
15 or order issued pursuant to the New Mexico Uniform Securities
16 Act.

17 C. It is unlawful for an investment adviser,
18 directly or indirectly, to employ or associate with an
19 individual to engage in an activity related to investment
20 advice in New Mexico if the registration of the individual is
21 suspended or revoked or the individual is barred from
22 employment or association with an investment adviser, federal
23 covered investment adviser or broker-dealer by an order of the
24 director pursuant to the New Mexico Uniform Securities Act, the
25 securities and exchange commission or a self-regulatory

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1 organization, unless the investment adviser did not know, and
2 in the exercise of reasonable care could not have known, of the
3 suspension, revocation or bar. Upon request from the
4 investment adviser and for good cause, the director, by order,
5 may waive, in whole or in part, the application of the
6 prohibitions of this subsection to the investment adviser.

7 D. It is unlawful for an investment adviser to
8 employ or associate with an individual required to be
9 registered pursuant to the New Mexico Uniform Securities Act as
10 an investment adviser representative who transacts business in
11 New Mexico on behalf of the investment adviser unless the
12 individual is registered pursuant to Subsection A of Section
13 404 of the New Mexico Uniform Securities Act or is exempt from
14 registration pursuant to Subsection B of Section 404 of that
15 act.

16 Section 404. [NEW MATERIAL] INVESTMENT ADVISER
17 REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS.--

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

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

25 (1) an individual who is employed by or

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1 associated with an investment adviser that is exempt from
2 registration pursuant to Subsection B of Section 403 of the New
3 Mexico Uniform Securities Act or a federal covered investment
4 adviser that is excluded from the notice filing requirements of
5 Section 405 of that act; and

6 (2) any other individual exempted by rule
7 adopted or order issued pursuant to the New Mexico Uniform
8 Securities Act.

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

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

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

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1 an investment adviser representative for more than one
2 investment adviser or federal covered investment adviser.

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

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

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

7 Section 405. [NEW MATERIAL] FEDERAL COVERED INVESTMENT
8 ADVISER NOTICE 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 investment
13 adviser unless the federal covered investment adviser complies
14 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 advisers,
22 investment advisers registered pursuant to the New Mexico
23 Uniform Securities Act and broker-dealers registered pursuant
24 to that act;

25 (b) institutional investors;

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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 adopted
12 or order issued pursuant to the New Mexico Uniform Securities
13 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 complying
17 with Section 611 of the New Mexico Uniform Securities Act and
18 such records as have been filed with the securities and
19 exchange commission pursuant to the federal Investment Advisers
20 Act of 1940 required by rule adopted or order issued pursuant
21 to the New Mexico Uniform Securities Act and pay the fees
22 specified in Subsection E of Section 410 of that act.

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

25 Section 406. [NEW MATERIAL] REGISTRATION BY

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1 BROKER-DEALER, AGENT, INVESTMENT ADVISER AND INVESTMENT ADVISER
2 REPRESENTATIVE.--

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

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

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

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

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

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1 noon on the forty-fifth day after the filing of any amendment
2 completing the application.

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

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

20 Section 407. [NEW MATERIAL] SUCCESSION AND CHANGE IN
21 REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER.--

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

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

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

25 C. A broker-dealer or investment adviser that

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1 changes its name may continue its registration by filing an
2 amendment to its registration. The amendment becomes effective
3 when filed or on a date designated by the registrant.

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

8 Section 408. [NEW MATERIAL] TERMINATION OF EMPLOYMENT OR
9 ASSOCIATION OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND
10 TRANSFER OF EMPLOYMENT OR ASSOCIATION.--

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

21 B. If an agent registered pursuant to the New
22 Mexico Uniform Securities Act terminates employment by or
23 association with a broker-dealer registered pursuant to that
24 act and begins employment by or association with another
25 broker-dealer registered pursuant to that act; or if an

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

22 C. The director may prevent the effectiveness of a
23 transfer of an agent or investment adviser representative
24 pursuant to Subsection B of this section based on the public
25 interest and the protection of investors.

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

12 Section 409. [NEW MATERIAL] WITHDRAWAL OF REGISTRATION OF
13 BROKER-DEALER, AGENT, INVESTMENT ADVISER AND INVESTMENT ADVISER
14 REPRESENTATIVE.--Withdrawal of registration by a broker-dealer,
15 agent, investment adviser or investment adviser representative
16 becomes effective sixty days after the filing of the
17 application to withdraw or within any shorter period as
18 provided by rule adopted or order issued pursuant to the New
19 Mexico Uniform Securities Act unless a revocation or suspension
20 proceeding is pending when the application is filed. If a
21 proceeding is pending, withdrawal becomes effective when and
22 upon such conditions as required by rule adopted or order
23 issued pursuant to the New Mexico Uniform Securities Act. The
24 director may institute a revocation or suspension proceeding
25 pursuant to Section 412 of the New Mexico Uniform Securities

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1 Act within one year after the withdrawal became effective
2 automatically and issue a revocation or suspension order as of
3 the last date on which registration was effective if a
4 proceeding is not pending.

5 Section 410. [NEW MATERIAL] FILING FEES.--

6 A. A person shall pay a fee of three hundred
7 dollars (\$300) when initially filing an application for
8 registration as a broker-dealer and when filing a renewal of
9 registration as a broker-dealer.

10 B. The fee for an individual shall be fifty dollars
11 (\$50.00) when filing an application for registration as an
12 agent, when filing a renewal of registration as an agent and
13 when filing for a change of registration as an agent.

14 C. A person shall pay a fee of three hundred
15 dollars (\$300) when filing an application for registration as
16 an investment adviser and when filing a renewal of registration
17 as an investment adviser.

18 D. The fee for an individual shall be fifty dollars
19 (\$50.00) when filing an application for registration as an
20 investment adviser representative, when filing a renewal of
21 registration as an investment adviser representative and when
22 filing a change of registration as an investment adviser
23 representative.

24 E. A federal covered investment adviser required to
25 file a notice pursuant to Section 405 of the New Mexico Uniform
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1 Securities Act shall pay an initial fee of three hundred
2 dollars (\$300) and an annual fee of three hundred dollars
3 (\$300).

4 F. A person required to pay a filing or notice fee
5 pursuant to this section may transmit the fee through or to a
6 designee as a rule or order provides pursuant to the New Mexico
7 Uniform Securities Act.

8 G. An investment adviser representative who is
9 registered as an agent pursuant to Section 402 of the New
10 Mexico Uniform Securities Act and who represents a person that
11 is both registered as a broker-dealer pursuant to Section 401
12 of that act and registered as an investment adviser pursuant to
13 Section 403 of that act or required as a federal covered
14 investment adviser to make a notice filing pursuant to Section
15 405 of that act is not required to pay an initial or annual
16 registration fee for registration as an investment adviser
17 representative.

18 H. If an application made pursuant to Subsection A,
19 B, C, D or E of this section is denied or withdrawn, the
20 director shall retain any fees paid.

21 Section 411. [NEW MATERIAL] POST-REGISTRATION
22 REQUIREMENTS.--

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

8 B. Subject to Section 15(h) of the federal
9 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or
10 Section 222(b) of the federal Investment Advisers Act of 1940
11 (15 U.S.C. Section 80b-22), a broker-dealer registered or
12 required to be registered pursuant to the New Mexico Uniform
13 Securities Act and an investment adviser registered or required
14 to be registered pursuant to the New Mexico Uniform Securities
15 Act shall file such financial reports as are required by a rule
16 adopted or order issued pursuant to the New Mexico Uniform
17 Securities Act. If the information contained in a record filed
18 pursuant to this subsection is or becomes inaccurate or
19 incomplete in a material respect, the registrant shall promptly
20 file a correcting amendment.

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

25 (1) a broker-dealer registered or required to

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1 be registered pursuant to the New Mexico Uniform Securities Act
2 and an investment adviser registered or required to be
3 registered pursuant to the New Mexico Uniform Securities Act
4 shall make and maintain the accounts, correspondence,
5 memoranda, papers, books and other records required by rule
6 adopted or order issued pursuant to the New Mexico Uniform
7 Securities Act;

8 (2) broker-dealer records required to be
9 maintained pursuant to Paragraph (1) of this subsection may be
10 maintained in any form of data storage acceptable pursuant to
11 Section 17(a) of the federal Securities Exchange Act of 1934
12 (15 U.S.C. Section 78q(a)) if they are readily accessible to
13 the director; and

14 (3) investment adviser records required to be
15 maintained pursuant to Paragraph (1) of this subsection may be
16 maintained in any form of data storage required by rule adopted
17 or order issued pursuant to the New Mexico Uniform Securities
18 Act.

19 D. The records of a broker-dealer registered or
20 required to be registered pursuant to the New Mexico Uniform
21 Securities Act and of an investment adviser registered or
22 required to be registered pursuant to that act are subject to
23 such reasonable periodic, special or other audits or
24 inspections by a representative of the director, within or
25 without New Mexico, as the director considers necessary or

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underscoring material = new
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1 appropriate in the public interest and for the protection of
2 investors. An audit or inspection may be made at any time and
3 without prior notice. The director may copy, and remove for
4 audit or inspection copies of, all records the director
5 reasonably considers necessary or appropriate to conduct the
6 audit or inspection. The director may assess a reasonable
7 charge for conducting an audit or inspection pursuant to this
8 subsection.

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

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1 act. The insurance, bond or other satisfactory form of
2 security shall permit an action by a person to enforce any
3 liability on the insurance, bond or other satisfactory form of
4 security if instituted within the time limitations in Paragraph
5 (2) of Subsection J of Section 509 of the New Mexico Uniform
6 Securities Act.

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

21 G. With respect to an investment adviser registered
22 or required to be registered pursuant to the New Mexico Uniform
23 Securities Act, a rule adopted or order issued pursuant to that
24 act may require that information or other records be furnished
25 or disseminated to clients or prospective clients in New Mexico

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1 as necessary or appropriate in the public interest and for the
2 protection of investors and advisory clients.

3 H. A rule adopted or order issued pursuant to the
4 New Mexico Uniform Securities Act may require an individual
5 registered pursuant to Section 402 or 404 of that act to
6 participate in a continuing education program approved by the
7 securities and exchange commission and administered by a
8 self-regulatory organization, or, in the absence of such a
9 program, a rule adopted or order issued pursuant to the New
10 Mexico Uniform Securities Act may require continuing education
11 for an individual registered pursuant to Section 404 of that
12 act.

13 Section 412. [NEW MATERIAL] DENIAL, REVOCATION,
14 SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION OR LIMITATION OF
15 REGISTRATION.--

16 A. If the director finds that the order is in the
17 public interest and that Subsection C of this section
18 authorizes the action, an order issued pursuant to the New
19 Mexico Uniform Securities Act may postpone, deny, suspend or
20 revoke any registration, limit the investment advisory
21 activities that an applicant or registered person may perform
22 in New Mexico or bar an applicant or registered person or a
23 person who is a partner, officer or director or a person
24 occupying a similar status or performing a similar function for
25 an applicant or registered person from association with a

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1 registered broker-dealer or investment adviser or a federal
2 covered investment adviser.

3 B. If the director finds that the order is in the
4 public interest and Subsection C of this section authorizes the
5 action, an order pursuant to the New Mexico Uniform Securities
6 Act may censure or impose a bar or a civil penalty on a
7 registrant in an amount not to exceed a maximum of ten thousand
8 dollars (\$10,000) for each violation.

9 C. A person may be disciplined pursuant to
10 Subsection A or B of this section, or both, if the person, or
11 in the case of a broker-dealer or investment adviser, a
12 partner, officer, director or a person having a similar status
13 or performing similar functions or a person directly or
14 indirectly controlling the broker-dealer or investment adviser:

15 (1) has filed an application for registration
16 in New Mexico pursuant to the New Mexico Uniform Securities Act
17 or the predecessor act within the previous ten years that, as
18 of the effective date of registration or as of any date after
19 filing in the case of an order denying effectiveness, was
20 incomplete in any material respect or contained a statement
21 that, in light of the circumstances under which it was made,
22 was false or misleading with respect to a material fact;

23 (2) willfully violated or willfully failed to
24 comply with the New Mexico Uniform Securities Act or the
25 predecessor act or a rule adopted or order issued pursuant to

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1 the New Mexico Uniform Securities Act or the predecessor act
2 within the previous ten years;

3 (3) has been convicted of a felony or within
4 the previous ten years has been convicted of a misdemeanor
5 involving a security, a commodity future or an option contract
6 or an aspect of a business involving securities, commodities,
7 investments, franchises, insurance, banking or finance;

8 (4) is enjoined or restrained by a court of
9 competent jurisdiction in an action instituted by the director
10 pursuant to the New Mexico Uniform Securities Act or the
11 predecessor act, a state, the securities and exchange
12 commission or the United States from engaging in or continuing
13 an act, practice or course of business involving an aspect of a
14 business involving securities, commodities, investments,
15 franchises, insurance, banking or finance;

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

18 (a) the securities, depository
19 institution, insurance or other financial services regulator of
20 a state or by the securities and exchange commission or other
21 federal agency denying, revoking, barring or suspending
22 registration as a broker-dealer, agent, investment adviser,
23 federal covered investment adviser or investment adviser
24 representative;

25 (b) the securities regulator of a state

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1 or by the securities and exchange commission against a
2 broker-dealer, agent, investment adviser, investment adviser
3 representative or federal covered investment adviser;

4 (c) the securities and exchange
5 commission or by a self-regulatory organization suspending or
6 expelling the registrant from membership in the self-regulatory
7 organization;

8 (d) a court adjudicating a United States
9 postal service fraud order;

10 (e) the insurance regulator of a state
11 denying, suspending or revoking registration as an insurance
12 agent; or

13 (f) a depository institution or
14 financial services regulator suspending or barring the person
15 from the depository institution or other financial services
16 business;

17 (6) is the subject of an adjudication or
18 determination, after notice and opportunity for hearing, by the
19 securities and exchange commission, the commodity futures
20 trading commission, the federal trade commission, a federal
21 depository institution regulator or a depository institution,
22 insurance or other financial services regulator of a state that
23 the person willfully violated the federal Securities Act of
24 1933, the federal Securities Exchange Act of 1934, the federal
25 Investment Advisers Act of 1940, the federal Investment Company

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1 Act of 1940 or the federal Commodity Exchange Act, the
2 securities or commodities law of a state or a federal or state
3 law pursuant to which a business involving investments,
4 franchises, insurance, banking or finance is regulated;

5 (7) is insolvent, either because the person's
6 liabilities exceed the person's assets or because the person
7 cannot meet the person's obligations as they mature, but the
8 director shall not enter an order against an applicant or
9 registrant pursuant to this paragraph without a finding of
10 insolvency as to the applicant or registrant;

11 (8) refuses to allow or otherwise impedes the
12 director from conducting an audit or inspection pursuant to
13 Subsection D of Section 411 of the New Mexico Uniform
14 Securities Act or refuses access to a registrant's office to
15 conduct an audit or inspection pursuant to Subsection D of
16 Section 411 of that act;

17 (9) has failed to reasonably supervise an
18 agent, investment adviser representative or other individual,
19 if the agent, investment adviser representative or other
20 individual was subject to the person's supervision and
21 committed a violation of the New Mexico Uniform Securities Act
22 or the predecessor act or a rule adopted or order issued
23 pursuant to that act or the predecessor act within the previous
24 ten years;

25 (10) has not paid the proper filing fee within

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1 thirty days after having been notified by the director of a
2 deficiency, but the director shall vacate an order pursuant to
3 this paragraph when the deficiency is corrected;

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

6 (a) by a court of competent jurisdiction
7 to have willfully violated the laws of a foreign jurisdiction
8 pursuant to which the business of securities, commodities,
9 investment, franchises, insurance, banking or finance is
10 regulated;

11 (b) to have been the subject of an order
12 of a securities regulator of a foreign jurisdiction denying,
13 revoking or suspending the right to engage in the business of
14 securities as a broker-dealer, agent, investment adviser,
15 investment adviser representative or similar person; or

16 (c) to have been suspended or expelled
17 from membership by or participation in a securities exchange or
18 securities association operating pursuant to the securities
19 laws of a foreign jurisdiction;

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

24 (13) has engaged in dishonest or unethical
25 practices in the securities, commodities, investment,

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1 franchise, banking, finance or insurance business within the
2 previous ten years; or

3 (14) is not qualified on the basis of factors
4 such as training, experience and knowledge of the securities
5 business. However, in the case of an application by an agent
6 for a broker-dealer that is a member of a self-regulatory
7 organization or by an individual for registration as an
8 investment adviser representative, a denial order shall not be
9 based on this paragraph if the individual has successfully
10 completed all examinations required by Subsection D of this
11 section. The director may require an applicant for
12 registration pursuant to Section 402 or 404 of the New Mexico
13 Uniform Securities Act who has not been registered in a state
14 within the two years preceding the filing of an application in
15 New Mexico to successfully complete an examination.

16 D. A rule adopted or order issued pursuant to the
17 New Mexico Uniform Securities Act may require that an
18 examination, including an examination developed or approved by
19 an organization of securities regulators, be successfully
20 completed by a class of individuals or all individuals. An
21 order issued pursuant to the New Mexico Uniform Securities Act
22 may waive, in whole or in part, an examination as to an
23 individual and a rule adopted pursuant to that act may waive,
24 in whole or in part, an examination as to a class of
25 individuals if the director determines that the examination is

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1 not necessary or appropriate in the public interest and for the
2 protection of investors.

3 E. The director may postpone, suspend or deny an
4 application summarily; restrict, condition, limit or suspend a
5 registration; or censure, bar or impose a civil penalty on a
6 registrant before final determination of an administrative
7 proceeding. Upon the issuance of an order, the director shall
8 promptly notify each person subject to the order that the order
9 has been issued, the reasons for the action and that within
10 fifteen days after the receipt of a request in a record from
11 the person, the matter will be scheduled for a hearing. If a
12 hearing is not requested and none is ordered by the
13 administrator within thirty days after the date of service of
14 the order, the order becomes final by operation of law. If a
15 hearing is requested or ordered, the director, after notice of
16 and opportunity for hearing to each person subject to the
17 order, may modify or vacate the order or extend the order until
18 final determination.

19 F. If a hearing is requested or ordered, such
20 hearing shall be conducted pursuant to Subsection B of Section
21 604 of the New Mexico Uniform Securities Act. An order shall
22 not be issued pursuant to this section, except in accordance
23 with Subsection E of this section, without:

24 (1) appropriate notice to the applicant or
25 registrant;

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- 1 (2) opportunity for hearing; and
- 2 (3) findings of fact and conclusions of law in
- 3 a record.

4 G. A person that controls, directly or indirectly,
5 a person not in compliance with this section may be disciplined
6 by order of the director pursuant to Subsection A or B of this
7 section, or both, to the same extent as the noncomplying
8 person, unless the controlling person did not know, and in the
9 exercise of reasonable care could not have known, of the
10 existence of conduct that is a ground for discipline pursuant
11 to this section.

12 H. The director shall not institute a proceeding
13 pursuant to Subsection A or B of this section based solely on
14 material facts actually known by the director unless an
15 investigation or the proceeding is instituted within one year
16 after the director actually acquires knowledge of the material
17 facts.

18 Article 5

19 FRAUD AND LIABILITIES

20 Section 501. [NEW MATERIAL] SECURITIES FRAUD.--It is
21 unlawful for a person, in connection with the offer, sale or
22 purchase of a security, directly or indirectly:

- 23 A. to employ a device, scheme or artifice to
- 24 defraud;
- 25 B. to make an untrue statement of a material fact

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1 or to omit to state a material fact necessary in order to make
2 the statement made, in the light of the circumstances pursuant
3 to which it is made, not misleading; or

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

7 Section 502. [NEW MATERIAL] PROHIBITED CONDUCT IN
8 PROVIDING INVESTMENT ADVICE.--

9 A. It is unlawful for a person that advises others
10 for compensation, either directly or indirectly or through
11 publications or writings, as to the value of securities or the
12 advisability of investing in, purchasing or selling securities
13 or that, for compensation and as part of a regular business,
14 issues or promulgates analyses or reports relating to
15 securities:

16 (1) to employ a device, scheme or artifice to
17 defraud another person; or

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

21 B. A rule adopted pursuant to the New Mexico
22 Uniform Securities Act may define an act, practice or course of
23 business of an investment adviser or an investment adviser
24 representative as fraudulent, deceptive or manipulative and may
25 prescribe means reasonably designed to prevent investment

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1 advisers and investment adviser representatives from engaging
2 in acts, practices and courses of business defined as
3 fraudulent, deceptive or manipulative.

4 C. A rule adopted pursuant to the New Mexico
5 Uniform Securities Act may specify the contents of an
6 investment advisory contract entered into, extended or renewed
7 by an investment adviser.

8 Section 503. [NEW MATERIAL] EVIDENTIARY BURDEN.--

9 A. In a civil action or administrative proceeding
10 pursuant to the New Mexico Uniform Securities Act, a person
11 claiming an exemption, exception, preemption or exclusion has
12 the burden to prove the applicability of the claim.

13 B. In a criminal proceeding pursuant to the New
14 Mexico Uniform Securities Act, a person claiming an exemption,
15 exception, preemption or exclusion has the burden of going
16 forward with evidence of the claim.

17 Section 504. [NEW MATERIAL] FILING OF SALES AND
18 ADVERTISING LITERATURE.--

19 A. Except as otherwise provided in Subsection B of
20 this section, a rule adopted or order issued pursuant to the
21 New Mexico Uniform Securities Act may require the filing of a
22 prospectus, pamphlet, circular, form letter, advertisement,
23 sales literature or other advertising record relating to a
24 security or investment advice addressed or intended for
25 distribution to prospective investors, including clients or

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1 prospective clients of a person registered or required to be
2 registered as an investment adviser.

3 B. This section does not apply to sales and
4 advertising literature specified in Subsection A of this
5 section that relates to a federal covered security or a federal
6 covered investment adviser or that the director determines by
7 rule or order to be excluded from the requirements of
8 Subsection A of this section.

9 Section 505. [NEW MATERIAL] MISLEADING FILINGS.--It is
10 unlawful for a person to make or cause to be made, in a record
11 that is used in an action or proceeding or filed pursuant to
12 the New Mexico Uniform Securities Act, a statement that, at the
13 time and in the light of the circumstances pursuant to which it
14 is made, is false or misleading in a material respect or, in
15 connection with the statement, to omit to state a material fact
16 necessary to make the statement made, in the light of the
17 circumstances pursuant to which it was made, not false or
18 misleading.

19 Section 506. [NEW MATERIAL] MISREPRESENTATIONS CONCERNING
20 REGISTRATION OR EXEMPTION.--The filing of an application for
21 registration, a registration statement, a notice filing
22 pursuant to the New Mexico Uniform Securities Act, the
23 registration of a person, the notice filing by a person or the
24 registration of a security pursuant to that act does not
25 constitute a finding by the director that a record filed

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1 pursuant to the New Mexico Uniform Securities Act is true,
2 complete and not misleading. The filing or registration or the
3 availability of an exemption, exception, preemption or
4 exclusion for a security or a transaction does not mean that
5 the director has passed upon the merits or qualifications of,
6 or recommended or given approval to, a person, security or
7 transaction. It is unlawful to make, or cause to be made, to a
8 purchaser, customer, client or prospective customer or client a
9 representation inconsistent with this section.

10 Section 507. [NEW MATERIAL] QUALIFIED IMMUNITY.--A
11 broker-dealer, agent, investment adviser, federal covered
12 investment adviser or investment adviser representative is not
13 liable to another broker-dealer, agent, investment adviser,
14 federal covered investment adviser or investment adviser
15 representative for defamation relating to a statement that is
16 contained in a record required by the director, or designee of
17 the director, the securities and exchange commission or a
18 self-regulatory organization, unless the person knew, or should
19 have known at the time that the statement was made, that it was
20 false in a material respect or the person acted in reckless
21 disregard of the statement's truth or falsity.

22 Section 508. [NEW MATERIAL] CRIMINAL PENALTIES.--

23 A. A person who willfully violates Section 501 or
24 502 of the New Mexico Uniform Securities Act is guilty of a
25 third degree felony and, upon conviction, shall be fined not

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

5 B. A person who willfully violates Section 505 of
6 the New Mexico Uniform Securities Act knowing the statement
7 made to be false or misleading in a material respect is guilty
8 of a third degree felony and, upon conviction, shall be fined
9 not more than five thousand dollars (\$5,000) or imprisoned not
10 more than three years, or both, for each violation. For
11 purposes of Subsection B of Section 31-18-13 NMSA 1978, the
12 minimum term prescribed by this subsection is three years.

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

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

25 E. An individual convicted of violating a rule or

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1 order pursuant to the New Mexico Uniform Securities Act may be
2 fined, but shall not be imprisoned, if the individual did not
3 have knowledge of the rule or order.

4 F. For the purposes of this section, "willfully"
5 means purposely or intentionally committing the act or making
6 the omission and does not require an intent to violate the law
7 or knowledge that the act or omission is unlawful.

8 G. Each offense shall constitute a separate
9 offense, and a prosecution for any one of such offenses shall
10 not bar prosecution or conviction for any other offenses.

11 H. All persons convicted of criminal violations of
12 the New Mexico Uniform Securities Act shall be sentenced in
13 accordance with the Criminal Sentencing Act or its successor
14 statute.

15 I. No indictment or information may be brought
16 pursuant to this section more than five years after the alleged
17 violation.

18 J. The attorney general or the proper district
19 attorney, with or without a referral from the director, may
20 institute criminal proceedings pursuant to the New Mexico
21 Uniform Securities Act. The attorney general or district
22 attorney may request assistance from the director or employees
23 of the division. When so requested by the director, the
24 attorney general shall commission as a special assistant
25 attorney general any attorney employed by the director or

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1 contracted with by the director and approved by the attorney
2 general to assist the director in carrying out the director's
3 duties, including providing legal advice and prosecuting
4 offenders.

5 K. The New Mexico Uniform Securities Act does not
6 limit the power of New Mexico to punish a person for conduct
7 that constitutes a crime pursuant to other laws of New Mexico.

8 Section 509. [NEW MATERIAL] CIVIL LIABILITY.--

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

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

23 (1) the purchaser may maintain an action to
24 recover the consideration paid for the security, less the
25 amount of any income received on the security, and interest at
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1 the legal rate of interest from the date of the purchase, costs
2 and reasonable attorney fees determined by the court, upon the
3 tender of the security, or for actual damages as provided in
4 Paragraph (3) of this subsection;

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

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

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

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1 untruth or omission. An action pursuant to this subsection is
2 governed by the following:

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

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

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

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

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1 Subsection A of Section 402 of that act or Section 506 of that
2 act is liable to the customer. The customer, if a purchaser,
3 may maintain an action for recovery of actual damages as
4 specified in Paragraphs (1) through (3) of Subsection B of this
5 section, or, if a seller, for a remedy as specified in
6 Paragraphs (1) through (3) of Subsection C of 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 Section
10 403 of the New Mexico Uniform Securities Act, Subsection A of
11 Section 404 of that act or Section 506 of that act is liable to
12 the client. The client may maintain an action to recover the
13 consideration paid for the advice, interest at the legal rate
14 of interest from the date of payment, costs and reasonable
15 attorney fees determined by the court.

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

23 (1) the person defrauded may maintain an
24 action to recover the consideration paid for the advice and the
25 amount of any actual damages caused by the fraudulent conduct,

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1 interest at the legal rate of interest from the date of the
2 fraudulent conduct, costs and reasonable attorney fees
3 determined by the court, less the amount of any income received
4 as a result of the fraudulent conduct; and

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

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

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

19 (2) an individual who is a managing partner,
20 executive officer or director of a person liable pursuant to
21 Subsections B through F of this section, including an
22 individual having a similar status or performing similar
23 functions, unless the individual sustains the burden of proof
24 that the individual did not know and, in the exercise of
25 reasonable care could not have known, of the existence of

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1 conduct by reason of which the liability is alleged to exist;

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

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

18 H. A person liable pursuant to this section has a
19 right of contribution as in cases of contract against any other
20 person liable pursuant to this section for the same conduct.

21 I. A cause of action pursuant to this section
22 survives the death of an individual who might have been a
23 plaintiff or defendant.

24 J. A person shall not obtain relief:

25 (1) pursuant to Subsection B of this section

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1 for violation of Section 301 of the New Mexico Uniform
2 Securities Act, or pursuant to Subsection D or E of this
3 section, unless the action is instituted within one year after
4 the violation occurred; or

5 (2) pursuant to Subsection B of this section,
6 other than for violation of Section 301 of the New Mexico
7 Uniform Securities Act, or pursuant to Subsection C or F of
8 this section, unless the action is instituted within the
9 earlier of two years after discovery of the facts constituting
10 the violation or five years after the violation.

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

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

24 M. The rights and remedies provided by the New
25 Mexico Uniform Securities Act are in addition to any other

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1 rights or remedies that may exist, but that act does not create
2 a cause of action not specified in this section or Subsection E
3 of Section 411 of that act.

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

8 A. the purchaser, seller or recipient of investment
9 advice receives in a record, before the action is 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 financial
15 or other information necessary to correct all material
16 misrepresentations or omissions in the information that was
17 required by the New Mexico Uniform Securities Act to be
18 furnished to that person at the time of the purchase, sale or
19 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 the
25 legal rate of interest from the date of the purchase, less the

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1 amount of any income received on the security; or, if the
2 purchaser no longer owns the security, an offer to pay the
3 purchaser upon acceptance of the offer damages in an amount
4 that would be recoverable upon a tender, less the value of the
5 security when the purchaser disposed of it, and interest at the
6 legal rate of interest from the date of the purchase in cash
7 equal to the damages computed in the manner provided in this
8 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 the
18 difference between the price at which the security was
19 purchased and the value the security would have had at the time
20 of the purchase in the absence of the purchaser's conduct that
21 may have caused liability and interest at the legal rate of
22 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

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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 Paragraph
4 (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 purchaser
20 at any time without a specified period of not less than thirty
21 days, or such shorter or longer period as the director by order
22 prescribes, and contains such other terms and conditions, if
23 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

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

3 D. the purchaser, seller or recipient of investment
4 advice timely accepts the offer made pursuant to Subsections A
5 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 investment
10 advice receives an offer in compliance with Subsections A
11 through C of this section but fails to accept the offer in a
12 record within the period specified in the offer.

13 Article 6

14 ADMINISTRATION AND JUDICIAL REVIEW

15 Section 601. [NEW MATERIAL] ADMINISTRATION.--

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

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

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

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

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1 designee of the director to disclose the record or information,
2 except in accordance with Section 602 of that act, Subsection C
3 of Section 607 of that act or Section 608 of that act.

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

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

23 F. The "securities enforcement and investor
24 education fund" is created as a nonreverting fund in the state
25 treasury to provide money for the purposes specified in

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1 Subsections E and G of this section. The division may
2 establish and adopt rules as required to administer the fund.
3 The securities enforcement and investor education fund shall be
4 administered by the division. The fund shall consist of:

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

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

12 (3) appropriations, grants or donations to the
13 fund; and

14 (4) income from investment of the fund.

15 G. Money in the securities enforcement and investor
16 education fund shall be appropriated by the legislature to the
17 division and shall be used for consumer education and training
18 in matters concerning securities laws and investment issues;
19 education and training of investigative and prosecutorial staff
20 of the division; and costs incurred for the investigation and
21 prosecution of civil and criminal violations of the New Mexico
22 Uniform Securities Act, including expert and other consultant
23 fees, witness fees, deposition costs and travel and training
24 expenses. Money shall be disbursed from the fund only on
25 warrant of the secretary of finance and administration upon

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1 vouchers signed by the director or the director's authorized
2 representative. Any unexpended or unencumbered balance
3 remaining at the end of a fiscal year shall not revert to the
4 general fund.

5 Section 602. [NEW MATERIAL] INVESTIGATIONS AND
6 SUBPOENAS.--

7 A. The director may:

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

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

21 (3) publish a record concerning an action,
22 proceeding or an investigation pursuant to or a violation of
23 the New Mexico Uniform Securities Act or a rule adopted or
24 order issued pursuant to that act if the director determines it
25 is necessary or appropriate in the public interest and for the

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1 protection of investors.

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

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

- 18 (1) hold the person in contempt;
19 (2) order the person to appear before the
20 director;
21 (3) order the person to testify about the
22 matter under investigation or in question;
23 (4) order the production of records;
24 (5) grant injunctive relief, including
25 restricting or prohibiting the offer or sale of securities or

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1 the providing of investment advice;

2 (6) impose a civil penalty of not more than
3 ten thousand dollars (\$10,000) for each violation; and

4 (7) grant any other necessary or appropriate
5 relief.

6 D. This section does not preclude a person from
7 applying to the appropriate district court or a court of
8 another state for relief from a request to appear, testify,
9 file a statement, produce records or obey a subpoena.

10 E. An individual is not excused from attending,
11 testifying, filing a statement, producing a record or other
12 evidence or obeying a subpoena of the director pursuant to the
13 New Mexico Uniform Securities Act or in an action or proceeding
14 instituted by the director pursuant to that act on the grounds
15 that the required testimony, statement, record or other
16 evidence, directly or indirectly, may tend to incriminate the
17 individual or subject the individual to a criminal fine,
18 penalty or forfeiture. If the individual refuses to testify,
19 file a statement or produce a record or other evidence on the
20 basis of the individual's privilege against self-incrimination,
21 the director may apply to the district court of Santa Fe county
22 or other appropriate district court or to a court of another
23 state, a federal court or a court of a foreign jurisdiction to
24 compel the testimony, the filing of the statement, the
25 production of the record or the giving of other evidence. The

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1 testimony, record or other evidence compelled pursuant to such
2 an order shall not be used, directly or indirectly, against the
3 individual in a criminal case, except in a prosecution for
4 perjury or contempt or otherwise failing to comply with the
5 order.

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

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1 of resources and employees of the director to carry out the
2 request for assistance.

3 Section 603. [NEW MATERIAL] CIVIL ENFORCEMENT.--

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

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

18 (1) issue a permanent or temporary injunction,
19 restraining order or declaratory judgment;

20 (2) order other appropriate or ancillary
21 relief, which may include:

22 (a) an asset freeze, accounting, writ of
23 attachment, writ of general or specific execution and
24 appointment of a receiver or conservator, that may be the
25 director, for the defendant or the defendant's assets;

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

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

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

14 (e) ordering the payment of prejudgment
15 and postjudgment interest; and

16 (f) ordering the payment of litigation
17 expenses of the director; and

18 (3) order such other relief as the court
19 considers appropriate.

20 C. If a person violates a provision of the New
21 Mexico Uniform Securities Act and the violation is directed
22 toward, targets or is committed against a person who, at the
23 time of the violation, is sixty-two years of age or older, the
24 court, in addition to any other civil penalties provided for
25 pursuant to the New Mexico Uniform Securities Act or a rule

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1 issued pursuant to that act, may impose an additional civil
2 penalty not to exceed ten thousand dollars (\$10,000) for each
3 violation.

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

7 Section 604. [NEW MATERIAL] ADMINISTRATIVE ENFORCEMENT.--

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

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

21 (2) issue an order denying, suspending,
22 revoking or conditioning the exemptions for a broker-dealer
23 pursuant to Subparagraph (d) or (f) of Paragraph (1) of
24 Subsection B of Section 401 the New Mexico Uniform Securities
25 Act or an investment adviser pursuant to Subparagraph (c) of

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1 Paragraph (1) of Subsection B of Section 403 of that act; or
2 (3) issue an order pursuant to Section 204 of
3 the New Mexico Uniform Securities Act.

4 B. For any administrative proceeding authorized by
5 the New Mexico Uniform Securities Act, including proceedings
6 related to notices and orders pursuant to Section 204 of that
7 act, Subsection E of Section 306 of that act, Subsection F of
8 Section 412 of that act or Subsection A of this section:

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

16 (2) upon entry of a notice of intent or
17 summary order, the director shall promptly notify in a record
18 all parties against whom action is taken or contemplated that
19 the notice or summary order has been entered and the reasons
20 for the notice or summary order. The director shall send
21 parties against whom action is taken or contemplated a notice
22 of opportunity for hearing on the matters set forth in the
23 order or notice of intent. The notice shall state that the
24 parties have fifteen days from receipt of the notice to file
25 with the director a request in a record for a hearing. The

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1 director shall set the matter for hearing no more than sixty
2 nor less than fifteen days from receipt of the request for
3 hearing and shall promptly notify the parties of the time and
4 place for hearing;

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

8 (4) the director may by order take the action
9 contemplated in the notice of intent or make a summary order
10 final:

11 (a) fifteen days after the parties
12 against whom action is taken or contemplated receive notice of
13 the right to request a hearing if those parties fail to request
14 a hearing; or

15 (b) one day following the date set for a
16 hearing requested by a party if the party fails to appear at
17 the hearing;

18 (5) if a hearing is requested or ordered, the
19 director, after notice of the opportunity for hearing to all
20 persons against whom action is taken or contemplated, may
21 modify or vacate the order or extend the order until final
22 determination;

23 (6) for the purpose of conducting any hearing
24 pursuant to this section, the director shall have the power to
25 call any party to testify under oath at such hearing to require

1 the attendance of witnesses and the production of books,
2 records and papers and to take the depositions of witnesses;
3 and for that purpose the director is authorized, at the request
4 of the person requesting such hearing or upon the director's
5 own initiative, to issue a subpoena for any witness or a
6 subpoena duces tecum to compel the production of any books,
7 records or papers. At the director's option or when state law
8 or court rules require such process, the subpoena may be
9 directed to the sheriff or other law enforcement agency in the
10 county where such witness resides;

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

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

18 (a) obtain the names and addresses of
19 witnesses who will or may be called by the other party to
20 testify at the hearing; and

21 (b) inspect and copy any documents or
22 items that the other party will or may introduce in evidence at
23 the hearing;

24 (9) the director shall pass upon the
25 admissibility of evidence and may exclude evidence that is

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1 incompetent, irrelevant, immaterial or unduly repetitious;

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

14 (11) a final order or order after hearing
15 shall include entry of findings of fact and conclusions of law
16 in a record.

17 C. In a final order pursuant to Subsection B of
18 this section, the director may impose a civil penalty of up to
19 ten thousand dollars (\$10,000) for each violation. For
20 purposes of determining the amount of a civil penalty imposed
21 pursuant to this subsection, the director shall consider, among
22 other factors, the frequency and persistence of the conduct
23 constituting a violation of the New Mexico Uniform Securities
24 Act or a rule or order of the director pursuant to that act,
25 the number of persons adversely affected by the conduct and the

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1 resources of the person committing the violation.

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

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

15 F. If a petition for judicial review of a final
16 order is not filed in accordance with Section 609 of the New
17 Mexico Uniform Securities Act, the director may file a
18 certified copy of the final order with the clerk of the
19 appropriate district court. The order so filed has the same
20 effect as a judgment of the court and may be recorded, enforced
21 or satisfied in the same manner as a judgment of the court.

22 G. If a person does not comply with an order
23 pursuant to this section, the director may petition the
24 district court of Santa Fe county or other appropriate district
25 court or a court of another state, a federal court or a court

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1 of a foreign jurisdiction to enforce the order. The court
2 shall not require the director to post a bond in an action or
3 proceeding pursuant to this section. If the court finds, after
4 service and opportunity for hearing, that the person was not in
5 compliance with the order, the court may adjudge the person in
6 civil contempt of the order. The court may impose a further
7 civil penalty against the person for contempt in an amount not
8 greater than ten thousand dollars (\$10,000) for each violation
9 and may grant any other relief the court determines is just and
10 proper in the circumstances.

11 Section 605. [NEW MATERIAL] RULES, FORMS, ORDERS,
12 INTERPRETATIVE OPINIONS AND HEARINGS.--

13 A. The director may:

14 (1) issue forms and orders and, after notice
15 and comment, may adopt and amend rules necessary or appropriate
16 to carry out the New Mexico Uniform Securities Act and may
17 repeal rules, including rules and forms governing registration
18 statements, applications, notice filings, reports and other
19 records;

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

23 (3) by rule, classify securities, persons and
24 transactions and adopt different requirements for different
25 classes.

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

16 C. Subject to Section 15(h) of the federal
17 Securities Exchange Act and Section 222 of the federal
18 Investment Advisers Act of 1940, the director may require that
19 a financial statement filed pursuant to the New Mexico Uniform
20 Securities Act be prepared in accordance with generally
21 accepted accounting principles in the United States and comply
22 with other requirements specified by rule adopted or order
23 issued pursuant to the New Mexico Uniform Securities Act. A
24 rule adopted or order issued pursuant to the New Mexico Uniform
25 Securities Act may establish:

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1 (1) subject to Section 15(h) of the federal
2 Securities Exchange Act and Section 222 of the federal
3 Investment Advisors Act of 1940, the form and content of
4 financial statements required pursuant to the New Mexico
5 Uniform Securities Act;

6 (2) whether unconsolidated financial
7 statements shall be filed; and

8 (3) whether required financial statements
9 shall be audited by an independent certified public accountant.

10 D. The director may provide interpretative opinions
11 or issue determinations that the director will not institute a
12 proceeding or an action pursuant to the New Mexico Uniform
13 Securities Act against a specified person for engaging in a
14 specified act, practice or course of business if the
15 determination is consistent with that act. A rule adopted or
16 order issued pursuant to the New Mexico Uniform Securities Act
17 may establish a reasonable charge for interpretative opinions
18 or determinations that the director will not institute an
19 action or a proceeding.

20 E. A penalty pursuant to the New Mexico Uniform
21 Securities Act shall not be imposed for, and liability does not
22 arise from, conduct that is engaged in or omitted in good faith
23 believing that conduct conforms to a rule, form or order of the
24 director pursuant to the New Mexico Uniform Securities Act.

25 F. A hearing in an administrative proceeding

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1 pursuant to the New Mexico Uniform Securities Act shall be
2 conducted in public unless the director for good cause
3 consistent with that act determines that the hearing will not
4 be so conducted.

5 Section 606. [NEW MATERIAL] ADMINISTRATIVE FILES AND
6 OPINIONS.--

7 A. The director shall maintain, or designate a
8 person to maintain, a register of applications for registration
9 of securities; registration statements; notice filings;
10 applications for registration of broker-dealers, agents,
11 investment advisers and investment adviser representatives;
12 notice filings by federal covered investment advisers that are
13 or have been effective pursuant to the New Mexico Uniform
14 Securities Act or the predecessor act; notices of claims of
15 exemption from registration or notice filing requirements
16 contained in a record; orders issued pursuant to the New Mexico
17 Uniform Securities Act or the predecessor act; and
18 interpretative opinions or no action determinations issued
19 pursuant to the New Mexico Uniform Securities Act.

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

22 C. The director shall furnish a copy of a record
23 that is a public record or a certification that the public
24 record does not exist to a person that so requests. A rule
25 adopted pursuant to the New Mexico Uniform Securities Act may

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1 establish a reasonable charge for furnishing the record or
2 certification. A copy of the record certified or a certificate
3 by the director of a record's nonexistence is prima facie
4 evidence of a record or its nonexistence.

5 Section 607. [NEW MATERIAL] PUBLIC RECORDS--
6 CONFIDENTIALITY.--

7 A. Except as otherwise provided in Subsection B of
8 this section, records obtained by the director or filed
9 pursuant to the New Mexico Uniform Securities Act, including a
10 record contained in or filed with a registration statement,
11 application, notice filing or report, are public records and
12 are available for public examination.

13 B. The following records are not public records and
14 are not available for public examination pursuant to Subsection
15 A of this section:

16 (1) a record obtained by the director in
17 connection with an audit or inspection pursuant to Subsection D
18 of Section 411 of the New Mexico Uniform Securities Act or an
19 investigation pursuant to Section 602 of that act, except that
20 information that is introduced at a hearing constitutes public
21 information unless otherwise ordered by the director;

22 (2) a part of a record filed in connection
23 with a registration statement pursuant to Sections 301 and 303
24 through 305 of the New Mexico Uniform Securities Act or a
25 record pursuant to Subsection D of Section 411 of that act that

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1 contains trade secrets or confidential information if the
2 person filing the registration statement or report has asserted
3 a claim of confidentiality or privilege that is authorized by
4 law;

5 (3) a record that is not required to be
6 provided to the director or filed pursuant to the New Mexico
7 Uniform Securities Act and is provided to the director only on
8 the condition that the record will not be subject to public
9 examination or disclosure;

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

13 (5) any social security number, residential
14 address unless used as a business address and residential
15 telephone number unless used as a business telephone number
16 contained in a record that is filed.

17 C. If disclosure is for the purpose of a civil,
18 administrative or criminal investigation, action or proceeding
19 or to a person specified in Subsection A of Section 608 of the
20 New Mexico Uniform Securities Act, the director may disclose a
21 record obtained in connection with an audit or inspection
22 pursuant to Subsection D of Section 411 of that act or a record
23 obtained in connection with an investigation pursuant to
24 Section 602 of that act.

25 Section 608. [NEW MATERIAL] UNIFORMITY AND COOPERATION

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1 WITH OTHER AGENCIES.--

2 A. The director shall, in the director's discretion,
3 cooperate, coordinate, consult and, subject to Section 607 of the
4 New Mexico Uniform Securities Act, share records and information
5 with the securities regulator of another state, Canada, a
6 Canadian province or territory, a foreign jurisdiction, the
7 securities and exchange commission, the United States department
8 of justice, the commodity futures trading commission, the federal
9 trade commission, the securities investor protection corporation,
10 a self-regulatory organization, a national or international
11 organization of securities regulators, a federal or state banking
12 and insurance regulator and a governmental law enforcement agency
13 to effectuate greater uniformity in securities matters among the
14 federal government, self-regulatory organizations, states and
15 foreign governments.

16 B. In cooperating, coordinating, consulting and
17 sharing records and information pursuant to this section and in
18 acting by rule, order or waiver pursuant to the New Mexico
19 Uniform Securities Act, the director shall, in the director's
20 discretion, take into consideration in carrying out the public
21 interest the following general policies:

22 (1) maximizing effectiveness of regulation for
23 the protection of investors;

24 (2) maximizing uniformity in federal and state
25 regulatory standards; and

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1 (3) minimizing burdens on the business of
2 capital formation, without adversely affecting essentials of
3 investor protection.

4 C. The cooperation, coordination, consultation and
5 sharing of records and information authorized by this section
6 includes:

7 (1) establishing or employing one or more
8 designees as a central depository for registration and notice
9 filings pursuant to the New Mexico Uniform Securities Act and
10 for records required or allowed to be maintained pursuant to
11 that act;

12 (2) developing and maintaining uniform forms;

13 (3) conducting a joint examination or
14 investigation;

15 (4) holding a joint administrative hearing;

16 (5) instituting and prosecuting a joint civil
17 or administrative proceeding;

18 (6) sharing and exchanging personnel;

19 (7) coordinating registrations pursuant to
20 Sections 301 and 401 through 404 of the New Mexico Uniform
21 Securities Act and exemptions pursuant to Section 203 of that
22 act;

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

25 (9) formulating rules, statements of policy,

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1 guidelines, forms and interpretative opinions and releases;

2 (10) formulating common systems and
3 procedures;

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

6 (12) attending conferences and other meetings
7 among securities regulators, which may include representatives
8 of governmental and private sector organizations involved in
9 capital formation, deemed necessary or appropriate to promote
10 or achieve uniformity; and

11 (13) developing and maintaining a uniform
12 exemption from registration for small issuers and taking other
13 steps to reduce the burden of raising investment capital by
14 small businesses.

15 Section 609. [NEW MATERIAL] JUDICIAL REVIEW.--

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

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

25 Section 610. [NEW MATERIAL] JURISDICTION.--

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1 A. Sections 301 and 302 of the New Mexico Uniform
2 Securities Act, Subsection A of Section 401 of that act,
3 Subsection A of Section 402 of that act, Subsection A of
4 Section 403 of that act, Subsection A of Section 404 of that
5 act and Sections 501, 506, 509 and 510 of that act do not apply
6 to a person that sells or offers to sell a security, unless the
7 offer to sell or the sale is made in New Mexico or the offer to
8 purchase or the purchase is made and accepted in New Mexico.

9 B. Subsection A of Section 401 of the New Mexico
10 Uniform Securities Act, Subsection A of Section 402 of that
11 act, Subsection A of Section 403 of that act, Subsection A of
12 Section 404 of that act and Sections 501, 506, 509 and 510 of
13 that act do not apply to a person that purchases or offers to
14 purchase a security, unless the offer to purchase or the
15 purchase is made in New Mexico or the offer to sell or the sale
16 is made and accepted in New Mexico.

17 C. For the purpose of this section, an offer to
18 sell or to purchase a security is made in New Mexico, whether
19 or not either party is then present in New Mexico, if the
20 offer:

- 21 (1) originates from within New Mexico; or
22 (2) is directed by the offeror to a place in
23 New Mexico and received at the place to which it is directed.

24 D. For the purpose of this section, an offer to
25 purchase or to sell is accepted in New Mexico, whether or not

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1 either party is then present in New Mexico, if the acceptance:

2 (1) is communicated to the offeror in New
3 Mexico and the offeree reasonably believes the offeror to be
4 present in New Mexico and the acceptance is received at the
5 place in New Mexico to which it is directed; and

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

8 E. An offer to sell or to purchase is not made in
9 New Mexico when a publisher circulates or there is circulated
10 on the publisher's behalf in New Mexico a bona fide newspaper
11 or other publication of general, regular and paid circulation
12 that is not published in New Mexico, or that is published in
13 New Mexico but has had more than two-thirds of its circulation
14 outside New Mexico during the previous twelve months or when a
15 radio or television program or other electronic communication,
16 except specifically addressed electronic mail or messaging,
17 originating outside New Mexico is received in New Mexico. A
18 radio or television program or other electronic communication
19 is considered as having originated in New Mexico if either the
20 broadcast studio or the originating source of transmission is
21 located in New Mexico, unless:

22 (1) the program or communication is syndicated
23 and distributed from outside New Mexico for redistribution to
24 the general public in New Mexico;

25 (2) the program or communication is supplied

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1 by a radio, television or other electronic network with the
2 electronic signal originating from outside New Mexico for
3 redistribution to the general public in New Mexico;

4 (3) the program or communication is an
5 electronic communication that originates outside New Mexico and
6 is captured for redistribution to the general public in New
7 Mexico by a community antenna or cable, radio, cable television
8 or other electronic system; or

9 (4) the program or communication consists of
10 an electronic communication that originates in New Mexico, but
11 that is not intended for distribution to the general public in
12 New Mexico.

13 F. Subsection A of Section 403 of the New Mexico
14 Uniform Securities Act, Subsection A of Section 404 of that
15 act, Subsection A of Section 405 of that act and Sections 502,
16 505 and 506 of that act apply to a person if the person engages
17 in an act, practice or course of business instrumental in
18 effecting prohibited or actionable conduct in New Mexico,
19 whether or not either party is then present in New Mexico.

20 Section 611. [NEW MATERIAL] SERVICE OF PROCESS.--

21 A. A consent to service of process complying with
22 this section shall be signed and filed in the form required by
23 a rule or order pursuant to the New Mexico Uniform Securities
24 Act. A consent appointing the director as the person's agent
25 for service of process in a noncriminal action or proceeding

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1 against the person, or the person's successor or personal
2 representative pursuant to the New Mexico Uniform Securities
3 Act or a rule adopted or order issued pursuant to that act
4 after the consent is filed, has the same force and validity as
5 if the service were made personally on the person filing the
6 consent. A person that has filed a consent complying with this
7 subsection in connection with a previous application for
8 registration or notice filing need not file an additional
9 consent.

10 B. If a person, including a nonresident of New
11 Mexico, engages in an act, practice or course of business
12 prohibited or made actionable by the New Mexico Uniform
13 Securities Act or a rule adopted or order issued pursuant to
14 that act and the person has not filed a consent to service of
15 process pursuant to Subsection A of this section, the act,
16 practice or course of business constitutes the appointment of
17 the director as the person's agent for service of process in a
18 noncriminal action or proceeding against the person or the
19 person's successor or personal representative.

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

23 (1) the plaintiff, which may be the director,
24 promptly sends notice of the service and a copy of the process,
25 return receipt requested, to the defendant or respondent at the

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1 address set forth in the consent to service of process or, if a
2 consent to service of process has not been filed, at the last
3 known address, or takes other reasonable steps to give notice;
4 and

5 (2) the plaintiff files an affidavit of
6 compliance with this subsection in the action or proceeding on
7 or before the return day of the process, if any, or within the
8 time that the court, or the director in a proceeding before the
9 director, allows.

10 D. Service pursuant to Subsection C of this section
11 may be used in a proceeding before the director or by the
12 director in a civil action in which the director is the moving
13 party.

14 E. If process is served pursuant to Subsection C of
15 this section, the court, or the director in a proceeding before
16 the director, shall order continuances as are necessary or
17 appropriate to afford the defendant or respondent reasonable
18 opportunity to defend.

19 Section 612. [NEW MATERIAL] SEVERABILITY.--If any part or
20 application of this act is held invalid, the remainder or its
21 application to other situations or persons shall not be
22 affected.

23 Article 7

24 TRANSITION

25 Section 701. [NEW MATERIAL] APPLICATION OF ACT TO

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1 EXISTING PROCEEDINGS AND EXISTING RIGHTS AND DUTIES.--

2 A. The predecessor act exclusively governs all
3 actions or proceedings that are pending on the effective date
4 of the New Mexico Uniform Securities Act or may be instituted
5 on the basis of conduct occurring before the effective date of
6 the New Mexico Uniform Securities Act, but a civil action shall
7 not be maintained to enforce any liability pursuant to the
8 predecessor act unless instituted within any period of
9 limitation that applied when the cause of action accrued or
10 within five years after the effective date of the New Mexico
11 Uniform Securities Act, whichever is earlier.

12 B. All effective registrations pursuant to the
13 predecessor act, all administrative orders relating to the
14 registrations, rules, statements of policy, interpretative
15 opinions, declaratory rulings, no action determinations and
16 conditions imposed on the registrations pursuant to the
17 predecessor act remain in effect while they would have remained
18 in effect if the New Mexico Uniform Securities Act had not been
19 enacted. They are considered to have been filed, issued or
20 imposed pursuant to the New Mexico Uniform Securities Act, but
21 are exclusively governed by the predecessor act.

22 C. The predecessor act exclusively applies to an
23 offer or sale made within one year after the effective date of
24 the New Mexico Uniform Securities Act pursuant to an offering
25 made in good faith before the effective date of the New Mexico

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1 Uniform Securities Act on the basis of an exemption available
2 pursuant to the predecessor act.

3 Section 702. TEMPORARY PROVISION--TRANSFER OF FUNDS.--On
4 the effective date of this act, all money in the securities
5 education and training fund shall be transferred to the
6 securities enforcement and investor education fund.

7 Section 703. REPEAL.--Sections 58-13B-1 through 58-13B-57
8 NMSA 1978 (being Laws 1986, Chapter 7, Sections 1 through 56,
9 and Laws 1989, Chapter 176, Section 9, as amended) are
10 repealed.

11 Section 704. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is January 1, 2010.