

AN ACT  
RELATING TO SECURITIES; AMENDING SECTION 58-13B-24 NMSA 1978  
(BEING LAWS 1986, CHAPTER 7, SECTION 24, AS AMENDED) TO  
CHANGE REGISTRATION REQUIREMENTS.

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

Section 1. Section 58-13B-24 NMSA 1978 (being Laws 1986, Chapter 7, Section 24, as amended) is amended to read:

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

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

B. If a registration statement is withdrawn before the effective date or a pre-effective stop order is entered pursuant to Section 58-13B-25 NMSA 1978, the director shall retain the fee set forth in this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

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

(2) five hundred twenty-five dollars (\$525)  
if the person is a corporate issuer or a person acting on

behalf of a corporate issuer and is claiming an exemption from the registration requirements of federal law regarding small corporate offerings pursuant to Rule 504 of Regulation D (17 CFR 230.504).

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

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

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

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

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

F. In the case of a non-issuer offering, the director may not require information pursuant to Section 58-13B-23 NMSA 1978 or Subsection L of this section unless it is known to the person filing the registration statement or

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

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

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

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

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

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

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

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

(1) the first written offer made to the purchaser by or for the account of the issuer or another

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

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

(3) payment pursuant to a sale; or

(4) delivery pursuant to a sale.

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

L. During the period that an offering is being made pursuant to an effective registration statement, the director by rule or order may require the person who filed

the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

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

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

times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold.

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

P. With respect to a federal covered security, as defined in Section 18(b)(2) of the federal Securities Act of 1993:

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

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

may, by rule or by order, require;

(b) a consent to service of process;

and

(c) a notification fee in the amount of five hundred twenty-five dollars (\$525); and

(2) the notice of intent and fee specified in Paragraph (1) of this subsection shall be effective for a period of one year from the date of filing with the director.

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

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

S. The director may issue a stop order suspending



the offer and sale of a federal covered security, except a federal covered security pursuant to Section 18(b)(1) of the federal Securities Act of 1933, if he finds that:

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

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

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1998.