



New Mexico Regulation and Licensing Department SECURITIES DIVISION

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Re: Drafted intrastate crowdfunding regulations

Dear Ms. Dominguez,

This letter is to summarize the objective of the regulations promulgated by the Securities Division of the Regulation and Licensing Department, for the consideration of the New Mexico Small Business Regulatory Advisory Commission. I attach three exhibits, showing the technical changes to the regulations, themselves. These regulations, if adopted, will create an intrastate crowdfunding mechanism. We do this by removing regulatory restrictions on amounts that may be raised by entrepreneurs, by removing restrictions on which residents may invest in qualified offerings, and by encouraging the creation of website-based marketplaces (called 'portals').

Statement of the Problem

Two conditions impair the ability of entrepreneurs in New Mexico from raising adequate capital for start-up businesses or expansions: Severe regulatory restrictions, and geography. We seek to lift many of the archaic regulatory limitations, to enable local businesses to offset the geographic disadvantage.

Since the adoption of the securities laws that have comprised the basic model for raising capital in this and all other states in the country since the 1920's and 1930's, raising capital from investors has been a) very expensive; b) restricted to small amounts; or, c) limited to so-called 'accredited investors' meaning, investors who make very high incomes or have high net worth. These long-standing rules in law and regulation have made the task of raising money very difficult for small businesses.

Access to capital is made even more difficult in New Mexico and other sparsely populated, rural states due to the tendency of capital to stay in a single geographic area. That is, investors in Boston tend to invest in Boston area businesses, while investors in northern California tend to invest in northern California. Texans tend to invest in Texas. According to research, this geographic trend for capital reflects the investors' familiarity with the nature of the business (technology for northern California, or perhaps, vineyards and wineries, for example), as well as the ability for the investors to know key people in the business, or to see and touch the

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product of the proposed venture. The result is that even great ideas in New Mexico have a near-impossible task of attracting capital from outside our borders.

The combination of oppressive securities laws and the geographic tendency of capital make a very difficult environment for businesses in New Mexico (and every other similarly situated state) to raise money for start-ups and expansions. The number one reason small startup businesses fail is inadequate capital, so it follows that restricted access to capital discourages the creation and growth of business, jobs and revenue.

The other consequence of the traditional securities model is that ordinary citizens have been denied the opportunity to consider start-ups and growing businesses in their own community as a possible investment opportunity. We estimate that restrictions like the definition of ‘accredited investors’ has meant that ninety-eight percent of New Mexico residents have been prohibited from even considering certain private placements and intrastate offerings. Again, research informs us that individuals desire to invest in opportunities that affect their homes and towns, for many reasons.

Summary of this Proposal

If New Mexico businesses can obtain access to capital in the state, it could help stimulate business development in the state. Also, by removing irrational definitions about who may invest in New Mexico businesses, individual investors will have some exciting opportunities to invest in their own communities that have previously been denied them.

These proposed regulations seek to accomplish that goal by:

1. Allowing New Mexico businesses to seek equity or debt investment from New Mexico residents in any amount that can be justified;
2. Allowing all New Mexicans to consider such offerings, and to invest if they choose, without artificial and irrelevant restrictions dependent upon income or net worth;
3. Creating a mechanism for all intrastate offerings to raise money from the entirety of the state’s population via officially recognized interactive websites, known as Portals.
4. Protecting the integrity of the investment activity by requiring material disclosures, and by the payment of investment capital to a third party escrow agent, until certain minimum requirements are satisfied.
5. Protecting the integrity of the capital market in New Mexico through continuous review and examination of offerings by the Securities Division and other cooperating law enforcement agencies (a function not covered by these regulations).

The New Mexico Securities Division has spent the last several months researching, drafting, and redrafting new regulations to create a brand new crowdfunding investment option for New Mexicans. There have been about a dozen other states to launch their own crowdfunding laws, either by rulemaking or by legislation. We have been watching carefully, and we have created rules which avoid some of the pitfalls earlier states experienced, and which open the market in New Mexico in much broader ways than any other state. These regulations will diminish the burden on small businesses, and all the expenses normally associated with raising capital.

We have taken every precaution to ensure New Mexico investors and business owners can utilize this new platform safely and easily, while still allowing access to the capital market.

Explanation of regulatory details

The new regulations create a new class of dealer called a “portal.” Portals are the websites that will allow for people (the “crowd”) to invest in the companies or ideas listed. Generally speaking, the regulations lay out who, what, when, and how the crowdfunding exemption can be utilized. Filing requirements, advertising restrictions, deadlines, investment limits, banking requirements, and many other categories are covered for the portals and the promoters.

Here is a brief, technical description of each new rule:

- 12.11.1.7 - This regulation basically says a “portal” is, by definition, not a broker-dealer. Therefore it doesn’t have the same requirements. This section also contains new definitions for “local business” and “investor” to give those phrases more clarity throughout their use in the new regulations.
- 12.11.2.11 - This regulation simply adds “portals” to the small list of specific dealers which do not need to complete the statutory examination requirements for dealers. Again, this is because portals are not dealers and are therefore not held to the same standards.
- 12.11.2.25 - This is the largest of the new regulations. This section gives detailed outlines for the new crowdfunding portals. The regulations dictate how the portal will register with the Securities Division, what kind of information it must contain on its website, how its website will operate on the front end and the back end, how the portal must maintain records, and every other in-and-out for operating. The regulations are intended to give structure and safeguards to the investors who will use the portal. Portals can still take creative approaches to the way they execute compliance with the rules. This is an important aspect to facilitating competition and ensuring the best product is available to New Mexicans.
- 12.11.12.11 - This section is being expanded to give specific direction to offerors who wish to utilize the new crowdfunding platform. The new subsection provides details regarding disclosures and information which must be provided to investors and potential investors, how to use funds, penalties, fines, fees, etc.

What can be done with new rules that couldn’t be done before:

- An innovative new way to raise money
 - “Everyday” people can become investors
 - A person can invest any amount of money into ideas they wish to support
 - Investment opportunities will be easier to find and research
 - Entrepreneurs and business owners will no longer have to rely on commercial loans, venture capital or angel investment groups, or private hedge funds
 - Investments will have a better chance of survival
 - Larger pool of potential investors
 - Better word-of-mouth - Investors will not be isolated due to geography
 - Greater sense of attachment to investments
 - New Mexicans can help their neighbors succeed
 - Local business will increase

- Portals can operate in New Mexico for the first time ever
 - Will register with the Securities Division and renew license every year
 - Fewer requirements and regulations than for broker-dealers
 - Creating a centralized, online, public place for investors and promoters to transact and discuss
 - Securities Division will maintain access to portal's operations to ensure compliance in real time
- Streamlined or relaxed processes for smaller or less complex offerings
- Escrow services will provide assistance to investors and promoters to act as another safeguard
- Utilizing technology, the internet, and social media to bring investing to everybody

How are these rules the same to what has always been done:

- Protect investors
- Swift punishment and censure for noncompliance, and prosecution for fraudulent activity

Conclusion

This new platform for raising capital will be an important tool in a business owner's belt. Given New Mexico's substantial small-business presence, having a way for residents to become invested in their community and to support their neighbors is long overdue. These regulations recognize and embrace the ubiquity of technology so that New Mexico businesses can tap into new investment pools. And, it is the easiest way for investors to research and educate themselves on different investment opportunities. New Mexico residents can help their local communities succeed and can feel protected while doing so.



Alan R. Wilson, Director
Securities Division
Regulation and Licensing Department
State of New Mexico

Encl: 12 11 1 NMAC Final
12 11 2 NMAC Final
12 11 12 NMAC Final

This is an amendment to 12.11.1 NMAC, Section 7, effective xx/xx/2014.

12.11.1.7 DEFINITIONS: The definitions in this section apply throughout the New Mexico Uniform Securities Act and the rules in Title 12 Chapter 11 NMAC unless the context otherwise requires.

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

B. "Bank" as defined in Section 58-13C-102B(3) is limited to institutions whose deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund or a successor authorized by federal law.

C. "Branch office" means any location where one or more agents or investment adviser representatives regularly conducts the business of effecting or attempting to effect transactions in any security, or transacting investment advisory business, or is held out as such, excluding:

(1) any location that is established solely for customer service ~~and/or~~ or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(2) any location that is the agent's or investment adviser's primary residence, provided that:

(a) only one agent or investment adviser representative, or multiple such agents or representatives who reside at that location and are members of the same immediate family, conduct business at the location;

(b) the location is not held out to the public as an office and the associated person does not meet with customers at the location;

(c) neither customer funds nor securities are handled at that location;

(d) the agent or investment adviser representative is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such agent or investment adviser representative;

(e) the agent's or investment adviser's correspondence and communications with the public are subject to the firm's supervision;

(f) electronic communications (e.g., e-mail) are made through the firm's electronic system;

(g) all orders are entered through the designated branch office or an electronic system established by the firm that is reviewable at the branch office;

(h) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the firm; and

(i) a list of the residence locations is maintained by the firm;

(3) any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that such location complies with the provisions of Subparagraphs (a) through (h) of Paragraph (2) of this subsection;

(4) any office of convenience, where agents or investment adviser representatives occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; and

(5) a temporary location established in response to the implementation of a business continuity plan;

(6) notwithstanding the exclusions provided in Paragraphs (1) through (5) of this subsection, any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

D. "Broker-dealer" as defined in Section 58-13C-102C does not include:

(1) a pension or profit sharing trust, when effecting transactions for its own account; or

(2) an investment adviser registered under the New Mexico Uniform Securities Act or registered under the Investment Advisers Act of 1940 when placing orders for the accounts of its clients in accordance with rules prescribed by the director, provided that no commission or other remuneration is received by the investment adviser for placing orders.

(3) a New Mexico crowdfunding portal which is operating in compliance with 12.11.2.25 NMAC and registered with the securities division.

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

F. "CRD" means the internet-based central registration depository that is the central licensing and registration system for broker-dealers, agents and regulators in the United States.

G. "FDIC" means the federal deposit insurance corporation of the United States.

H. "FINRA" means the financial industry self-regulatory organization created in July 2007 through the consolidation of NASD and the member regulation, enforcement and arbitration functions of the New York stock exchange. As the successor to NASD, FINRA is the entity designated as the filing depository by the SEC for purposes of the Investment Advisers Act of 1940, 15 U.S.C section 80b-1 et seq.

I. "Institutional investor" as defined Section 58-13C-102L includes but is not limited to:

(1) an entity, other than a natural person, which is directly engaged in the business of, and derives at least eighty percent of its annual gross income from, investing, purchasing, selling or trading in securities of more than one issuer and not of its own issue, and that has gross assets in excess of \$10,000,000 at the end of its latest fiscal year;

(2) a state, a political subdivision of a state or an agency or corporate or other instrumentality of a state or a political subdivision of a state; or

(3) a federally recognized Indian tribe or pueblo that has total assets in excess of \$10,000,000 and that has obtained certification from the division that it is an institutional investor.

J. "IARD" means the internet-electronic filing system for registration and disclosures by investment advisers and their associated persons developed and operated by FINRA according to the requirements of the system's sponsors, the SEC and NASAA.

K. "Investment contract" as used in Section 58-13C-102DD includes any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

L. "Investor" as used in 12.11.2.25 NMAC and Subsection F of 12.11.12.11 NMAC, means a New Mexico resident or local business which has purchased a security pursuant to the requirements of those sections.

M. "Local business" as used in 12.11.2.25 NMAC and Subsection F of 12.11.12.11 NMAC, means a for-profit business entity formed under the laws of the state of New Mexico and legally registered and licensed under state law and located in New Mexico which:

(1) holds or expects to hold at least 80% of its assets in New Mexico;

(2) gained in the previous year or expects to gain at least 80% of its gross revenue from New Mexico operations;

(3) will use at least 80% of its proceeds within New Mexico;

(4) otherwise meets all requirements for residency as an investor under Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. Section 77c(a)(11), and SEC rule 147, C.F.R. 230, particularly rule 147(4)(d)(3).

~~L.] N.~~ "NASAA" means the North American securities administrators association, www.nasaa.org, whose membership is comprised of securities administrators in the 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Canada, and Mexico, and whose activities include among others development of model rules and uniform forms for use by state regulatory agencies.

~~M.] O.~~ "NASD" was a self-regulatory organization commonly known as the national association of securities dealers responsible for the operation and regulation of the Nasdaq stock market and over-the-counter markets and consolidated into FINRA in July 2007.

~~N.] P.~~ An "offer" is made within the meaning of Subsection O of Section 58-13C-202, so far as the securities holders of an issuer are concerned, if there is submitted to the vote of the securities holders a proposal, plan or agreement for:

(1) a reclassification of securities of such issuer which involves the substitution or exchange of a security for another security;

(2) a statutory merger or consolidation in which securities of the issuer will become or be exchanged for securities of another issuer;

(3) a transfer of assets of the issuer to another person in consideration of the issuance of securities of the other person or any of its affiliates; or

(4) a sale of securities of the issuer to another person in consideration of the issuance or transfer to such issuer of securities of the other person or any of its affiliates.

[O:] Q. “Pledgee” within the meaning of Section 58-13C-202G of the New Mexico Uniform Securities Act includes a “secured party” as that term is defined in Section 55-9-102(a)(71) NMSA 1978.

[P:] R. “SEC” means the securities and exchange commission of the United States.
[12.11.1.7 NMAC - Rp, 12.11.1.7 NMAC, 1-1-2010; A, 9/23/2014]

This is an amendment to 12.11.2 NMAC, Section 11 and adding Section 25, effective xx/xx/2014.

12.11.2.11 EXAMINATION REQUIREMENTS WAIVER: The examination requirement in 12.11.2.10 NMAC is waived for any applicant who meets the criteria set forth in either Subsections A, ~~B~~, or C of this section.

A. The applicant has been registered, within two years prior to the date the application for registration is filed in this state, as agents or as a broker-dealer under the securities law of any other state that requires passing the uniform securities agent state law examination or the uniform combined state law examination and has been registered with FINRA, within two years prior to the date the application for registration is filed, to engage in the type of business for which the applicant is applying for registration.

B. The applicant has been registered under the New Mexico Uniform Securities Act within two years prior to the date the application is filed as an agent or broker-dealer to engage in the type of business for which the applicant is seeking registration.

C. A New Mexico crowdfunding portal and its agents.
[12.11.2.11 NMAC - Rp, 12.11.2.11 NMAC, 1-1-2010; A, 9/23/2014]

12.11.2.25 NEW MEXICO CROWDFUNDING PORTAL REGISTRATION, ACTIVITIES, AND RESTRICTIONS:

A. Intrastate portal. A New Mexico crowdfunding portal:

(1) must be an entity incorporated or organized under the laws of New Mexico, authorized to do business in New Mexico; and

(2) does not operate or facilitate a secondary market in securities.

B. Internet website. The internet website operated by the New Mexico crowdfunding portal must do the following:

(1) display a disclaimer that reflects access to securities offerings on the website is limited to New Mexico residents and offers and sales of the securities appearing on the website are limited to persons that are New Mexico residents; and

(2) verify evidence of residency within New Mexico as a condition of entry before viewing securities-related offering materials on the website and before sale is made to a prospective investor; an affirmative representation made by a prospective investor that the prospective investor is a New Mexico resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:

(a) a valid New Mexico driver license or official personal identification card issued by the state of New Mexico;

(b) a current New Mexico voter registration; or

(c) general property tax records showing the individual owns and occupies property in this state as his or her principal residence.

(3) if the prospective investor is a business entity, residency must be established with the same affirmation as well as providing the appropriate paperwork to establish the entity is a local business;

(4) prior to permitting an investment in any securities listed on the internet website, the portal shall obtain an affirmative acknowledgment from the investor of the following:

(a) there is no ready market for the sale of the securities acquired from this offering; it may be difficult or impossible for an investor to sell or otherwise dispose of this investment; an investor may be required to hold and bear the financial risks of this investment indefinitely;

(b) the securities have not been registered under federal or state securities laws and; therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law;

(c) in making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved; and

(d) no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on this internet website;

(e) a New Mexico crowdfunding large investment form must be filed with the portal by each investor who wishes to make an investment over \$10,000 for each investment for each offering;

(5) information about the issuer and the offering must be available on the resident-only area of the website, consisting of, but not limited to:

(a) a description of the entity or idea, if appropriate, its form of business, principal office, history, business plan, and the intended use of the offering proceeds, including compensation paid to any owner, executive officer, director, or manager;

(b) the identity of the executive officers, directors and managers, including their titles and their prior experience and the identity of all persons owning more than 20% of the ownership interests of any class of securities of the company; and

(c) a description of the securities being offered and any of the outstanding securities of the company, the amount of the offering, and the percentage ownership of the company represented by the offered securities.

(d) the fees being paid to the portal for their services and whether that cost is being passed along to the consumer or being paid by the issuer;

(e) the fees being paid by the issuer to any banks for escrow or related services.

(6) all additional disclosures, which are included but not limited to those disclosures listed in Subsection E of 12.11.12.11 NMAC, must be made available on the resident-only area of the website;

(7) during the time the offering appears on the internet website, the website must provide channels through which potential investors and investors can communicate with one another and with the representatives of the issuer about the offering; these communications must be visible and accessible to all those with access to the offering materials in the resident-only area of the website;

(8) the schedule of fees charged to issuers must be clearly displayed;

(9) a disclosure on each page which indicates that investments are available to New Mexico residents only; any information regarding the issuer's product that is located in the non-resident area of the website must be explicitly labeled as informational and not an offer;

(10) no less than 20 days prior to offering an investment opportunity to residents of New Mexico, the portal shall give the securities division access to the internet website; the securities division shall maintain access to the website at all times.

C. Prohibited activities. A New Mexico crowdfunding portal shall not:

(1) offer investment advice nor recommendations;

(2) compensate employees, agents, or other persons not registered with the securities division for soliciting offers or sales of securities displayed or referenced on its platform or portal;

(3) hold, manage, possess or otherwise handle investor funds or securities;

(4) be affiliated with or under common control with an issuer whose securities appear on the portal's internet website;

(5) hold a financial interest in any issuer offering securities on the portal's internet website;

or
(6) receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer.

D. Background and regulatory checks. Prior to offering securities to residents of New Mexico, the New Mexico crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal's internet website, and of each of the issuer's control persons. "Control persons" for purposes of this subsection means the issuer's officers; directors; or other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20% of the outstanding equity of the issuer; the portal must deny an issuer access to its internet website if the portal has a reasonable basis for believing that:

(1) the issuer or any of its control persons is subject to a disqualification under Subsection C of 12.11.12.11 NMAC;

(2) the issuer has engaged in, is engaging in, or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person; or

(3) it cannot adequately or effectively assess the risk of fraud by the issuer or its potential offering.

E. Recordkeeping.

(1) A New Mexico crowdfunding portal is not required to maintain records as described in 12.11.3.8 thru 12.11.3.15 NMAC, or maintain a supervisory system as described in 12.11.4.10 NMAC.

(2) A portal shall maintain and preserve for a period of five years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made through the internet website and to transactions where the portal receives compensation:

- (a) records of compensation received for acting as a portal, including the name of the payor, the date of payment, name of the issuer, and name of the investor;
- (b) copies of information provided by the portal to issuers offering securities through the portal, prospective investors, and investors;
- (c) any agreements or contracts between the portal and an issuer, prospective investor, or investor;
- (d) any information used to establish that an issuer, prospective investor, or investor is a New Mexico resident;
- (e) any correspondence or other communications with issuers, prospective investors, and investors;
- (f) any information made available through the portal's internet website relating to an offering;
- (g) ledgers or any other records that reflect all assets and liabilities, income and expense, and capital accounts; and
- (h) any other records relating to the offers or sales of securities made through the internet website.

(3) A portal shall maintain and preserve a copy of the 202X New Mexico crowdfunding portal registration form, the portal termination form, and the form U-4 (uniform application for securities industry registration or transfer) used to register the portal and its designated officer, and any amendments thereto, for a period of five years from the termination of the portal's registration.

(4) A portal shall, upon written request of the securities division, furnish to the securities division any records required to be maintained and preserved under this subsection.

(5) A portal shall monitor all offerings contained on its website and ensure each offering does not remain active for more than twelve months per registration with the securities division.

(6) The portal shall provide to the securities division access, inspection and review of any internet website operated by the portal, and records maintained by the portal; and

(7) The records required to be kept must be maintained in compliance with the following:

(a) records, including those stored electronically, shall be stored in a manner that will permit the immediate location of any particular document to be available for immediate and complete access by representatives of the securities division, if requested; in the event that a records retention system commingles records required to be kept under this subsection with records not required to be kept, representatives of the securities division may review all commingled records; if stored electronically, records must be able to be downloaded with indexes to an acceptable medium;

(b) any electronic storage system must preserve the records exclusively in a non-rewriteable, non-erasable format which automatically verifies the quality and accuracy of the storage media recording process;

(c) records must be serializes and time-date stamped indicating their required period of retention; if duplicated copies exist, a time-date stamp must also be placed on the duplicates;

F. Filings.

(1) Application. A complete application for a New Mexico crowdfunding portal consists of the following and must be filed with the securities division no less than 20 days prior to going live for public use:

(a) a completed New Mexico crowdfunding portal registration form, including all applicable schedules and supplemental information;

(b) Form U-4, for the designated officer, and a Form U-4 for each agent to be registered; officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners;

(c) a copy of the portal's articles of incorporation or other documents which indicate the form of organization, certified by the New Mexico secretary of state or by an officer or partner of the applicant;

(d) a schedule of fees that will be charged to the issuer; and

(e) any other information deemed necessary by the securities division to determine the financial responsibility, business repute, or qualifications of the portal; and

(f) the registration fee of \$300.00.

(2) Reporting and post-reporting requirements. In its initial application with the securities division, or within 20 days of any initiated proceedings or final orders, as such information would pertain to any owners, affiliates, directors, managers, principals, or the like, a portal shall disclose:

- (a) any administrative order issued by state or federal authorities, which order:
- (i) is based upon a finding that such person has engaged in fraudulent conduct; or
- (ii) was entered after notice and opportunity for a hearing, denying, suspending, or revoking the person's registration as a dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms;
- (b) any felony criminal action or conviction;
- (c) any misdemeanor action or conviction based on fraud, deceit, or wrongful taking of property;
- (d) any order, judgment, or decree entered by any court of competent jurisdiction which temporarily or permanently restrains or enjoins such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving any false filing with any state, or which restrains or enjoins such person from activities subject to federal or state statutes designed to protect consumers against unlawful or deceptive practices involving investments, insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services;
- (e) any expulsion, bar, suspension, censure, fine or penalty imposed by a self-regulatory organization;
- (f) any change in any other information previously disclosed to the director on any application, form or filing; and
- (g) the filing of any voluntary or involuntary bankruptcy petition.
- (3) Upon request by the securities division, managers or agents of the portal will be required to furnish to the securities division copies of the order, conviction, or decrees, or other documents which evidence events disclosable by law.
- (4) Renewal. Registration as a portal expires at the close of the calendar year, but subsequent registration for the succeeding year shall be issued upon written application and upon payment of the appropriate renewal fee(s), without filing of further statements or furnishing any further information unless specifically requested by the securities division.

G. Failure to Comply.

- (1) Criminal liability. Noncompliance with any part of this section or other applicable sections may result in criminal liability pursuant to Article 5 of the New Mexico Uniform Securities Act.
- (2) Civil and Administrative Liability. Noncompliance with any part of this section or other applicable sections may result in civil or administrative liability pursuant to Article 6 of the New Mexico Uniform Securities Act.

[12.11.2.25 NMAC - N, 9/23/2014]

This is an amendment to 12.11.12 NMAC, Section 11, effective xx/xx/2014. Subsections A through E are not published as there were not changes.

12.11.12.11 SECTION 58-13c-202X - SMALL OFFERINGS BY ISSUERS WITH LOCAL OPERATIONS

F. Additional and Specific Requirements for Offerings using the New Mexico Crowdfunding Exemption.

- (1) The issuer must be either:
 - (a) a person resident of New Mexico doing business within the state; or
 - (b) a for-profit business entity formed under the laws of the state of New Mexico and legally registered and licensed under state law; the issuer-business must provide evidence that it:
 - (i) derived at least 80% of the issuer's gross revenues from the previous year from business operations in New Mexico;
 - (ii) holds at least 80% of the issuer's assets at the end of its most recent semi-annual period prior to the offering within the state of New Mexico;
 - (iii) will use 80% of the proceeds from this offering in connection with the operation of its business within New Mexico;
 - (iv) is not, either before or as a result of the offering, an investment company as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. Section 80a-3, or subject to the reporting requirements of Section 13 or Paragraph (d) of Section 15 of the Securities Exchange Act of 1934, 15 U.S.C. Sections 78m and 78o(d);
 - (v) is not a company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity; or
 - (vi) will use, derive, and hold 80% of its earnings each year within New Mexico if it is a newly-formed company;
- (2) The offering and all transactions in connection with the offering shall be made exclusively through a New Mexico crowdfunding portal which has been registered with the securities division.
- (3) The transactions shall meet the requirements of the federal exemption for intrastate offerings in Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. §77c(a)(11), and SEC rule 147, C.F.R. 230.147 and are subject to the limitation on resale contained in Subsection (e) and (f) of SEC Rule 147, 17 C.F.R. 230.147(e) and (f). The offering and shares shall both comply with those sections.
- (4) No offer or sale under this section shall be made to any person who has not verified New Mexico residency or status as a local business under 12.11.2.25 NMAC.
- (5) Advertising which complies with state and federal law is permitted. All advertising must be accompanied with appropriate disclaiming language which clearly states advertisements are not offers and are for informational purposes only. All advertisements must clearly state offers and sales are only available to New Mexico residents and all sales must be made through a New Mexico crowdfunding portal.
- (6) All payments for purchases of securities offered under this exemption shall be directed to and deposited in an escrow or trust account with a bank or depository institution authorized to do business in New Mexico and subject to regulation of New Mexico and the United States, and shall be held in escrow until the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the mandatory disclosure statements. Bank names and account numbers, as well as target offering amounts and target dates shall be provided to the securities division. Investors will receive a return of all their investment funds if the target offering amount is not raised by the time stated in the disclosure statement. All funds shall be used in accordance with representations made to investors.
 - (a) All interest rates and fees associated with banking or escrow services must be disclosed.
 - (b) All fees and interest associated with banking or escrow must be paid by the issuer and shall not be passed along to investors.
- (7) The issuer shall not accept more than \$10,000 from any single investor unless the investor has completed and filed with the portal a *New Mexico crowdfunding large investment form*.

(8) No offer or sale shall occur less than 20 days from the date the securities division receives the application for the New Mexico crowdfunding exemption.

(9) All communications between the issuer, prospective investors, or investors taking place during the offer of securities pursuant to this exemption must occur on the internet website of the registered New Mexico crowdfunding portal, or at events that are open to the public. During the time the offering appears on the internet website, the website must provide channels through which potential investors and investors can communicate with one another and with the representatives of the issuer about the offering. These communications must be visible and accessible to all those with access to the offering materials on the website.

(10) Individual offerings may be for either debt or equity interest, but not both.

(11) Nothing in this section is intended to preclude an issuer from having multiple offerings under this exemption pending at the same time. If such multiple offerings do exist, disclosure of each must be adequately made according to state law.

(12) Non-compliance with any part of this section or other applicable sections may result in criminal, civil, or administrative liability pursuant to Articles 5 and 6 of the New Mexico Uniform Securities Act.

(13) Pursuant to Section 58-13C-203, the director may, by order, waive, in whole or in part, any or all of the conditions contained in this section upon a finding that such an order is appropriate.

G. [F.] Notice to prospective investors of material changes in the condition of the issuer occurring after the effective date of offering or when new information is substituted for that contained in the prospectus shall be effected through an amendment. Such amendments will not become effective until the director so orders and a corrected offering document will be sent to present stockholders including stockholders who may already have sold their shares. Post-effective amendments to change the price of securities will not be permitted. Post-effective amendments to lower the minimum amount of the offering will not be permitted. Amendments to increase the minimum amount of the offering, however, will be permitted.

H. [G.] Unless extended by the director, an offering shall be completed no later than one year from the date of acknowledgment by the director of the claim of exemption.

I. [H.] No offering document is required for sales of securities by a professional corporation or association to persons duly licensed in the corporation's area of business.

[12.11.12.11 NMAC - Rp, 12.11.12.13 NMAC, 1-1-2010; A, 09/23/2014]