

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 2 BROKER-DEALERS AND AGENTS

12.11.2.1 ISSUING AGENCY: Regulation and Licensing Department - New Mexico Securities Division.
[12.11.2.1 NMAC - Rp, 12.11.2.1 NMAC, 1-1-2010]

12.11.2.2 SCOPE: All persons, whether natural or legal entities, that transact business in New Mexico as an investment adviser or an issuer of securities, and their agents.
[12.11.2.2 NMAC - Rp, 12.11.2.2 NMAC, 1-1-2010]

12.11.2.3 STATUTORY AUTHORITY: Section 58-13C-605A NMSA 1978 authorizes the director to make, amend and rescind rules as are necessary to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".
[12.11.2.3 NMAC - Rp, 12.11.2.3 NMAC, 1-1-2010]

12.11.2.4 DURATION: Permanent.
[12.11.2.4 NMAC - Rp, 12.11.2.4 NMAC, 1-1-2010]

12.11.2.5 EFFECTIVE DATE: January 1, 2010, unless a later date is cited at the end of a section.
[12.11.2.5 NMAC - Rp, 12.11.2.5 NMAC, 1-1-2010]

12.11.2.6 OBJECTIVE: To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.
[12.11.2.6 NMAC - Rp, 12.11.2.6 NMAC, 1-1-2010]

12.11.2.7 DEFINITIONS: [RESERVED]

12.11.2.8 APPLICATIONS FOR REGISTRATION:

A. Applications for registration by broker-dealers and agents who are members of FINRA shall be filed with CRD on forms established for the CRD and, in addition thereto, the broker-dealer shall file with the director a financial statement that is current within 90 days of the date the application is received by the division, and a completed affidavit of no sales or an explanation why such affidavit cannot be completed.

B. Applications for registration and annual reports of broker-dealers and agents not members of the FINRA shall be filed with the director on forms BD, U-4, and affidavit of no sales, as designated in 12.11.16 NMAC. If the applicant cannot complete the affidavit of no sales, then the applicant shall file an explanation why such affidavit cannot be completed.

C. An "application" for purposes of Section 58-13C-406A shall include any information required by the director pursuant to Section 58-13C-406A(2).

D. Annual reports required by the New Mexico Uniform Securities Act or rules promulgated thereunder shall be filed with the director on or before December 31 of each year.
[12.11.2.8 NMAC - Rp, 12.11.2.8 NMAC, 1-1-2010]

12.11.2.9 REGISTRATION FEES:

A. Registration fees required of broker-dealers and agents who are members of FINRA shall be paid to CRD, in accordance with FINRA instructions. Annual renewal fees shall be paid no later than December 31 of each year.

B. Registration fees required of broker-dealers and agents who are not members of the FINRA shall be paid to the division. Annual renewal fees shall be paid to the division on or before December 31 of each year.
[12.11.2.9 NMAC - Rp, 12.11.2.9 NMAC, 1-1-2010]

12.11.2.10 EXAMINATION REQUIREMENTS - AGENTS: Each applicant for initial registration as a broker-dealer or agent is required to pass with a grade of at least 70 percent, within two years prior to the date the application for registration is filed in this state, the uniform securities agent state law examination (series 63) or uniform combined state law examination (series 66), and one of the general securities examinations in Subsection A

below, unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to pass, in addition to the series 63 or series 66 examination, each examination in Subsections B to I of this section that relates to the applicant's proposed securities activities:

- A. FINRA non-member general securities examination (series 2) or, in the case of applicants registered with FINRA, the general securities registered representative examination (series 7);
- B. investment company products/variable contracts representative examination (series 6);
- C. limited registered representative examination (series 17);
- D. direct participation program representative examination (series 22);
- E. municipal securities representative examination (series 52);
- F. corporate securities representative examination (series 62);
- G. government securities limited representative qualification examination (series 72);
- H. Canada modules of the series 7 examination (series 37 and 38);
- I. Japan module of the series 7 examination (series 47).

[12.11.2.10 NMAC - Rp, 12.11.2.10 NMAC, 1-1-2010]

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 or B 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.

[12.11.2.11 NMAC - Rp, 12.11.2.11 NMAC, 1-1-2010]

12.11.2.12 EXAMINATION REQUIREMENTS - PRINCIPAL: Prior to issuance of an initial registration as a broker-dealer, and at all times thereafter, at least one registered sales representative located at the principal office of the broker-dealer, and, except as provided in 12.11.2.24 NMAC, at least one sales representative located at each branch office in this state, who are so identified in the registration application, shall be designated to act in a supervisory capacity in each such office. Each supervisor designated in accordance with this section shall meet the examination requirements specified in 12.11.2.10 NMAC for applicants whose securities activities will not be restricted and shall pass with a grade of at least 70 percent the examination in Subsection A of this section. If the broker-dealer's proposed securities activities will be restricted, the designated supervisor is required to pass each examination in Subsections B to D of this section that relates to the broker-dealer's proposed securities activities:

- A. general securities principal examination (series 24);
- B. investment company products/variable contracts principal examination (series 26);
- C. direct participation programs principal examination (series 39);
- D. municipal securities principal examination (series 53).

[12.11.2.12 NMAC - Rp, 12.11.2.12 NMAC, 1-1-2010]

12.11.2.13 NOT COMPLETED AND WITHDRAWN APPLICATIONS: Any application for registration which is not completed or withdrawn within six months from the date it is initially received may be deemed materially incomplete, and the director may issue an order denying the registration.

[12.11.2.13 NMAC - Rp, 12.11.2.13 NMAC, 1-1-2010]

12.11.2.14 AUTOMATIC EFFECTIVENESS: Pursuant to Section 58-13C-406C, a registration becomes automatically effective 45 days after all requirements have been met and all requested information has been filed, provided that no proceeding under Section 58-13C-412 has been instituted. A registration may become effective sooner than 45 days after the filing of an application if:

- A. the director issues a registration before the expiration of 45 days; or
- B. the director transmits approval of the registration status of an agent or broker-dealer through the CRD of the FINRA.

[12.11.2.14 NMAC - Rp, 12.11.2.14 NMAC, 1-1-2010]

12.11.2.15 SECTION 202K EXEMPTION: Persons effecting only transactions exempt pursuant to Section 58-13C-202K who are duly licensed New Mexico real estate agents or duly registered under the New Mexico Mortgage Loan Company and Loan Broker Act are exempt from the requirements of Sections 58-13C-401A and 58-13C-402A.

[12.11.2.15 NMAC - Rp, 12.11.2.15 NMAC, 1-1-2010]

12.11.2.16 ISSUER AGENTS - SCOR OFFERINGS: Persons acting for an issuer effecting offers and sales of securities registered pursuant to 12.11.10 NMAC, Small Company Offering Registration (SCOR), to whom no commissions or other similar compensation is paid or given directly or indirectly for effecting such transactions are exempt from the requirements of Sections 58-13C-401A and 58-13C-402A.

[12.11.2.16 NMAC - Rp, 12.11.2.16 NMAC, 1-1-2010]

12.11.2.17 CANADIAN BROKER-DEALERS AND SALES REPRESENTATIVES EXEMPTION: A broker-dealer and its authorized agents are exempt from the registration requirements of Sections 58-13C-401A and 58-13C-402A if:

- A.** the broker-dealer and its authorized agents are located in Canada;
- B.** the broker-dealer and its authorized agents are licensed or registered pursuant to the laws of one or more Canadian provinces or territories;
- C.** the broker-dealer has no place of business in this state; and
- D.** the transactions in this state are limited to the following:
 - (1) transactions with a person who is temporarily in this state and with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or
 - (2) transactions with a person who is present in this state in relation to a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

[12.11.2.17 NMAC - Rp, 12.11.2.17 NMAC, 1-1-2010]

12.11.2.18 NET CAPITAL REQUIREMENTS AND AGGREGATE INDEBTEDNESS LIMITATIONS:

A. Every broker-dealer, whether or not subject to Rule 15c3-1 of the Securities Exchange Act of 1934, shall maintain net capital in such minimum amounts as are designated in that rule for the activities to be engaged in by a broker-dealer in this state.

B. The aggregate indebtedness of each broker-dealer whether or not subject to rule 15c3-1 of the Securities Exchange Act of 1934 shall not exceed the levels prescribed in that rule.

C. If a broker-dealer is an individual, the person shall segregate from personal capital in a separate account an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the broker-dealer is registered.

D. The director may by order exempt any broker-dealer from the provisions of this rule, either unconditionally or upon specified conditions, if by reason of the broker-dealer's membership on a national securities exchange or the special nature of its business and its financial position, and the safeguards that have been established for the protection of customers' funds and securities, the provisions are not necessary in the public interest or for the protection of investors.

[12.11.2.18 NMAC - Rp, 12.11.2.18 NMAC, 1-1-2010]

12.11.2.19 FIDELITY BONDS:

A. Every broker-dealer shall file with the director a surety bond in the amount set by the director, with a minimum of \$100,000 and a maximum of \$1,000,000, except as provided in Subsections B and C of 12.11.2.19 NMAC. The bond shall comply with the requirements of Subsection E of Section 411 of the New Mexico Uniform Securities Act.

B. Broker-dealers who are members of the securities investor protection corporation will not be required to file the surety bond.

C. Broker-dealers who do not have custody of customer funds or securities will not be required to file the surety bond.

D. Issuer agents shall file with the director a surety bond in the amount set by the director, with a minimum of \$10,000 and a maximum of \$100,000.

[12.11.2.19 NMAC - Rp, 12.11.2.19 NMAC, 1-1-2010]

12.11.2.20 USE OF INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES:

A. Broker-dealers and agents who use the internet to distribute information on available products and services through communications made on the internet directed generally to anyone having access to the internet and transmitted through internet communications shall not be considered to be “transacting business” in this state for purposes of Sections 58-13C-401A and 58-13C-402A of the New Mexico Uniform Securities Act based solely on that fact, provided that:

- (1) the internet communication contains a legend in which it is clearly stated that:
 - (a) the broker-dealer or agent in question may only transact business in this state if first registered, excluded, or exempted from state broker-dealer or agent registration requirements; and
 - (b) follow-up, individualized responses to persons in this state by the broker-dealer or agent that involve either effecting or attempting to effect transactions in securities, or rendering of personalized investment advice for compensation, will not be made without compliance with broker-dealer or agent registration requirements, or an applicable exemption or exclusion;
- (2) the internet communication contains a mechanism which includes, but is not limited to, technical “firewalls” or other implemented policies and procedures, designed reasonably to ensure that before any subsequent, direct communication with prospective customers or clients in this state, the broker-dealer and agent are first registered in this state or qualify for an exemption or exclusion from the registration requirement;
- (3) the internet communication is limited to the dissemination of general information on products and services and does not involve either effecting or attempting to effect transactions in securities, or rendering personalized investment advice for compensation in this state over the internet; and
- (4) with respect to broker-dealer or agent internet communications:
 - (a) the broker-dealer affiliation of the agent is prominently disclosed within the internet communication;
 - (b) the broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any internet communication by agent;
 - (c) the broker-dealer with whom the agent is associated first authorizes the distribution of information on the particular products and services through the internet communication; and
 - (d) when disseminating information through the internet communication, the agent acts within the scope of the authority granted by the broker-dealer.

B. This rule extends to state broker-dealer and agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

C. Nothing in this rule shall be construed to affect the activities of any broker-dealer or agent engaged in business in this state that is not subject to the jurisdiction of the director as provided in the National Securities Markets Improvements Act of 1996, as amended.

[12.11.2.20 NMAC - Rp, 12.11.2.20 NMAC, 1-1-2010]

12.11.2.21 REPORTING REQUIREMENTS:

A. Each broker-dealer shall file with the director a copy of any complaint related to its business, transactions or operations naming the broker-dealer or any of its partners, officers, members, sales representatives or agents as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the broker-dealer; a copy of any answer or reply thereto filed by the broker-dealer within ten days of the date such is filed; and a copy of any decision, order or sanction made with respect to any such proceeding within twenty days of the date the decision, order or sanction is rendered.

B. Each broker-dealer shall file with the director a notice of transfer of control or change of name not less than thirty days prior to the date on which the transfer of control or change of name is to become effective or such shorter period as the director may permit.

C. Except as otherwise provided in this section, all material changes in the information included in a broker-dealer's most recent application for registration shall be set forth in an amendment to form BD filed with the director within thirty days after the change occurs.

D. Every broker-dealer shall file with the director the following reports concerning its net capital and aggregate indebtedness:

- (1) immediate facsimile, telegraphic or written notice whenever the net capital of the broker-dealer is less than is required under 12.11.2.18 NMAC specifying the respective amounts of its net capital and aggregated indebtedness on the date of the notice; and

(2) a copy of every report or notice required to be filed by the broker-dealer pursuant to Rule 17a-11 of the Securities Exchange Act of 1934.

E. Each broker-dealer shall give immediate written notice to the director of the theft or disappearance of any New Mexico customers' securities or funds that are in the custody or control of its offices, whether within or outside this state, stating all material facts known to it concerning the theft or disappearance. However, if a broker-dealer complies with the provisions of 17 C.F.R. 240.17(f)(1), such broker-dealer need not give the notice required by this subsection.

F. Each broker-dealer shall file with the director a copy of any subordination agreement relating to the broker-dealer, within ten days after the agreement has been entered into, unless prior thereto the broker-dealer has filed a copy of the agreement with a national securities exchange or association of which it is a member.

G. Each broker-dealer shall notify the director in writing at least ten days prior to opening and not more than ten days after closing in this state any "branch office" as defined in these rules. The notification shall include such information as the director may request.

[12.11.2.21 NMAC - Rp, 12.11.2.21 NMAC, 1-1-2010]

12.11.2.22 FILING DOCUMENTS WITH THE DIRECTOR: Broker-dealers and agents may satisfy filing requirements contained in these rules by filing required documents with CRD where appropriate.

[12.11.2.22 NMAC - Rp, 12.11.2.22 NMAC, 1-1-2010]

12.11.2.23 DENIAL, SUSPENSION AND REVOCATION: Any order denying, suspending, revoking, canceling or limiting the registration of, and any order barring, a broker-dealer or agent may include such other sanctions as the director finds appropriate.

[12.11.2.23 NMAC - Rp, 12.11.2.23 NMAC, 1-1-2010]

12.11.2.24 BRANCH OFFICE SUPERVISORY REQUIREMENTS: Every registered broker-dealer must employ at its principal office and at each branch office in this state at least one person designated to act in a supervisory capacity who is registered as an agent in this state and has satisfied the supervisory examination requirement in 12.11.2.12 NMAC. Designated supervisors must meet the requirements of this section at the time that the principal or branch office located in this state opens for business. Except as provided in Subsection A of 12.11.2.24 NMAC, the designated supervisor must be physically located in the office that he or she supervises. After a principal or branch office located in this state opens for business, if the designated supervisor no longer meets the requirements of this section, the broker-dealer shall have 90 days from the first date of noncompliance to meet the requirements of this section, provided that the broker-dealer notifies the director in writing of the event of noncompliance within five days of such event and further sets forth the method of supervision pending the replacement of the designated supervisor.

A. For single agent branch offices, the supervisory requirement of this section shall be satisfied if at least one person registered in this state who meets the examination requirements of sections 12.11.2.10 NMAC and 12.11.2.12 NMAC is employed on a full-time basis by the broker-dealer, and the broker-dealer shall:

(1) meet the supervisory requirements of FINRA;

(2) conduct annual on-site field audits, by its compliance department, of each single agent branch office, including, but not limited to, an examination for compliance with books and records requirements, for evidence of outside business activity, and for evidence that such activity was properly disclosed to and approved by the firm;

(3) maintain in its principal office the results of all field audits conducted pursuant to Paragraph (2) of this subsection;

(4) contact annually either telephonically or in writing a random sampling of at least 10 percent of the clients of each agent operating from single agent branch offices to determine if such agents are complying with 12.11.4.16 NMAC, including, but not limited to, whether agents are conducting any business with clients other than business that has been disclosed to the broker-dealer; if clients are contacted telephonically the broker-dealer shall maintain a written memorandum summarizing the questions asked and the clients' responses; and

(5) comply with any additional conditions that the director may by order impose, if the director finds the issuance of such order is necessary or appropriate in the public interest or for the protection of investors.

B. Branch office sales supervisors who have no supervisory or compliance responsibility for net capital or investment banking functions may substitute the general securities sales supervisor examination (series 8 or series 9/10) for the general securities principal exam (series 24).

[12.11.2.24 NMAC - Rp, 12.11.2.24 NMAC, 1-1-2010]

HISTORY of 12.11.2 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives:

FID 67-1, Regulation 67-62, General Requirements, filed 5-18-67;

FID 76-1, Order 76-64, Regulation 76-1, Relating to Options Clearing Corporations, filed 3-26-76;

SB Rule 84-1, New Mexico Blue Sky Regulations, filed 9-5-84;

SD Rule 86-1.02, Authority, filed 7-1-86;

SD Rule 86-3.01, Licensing Procedure, filed 7-1-86;

SD Rule 95-3.01, Licensing Procedure, filed 10-14-95;

SD Rule 86-3.02, Net Capital Requirements and Aggregate Indebtedness Limitations, filed 7-1-86;

SD Rule 86-3.05, Reporting Requirements, filed 7-1-86;

SD Rule 86-3.08, Rules of Conduct, filed 7-1-86;

SD Rule 95-3.08, Rules of Conduct, filed 10-14-95;

SD Rule 86-3.09, Prohibited Business Practices, filed 7-1-86;

SD Rule 86-3.10, Denial, Suspension and Revocation, filed 7-1-86;

SD Rule 86-3.11, Filing Documents with the Director, filed 7-1-86;

SD Rule 86-3.12, Exempt Broker-Dealers and Sales Representatives, filed 10-6-86;

SD Rule 95-3.12, Exempt Broker-Dealers and Sales Representatives, filed 10-14-95.

History of Repealed Material: 12.11.2 NMAC, Broker-Dealers and Sales Representatives (filed 1-16-2002) repealed 1-1-2010.

Other History:

SD Rule 95-3.01, Licensing Procedure, (filed 10-14-95); SD Rule 86-3.02, Net Capital Requirements and Aggregate Indebtedness Limitations (filed 7-1-86); SD Rule 86-3.05, Reporting Requirements (filed 7-1-86); SD Rule 95-3.08, Rules of Conduct (filed 10-14-95); SD Rule 86-3.09, Prohibited Business Practices (filed 7-1-86); SD Rule 86-3.10, Denial, Suspension and Revocation (filed 7-1-86); SD Rule 86-3.11, Filing Documents with the Director (filed 7-1-86); SD Rule 95-3.12, Exempt Broker-Dealers and Sales Representatives (filed 10-14-95) were **renumbered, reformatted, and amended** into the first version of the New Mexico Administrative Code as 12 NMAC 11.2, Broker-Dealers and Sales Representatives, effective 5-1-1999.

Those relevant portions of 12 NMAC 11.2 numbered Subpart 2, Licensing Procedure (filed 4-19-99); Subpart 3, Exempt Broker-Dealers and Sales Representatives (filed 4-19-99); Subpart 4, Net Capital Requirements and Aggregate Indebtedness Limitations (filed 4-19-99); Subpart 5, Use of the Internet for General Dissemination of Information on Products and Services (filed 4-19-99); Subpart 8, Reporting Requirements (filed 4-19-99); Subpart 9, Filing Documents with the Director (filed 4-19-99); Subpart 10, Rules of Conduct; and Subpart 12, Denial, Suspension and Revocation (filed 4-19-99) were **renumbered, reformatted, amended and replaced by** 12.11.2 NMAC, Broker-Dealers and Sales Representatives, effective 1-31-2002.

12.11.2 NMAC, Broker-Dealers and Sales Representatives (filed 1-16-2002) was replaced by 12.11.2 NMAC, Broker-Dealers and Agents, effective 1-1-2010.