

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 4 BROKER-DEALER AND AGENTS RULES OF CONDUCT AND PROHIBITED
BUSINESS PRACTICES

12.11.4.1 ISSUING AGENCY: Regulation and Licensing Department - New Mexico Securities Division.
[12.11.4.1 NMAC - Rp, 12.11.4.1 NMAC, 1-1-2010]

12.11.4.2 SCOPE: All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer or an issuer of securities, and their agents.
[12.11.4.2 NMAC - Rp, 12.11.4.2 NMAC, 1-1-2010]

12.11.4.3 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 NMSA 1978, hereinafter referred to in this Chapter 11 as the “New Mexico Uniform Securities Act”.
[12.11.4.3 NMAC - Rp, 12.11.4.3 NMAC, 1-1-2010]

12.11.4.4 DURATION: Permanent.
[12.11.4.4 NMAC - Rp, 12.11.4.4 NMAC, 1-1-2010]

12.11.4.5 EFFECTIVE DATE: January 1, 2010, unless a later date is cited at the end of a section.
[12.11.4.5 NMAC - Rp, 12.11.4.5 NMAC, 1-1-2010]

12.11.4.6 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.
[12.11.4.6 NMAC - Rp, 12.11.4.6 NMAC, 1-1-2010]

12.11.4.7 DEFINITIONS: [RESERVED]

12.11.4.8 WRITTEN CONFIRMATIONS: Except as provided in 12.11.4.9 NMAC, each broker-dealer shall give or send to the customer a written confirmation, promptly after execution, and before settlement, of each transaction. The confirmation shall set forth:

- A.** a description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;
- B.** whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent for both the customer and some other person;
- C.** when the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the broker-dealer; and

D. whether the transaction was unsolicited.
[12.11.4.8 NMAC - Rp, 12.11.4.8 NMAC, 1-1-2010]

12.11.4.9 COMPLIANCE WITH RULE 10b-10: If applicable, compliance with Rule 10b-10 of the Securities Exchange Act of 1934 shall be deemed compliance with 12.11.4.8 NMAC.
[12.11.4.9 NMAC - Rp, 12.11.4.9 NMAC, 1-1-2010]

12.11.4.10 WRITTEN SUPERVISORY PROCEDURES: Each broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of the New Mexico Uniform Securities Act and rules and orders thereunder. The procedures shall include the designation by name or title of a number of supervisory employees reasonable in relation to the number of its registered agents, offices and transactions in this state. A complete set of the procedures and system for applying them shall be kept and maintained at every branch office.
[12.11.4.10 NMAC - Rp, 12.11.4.10 NMAC, 1-1-2010]

12.11.4.11 CONTRACT WAIVING RIGHTS PROHIBITED: A broker-dealer shall not enter into any contract with a customer if the contract contains any condition, stipulation or provision binding the customer to waive any rights under the New Mexico Uniform Securities Act or any rule or order thereunder. Any such condition, stipulation or provision is void.

[12.11.4.11 NMAC - Rp, 12.11.4.11 NMAC, 1-1-2010]

12.11.4.12 NET WORTH WITHDRAWALS PROHIBITED: No broker-dealer shall permit or effect a withdrawal of any part of its net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment, or otherwise, that would cause its net capital or its aggregate indebtedness to violate Subsections A or B of 12.11.2.18 NMAC, without prior written approval of the director.

[12.11.4.12 NMAC - Rp, 12.11.4.12 NMAC, 1-1-2010]

12.11.4.13 CUSTOMER COPIES OF CONTRACTS: Each broker-dealer shall provide each customer with a conformed copy of all contracts or agreements between the broker-dealer and the customer, and a copy of the customer information forms prescribed under Subsections J and K of 12.11.3.9 NMAC, not later than 15 days after the initial securities transaction effected in the customer's account.

[12.11.4.13 NMAC - Rp, 12.11.4.13 NMAC, 1-1-2010]

12.11.4.14 BROKER-DEALER ASSOCIATION WITH A DEPOSITORY INSTITUTION: No broker-dealer may associate with a depository institution by contract, agreement or other means unless promotional and account-establishing functions are performed or supervised by persons registered as agents representing the broker-dealer.

[12.11.4.14 NMAC - Rp, 12.11.4.14 NMAC, 1-1-2010]

12.11.4.15 PROHIBITED BUSINESS PRACTICES BY BROKER-DEALERS: The following are deemed to be unethical and dishonest conduct or practices by a broker-dealer under Section 58-13C-412C(13) NMSA 1978 without limiting those terms to the practices specified herein:

A. causing any unreasonable delay in the delivery of securities purchased by any of its customers, or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

B. inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

C. recommending to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer;

D. executing a transaction on behalf of a customer without authority to do so;

E. executing a transaction for the account of a customer upon instruction from a third party without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

F. exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

G. extending, arranging for, or participating in arranging for credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the Federal Reserve Board;

H. executing any transaction in a margin account without obtaining from its customer a written margin agreement not later than 15 calendar days after the initial transaction in the account;

I. failing to segregate customers' free securities or securities in safekeeping;

J. hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;

K. charging its customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

L. entering into a transaction for its own account with a customer with an unreasonable markup or markdown;

M. entering into a transaction for its own account with a customer in which a commission is charged;

N. entering into a transaction with or for a customer at a price not reasonably related to the current market price;

O. executing orders for the purchase by a customer of securities not registered or exempted unless the transaction is exempted under the New Mexico Uniform Securities Act;

P. representing itself as a financial or investment planner, consultant, or adviser, when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services and the method of compensation for the services;

Q. violating any material rule of any securities exchange or national securities association of which it is a member with respect to any customer, transaction or business in this state;

R. failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

S. introducing customer transactions on a “fully disclosed” basis to another broker-dealer that is not registered under the New Mexico Uniform Securities Act;

T. recommending to a customer that the customer engage the services of an investment adviser that is not registered under the New Mexico Uniform Securities Act or the Investment Advisers Act of 1940; and

U. using in a misleading manner any term or abbreviation that states or implies that a person has special expertise, certification, or training in financial planning, including but not limited to, the misleading use of a senior-specific certification or designation as set forth in 12.11.17 NMAC.

[12.11.4.15 NMAC - Rp, 12.11.4.15 NMAC, 1-1-2010]

12.11.4.16 PROHIBITED BUSINESS PRACTICES BY AGENTS: The following are deemed to be unethical or dishonest conduct or practices by an agent under Section 58-13C-412C(13) NMSA 1978 without limiting those terms to the practices specified herein:

A. borrowing money or securities from, or lending money or securities to, a customer;

B. acting as a custodian for money, securities or an executed stock power of a customer;

C. effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;

D. effecting transactions in securities for an account operating under a fictitious name, unless disclosed to, and permitted in writing by, the broker-dealer or issuer which the agent represents;

E. sharing directly or indirectly in profits or losses in the account of any customer without first obtaining written authorization of the customer and the broker-dealer which the agent represents;

F. dividing or otherwise splitting commissions, profits or other compensation receivable in connection with the purchase or sale of securities in this state with any person not so registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

G. using advertising describing or relating to the agent’s securities business unless the advertising clearly identifies the name of the agent’s employing broker-dealer or issuer;

H. misrepresenting the services of a registered investment adviser on whose behalf the agent is soliciting business or accounts; and

I. engaging in any of the practices specified in Subsections B, C, D, E, F, G, H, O, P, Q, R, T and U of 12.11.4.15 NMAC.

[12.11.4.16 NMAC - Rp, 12.11.4.16 NMAC, 1-1-2010]

HISTORY OF 12.11.4 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, 5-18-67

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

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

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

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

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

History of Repealed Material:

12.11.4 NMAC, Broker Dealer and Sales Representatives Rules of Conduct and Prohibited Business Practices (filed 12-9-2008) repealed 1-1-2010.

Other History:

That relevant portion of SD Rule 95-3.08, Rules of Conduct, filed 9-27-95; and SD Rule 86-3.09, Prohibited Business Practices, filed 7-11-86 were **renumbered** into first version of the New Mexico Administrative Code as 12 NMAC 11.2, Subpart 10, Rules of Conduct; Subpart 11, Prohibited Business Practices, filed 4-19-99.

Those relevant portions of 12 NMAC 11.2, Subpart 10, Rules of Conduct; Subpart 11, Prohibited Business Practices, (filed 4-19-99), were renumbered, reformatted, amended and replaced by 12.11.4 NMAC, Broker Dealer and Sales Representatives Rules of Conduct and Prohibited Business Practices, effective 12-31-2008.

12.11.4 NMAC, Broker Dealer and Sales Representatives Rules of Conduct and Prohibited Business Practices (filed 12-9-2008) was replaced by 12.11.4 NMAC, Broker-Dealer and Agents Rules of Conduct and Prohibited Business Practices, effective 1-1-2010.