

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 10 SMALL COMPANY OFFERING REGISTRATION (SCOR)

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

12.11.10.2 SCOPE: All persons, whether natural or legal entities, that transact business in the state of New Mexico as a broker-dealer, an investment adviser, or an issuer of securities, and their representatives and agents.
[12.11.10.2 NMAC - N, 1-1-2010]

12.11.10.3 STATUTORY AUTHORITY: Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate 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”.
[12.11.10.3 NMAC - N, 1-1-2010]

12.11.10.4 DURATION: Permanent.
[12.11.10.4 NMAC - N, 1-1-2010]

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

12.11.10.6 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.
[12.11.10.6 NMAC - N, 1-1-2010]

12.11.10.7 DEFINITIONS: [RESERVED]

12.11.10.8 QUALIFICATIONS FOR USE OF SCOR: SCOR is intended to allow small companies to conduct limited offerings of securities. The requirements contained in this subpart shall apply to registrations that utilize form U-7 for registration and are exempt from federal registration under Rule 504 of Regulation D or that utilize model A of form 1-A for offerings that are exempt under Regulation A of the Securities Act of 1933.

A. The issuer must be a corporation or centrally managed limited liability company organized under the laws of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia and have its principal place of business in one of the foregoing jurisdictions.

B. The securities may be offered and sold only on behalf of the company. Form U-7 may not be used by any selling security holder (including purchasing underwriters in a firm commitment underwriting) to register his securities for resale.

C. The offering price for common stock (and the exercise price, if the securities offered are options, warrants or rights for common stock; or the conversion price if the securities are convertible into common stock) or membership interest in a limited liability company or limited liability partnership must be equal to or greater than \$1.00 per share or unit of interest.

D. By filing for SCOR registration in this state, the registrant agrees with the director that the registrant will not split its common stock, or declare a stock dividend, for two years after the effectiveness of the registration if such action has the effect of lowering the price below \$1.00.

[12.11.10.8 NMAC - Rp, 12 NMAC 11.4.6.1, 1-1-2010]

12.11.10.9 INELIGIBLE ISSUERS: The following issuers are ineligible to use SCOR:

A. investment companies subject to the Investment Company Act of 1940;

B. companies subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934;

C. companies engaged in or which propose to engage in petroleum exploration and production, mining, or other extractive industries;

D. development stage companies that either have no specific business plan or purpose or have indicated that their business plan is to engage in a merger or acquisition with an identified company or companies or other entity or person;

E. holding companies or companies whose principal purpose is owning stock in, or supervising the management of, other companies; and

F. issuers disqualified under 12.11.10.21 NMAC.
[12.11.10.9 NMAC - Rp, 12 NMAC 11.4.6.2, 1-1-2010]

12.11.10.10 REGISTRATION:

A. A corporation issuing securities that are exempt from registration with the SEC under Rule 504 of Regulation D of the Securities Act of 1933 shall use registration form U-7, small company offering registration form, when registering such securities in this state.

B. Use of SCOR is available to any offering of securities by a company relying upon an exemption from registration pursuant to Regulation A or Rule 504 of Regulation D of the Securities Act of 1933. The aggregate offering under Regulation A, within and outside this state, shall not exceed \$5,000,000. The aggregate offering under Rule 504, within and outside this state, shall not exceed \$1,000,000, less the aggregate offering price of all securities sold within the previous twelve months in reliance on Rule 504.

C. Any reference in this rule to form U-7 means the small company offering registration form (form U-7) as adopted by NASAA, on April 29, 1989, as amended, which is incorporated herein by reference. Copies of form U-7 are available from the division and from NASAA.

D. Securities issued under this Part 10 shall be registered by qualification under Section 58-13B-23.
[12.11.10.10 NMAC - Rp, 12 NMAC 11.4.6.3, 1-1-2010]

12.11.10.11 APPLICATION:

A. In addition to filing a properly completed and signed form U-7 or model A of form 1-A, a company must file with the director an executed form U-1, uniform application to register securities, and a signed original form U-2, consent to service of process. References in form U-1 to SEC registration and effectiveness and questions 6 and 8(a) of form U-1 should be disregarded. Form U-1 should set forth the amount of securities being registered in this state. Once registration is effective in this state, the effective date should be noted at the bottom of the cover page of the form U-7 or model A of form 1-A. Any changed or revised disclosure document must also be signed. A company that intends to conduct a SCOR offering in two or more states should contact the states to determine if the offering can be filed for regional review. In filing for regional review, the company will, in most cases, confer with a lead state that will coordinate the review and comments of all states in which the offering is to be made. Upon completion, the offering will become effective in all these states.

B. A response shall be provided to each question in each paragraph of form U-7 or model A of form 1-A. If the question or series of questions is inapplicable, so indicate. Each answer should be clearly and concisely stated in the space provided; however, notwithstanding the specificity of the questions, responses should not involve nominal, immaterial or insignificant information. If the provided space is insufficient, additional space should be created by adding more lines. No cover other than that provided in these forms may be used.

C. The disclosure document on form U-7 or model A of form 1-A constitutes the offering circular or prospectus and either of these forms, once filled out, filed and declared effective, may be reproduced by the company by copy machine or otherwise for dissemination to potential investors. Care should be taken to assure that whichever form is used, if reproduced, is accurate, readable, and complete. Small size type, script or italic style type should not be used.

D. There must be submitted to the director an opinion of an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and, when issued upon payment of the offering price, will be legally and validly issued, fully paid and nonassessable and binding on the company in accordance with their terms.

[12.11.10.11 NMAC - Rp, 12 NMAC 11.4.6.4, 1-1-2010]

12.11.10.12 EXHIBITS: In addition to filing a properly completed form U-7, applicants for SCOR registration shall file, to the extent applicable, the following documents with the director:

A. form of selling agency agreement;

B. the issuer's articles of incorporation or other charter documents and all amendments thereto;

C. the issuer's bylaws, as amended to date;

- D. copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued;
- E. any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants, or rights to be offered;
- F. specimen of security to be offered (including any legend restricting resale);
- G. form U-2, uniform consent to service of process, accompanied by an appropriate form U-2A, uniform corporate resolution;
- H. copy of all advertising or other materials directed to or to be furnished investors in the offering;
- I. form of escrow agreement for escrow of proceeds;
- J. consent to inclusion in disclosure document of accountant's report;
- K. consent to inclusion in disclosure document of tax advisor's opinion or description of tax consequences;
- L. consent to inclusion in disclosure document of any evaluation of litigation or administrative action by counsel;
- M. form of any subscription agreement for the purchase of securities in this offering;
- N. schedule of residential addresses of officers, directors, principal stockholders, and limited liability company and limited liability partnership members; and
- O. work sheets showing computations of responses to questions 33, 36(a), 40(a), 41, 68(a) and 68(b) of form U-7.

[12.11.10.12 NMAC - Rp, 12 NMAC 11.4.6.5, 1-1-2010]

12.11.10.13 REGISTRATION FEE: An application for registration under this regulation shall be accompanied by a non-refundable fee as provided in Section 58-13C-305B. Checks shall be made payable to the New Mexico securities division.

[12.11.10.13 NMAC - Rp, 12 NMAC 11.4.6.6, 1-1-2010]

12.11.10.14 EFFECTIVENESS:

A. The company should expect that the director may have comments and questions concerning the answers set forth on form U-7 and that changes may be required to be made to the answers before the registration is declared effective. Comments and questions may either be included in a letter or made by telephone communication initiated by the director in response to the filing. Comments may include requests for disclosure of additional information or may also require that certain terms of the offering be modified to comply with the state's substantive fairness criteria. Failure to resolve outstanding comments may lead to denial of registration.

B. No offers or sales may be made in this state until the registration has been declared effective by the director. To make offers or sales before the registration is effective could lead to a stop order or other proceeding which would preclude use of SCOR in this or any other state and could give rise to a right of rescission by investors enforceable against management, principal stockholders and the selling agents, as well as the company. When the registration has been declared effective in this state, offers and sales may be made in this state even though registration in other states has not been declared effective. The registration statement will be effective only for the time period specified by the director, which may be different for different states; however, no registration statement shall remain effective for a period greater than one year unless an extension is granted by the director.

C. After the registration has been declared effective and while the offering is still in progress, if any portion of the form U-7 should need to be changed or revised because of a material event concerning the company or the offering to make it accurate and complete, it shall be so changed, revised, or supplemented. If changed, revised or supplemented (including an addition on the cover page of another state in which the offering has been registered) the form U-7 as so changed, revised or supplemented, clearly marked to show changes from the previously filed version, should be filed and cleared with the director before use. If any of the changes or revisions are of such significance that they are material to the making of an investment decision by an investor, the disclosure document on this form as so changed, revised or supplemented should be recirculated to persons in this state that have previously subscribed and who should be given the opportunity to rescind or reconfirm their investment.

D. Options, warrants and similar rights to purchase securities constitute a continuous offering of the underlying securities during the exercise period and require the securities to be registered and the disclosure document to be kept continuously current throughout the exercise period through the use of the amendment procedure set forth in Subsection C of this section or by means of a supplement, as appropriate. Upon any change, revision or supplement to the disclosure document, a copy must be promptly furnished to the holders of options, warrants and similar rights.

[12.11.10.14 NMAC - Rp, 12 NMAC 11.4.6.7, 1-1-2010]

12.11.10.15 DELIVERY OF DISCLOSURE DOCUMENT: The disclosure document and any supplements thereto must be delivered to each investor before the earliest of any of the following events: (a) any order is accepted; (b) any subscription agreement is signed; or (c) any part of the purchase price is received. The foregoing information shall not be delivered to any investor prior to the effective date of the registration.

[12.11.10.15 NMAC - Rp, 12 NMAC 11.4.6.8, 1-1-2010]

12.11.10.16 REPORTING:

A. Within 30 days after the expiration date of the registration, the completion of the offering, or the termination of the offering, whichever occurs first, the issuer shall deliver to the director a report setting forth the application of proceeds, the total number of purchasers, the number of purchasers residing in this state, the total dollar amount sold, the dollar amount sold to residents of this state and any other information the director, in his discretion, may require. Annually thereafter, the issuer shall file reports with the director setting forth, in reasonable detail, the application of the offering proceeds until all proceeds are expended.

B. The director has discretion to require that additional information be provided and may specify the forms necessary to fulfill the reporting requirements of Subsection A of this section.

[12.11.10.16 NMAC - Rp, 12 NMAC 11.4.6.9, 1-1-2010]

12.11.10.17 OTHER REQUIREMENTS: The following standards apply to registration of SCOR equity securities:

A. 12.11.9.9 NMAC, Impoundment of Proceeds; if the proposed business of the company requires a minimum amount of proceeds to commence or continue the business in the manner proposed, the company shall establish an escrow provided that the escrow agent shall be a bank, savings and loan association, or other similar depository institution, or an independent escrow agent approved by the director in accordance with Subsection H of 58-13B-24;

B. 12.11.9.10 NMAC, Loans and Other Material Affiliated Transactions;

C. 12.11.9.11 NMAC, Options and Warrants;

D. 12.11.9.12 NMAC, Promoter's Equity Investment, provided that the amounts set forth therein may be reduced at the discretion of the director for good cause shown;

E. 12.11.9.13 NMAC, Promotional Shares;

F. 12.11.9.15 NMAC, Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders; and

G. 12.11.9.19 NMAC, Debt Securities.

[12.11.10.17 NMAC - Rp, 12 NMAC 11.4.6.10, 1-1-2010]

12.11.10.18 FINANCIAL STATEMENTS: Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be provided. If the company has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided, however, that if each of the following four conditions are met, such financial statements, in lieu of being audited, may be reviewed by independent certified public accountants in accordance with the *accounting and review service standards* promulgated by the American institute of certified public accountants or the Canadian equivalent:

A. the company shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation, or any other method directed toward the public;

B. the company has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;

C. the aggregate amount of all previous sales of securities by the company (exclusive of debt financing with banks and similar commercial lenders) shall not exceed \$1,000,000; and

D. the amount of the present offering does not exceed \$1,000,000.

[12.11.10.18 NMAC - Rp, 12 NMAC 11.4.6.11, 1-1-2010]

12.11.10.19 SELLING AGENTS:

A. The company may engage broker-dealers or issuer representatives to sell the securities. Commissions, fees, or other remuneration for soliciting any prospective purchaser in this state in connection with this offering may only be paid to persons who, if required to be registered, the company reasonably believes are appropriately registered in this state.

B. 12.11.2.16 NMAC provides an exemption from registration for persons representing a SCOR issuer who do not receive compensation for sales.
[12.11.10.19 NMAC - Rp, 12 NMAC 11.4.6.12, 1-1-2010]

12.11.10.20 ADVERTISING: All selling literature or advertisements announcing the offering shall be filed with the director prior to publication or circulation. An announcement containing no more than the following need not be filed with the director:

- A.** the name of the company;
- B.** characterization of the company as indicated on the cover page of the disclosure document;
- C.** address and telephone number of the company;
- D.** a brief indication in ten words or less of the company's business or proposed business;
- E.** the number and type of securities offered and the offering price per security;
- F.** the name, address, and telephone number of any selling agent authorized to sell the securities;
- G.** a statement that the announcement does not constitute an offer to sell or solicitation of an offer to purchase and that any such offer must be made by official disclosure document;
- H.** how a copy of the disclosure document may be obtained;
- I.** the company's logo; and
- J.** clip and return coupons, requesting a copy of the disclosure document, used in printed announcements.

[12.11.10.20 NMAC - Rp, 12 NMAC 11.4.6.13, 1-1-2010]

12.11.10.21 DISQUALIFICATION: SCOR shall not be available for the securities of any company if the company or any of its officers, directors, 10 percent stockholders or members, promoters or any selling agents of the securities to be offered, or any officer, director or partner of such selling agent:

A. has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application for registration hereunder;

B. has been convicted within five years prior to the filing of the application for registration hereunder of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

C. is currently subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the application for registration hereunder or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the application for registration hereunder;

D. is subject to any federal or state enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities;

E. is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security or involving the making of any false filing with any state entered within five years prior to the filing of the application for registration hereunder;

F. the prohibitions of Subsections A, B, C and D of this section shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the jurisdiction in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is registered in this state and the form BD filed with this state discloses the order, conviction, judgment, or decree relating to such person; no person disqualified under this section may act in a capacity other than that for which the person is licensed or registered;

G. any disqualification caused by this section is automatically waived if the securities administrator or agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied; or

H. if any of the circumstances in Subsections B, C or E of this section have occurred more than five years from the date of the application for registration hereunder, these circumstances must be described in response to question 118 of form U-7, Other Material Factor.

[12.11.10.21 NMAC - Rp, 12 NMAC 11.4.6.14, 1-1-2010]

HISTORY OF 12.11.10 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 95-5.23, Small Corporate Offering Registration (SCOR), filed 9-27-95.

History of Repealed Material:

12 NMAC 11.4, Subpart 6, Small Company Offering Registration (SCOR) (filed 4-19-99) repealed 1-1-2010.

Other History:

SD Rule 95-5.23, Small Corporate Offering Registration (SCOR), filed 9-27-95; was **renumbered** into first version of the New Mexico Administrative Code as 12 NMAC 11.4, Registration and Exemption of Securities, effective 5-1-99.

That relevant portion of 12 NMAC 11.4, Subpart 6, Small Company Offering Registration (SCOR) (filed 4-19-99) was renumbered, reformatted, and replaced by 12.11.10 NMAC, Small Company Offering Registration (SCOR), effective 1-1-2010.