



New Mexico
Regulation and Licensing

Securities Division

OPTIONS FOR SMALL BUSINESS

General Information about Small Business Offerings

This pamphlet gives a brief overview of some of the options available to small businesses that may be considering a securities offering as a means of raising capital. Anyone considering such an offering should consult with an experienced securities attorney before engaging in such an offering.

Several limitations apply to all small offerings. Even though some options provide the purchaser with unrestricted securities, as a practical matter no market exists for such securities and therefore the purchaser should realize that they may not be able to sell their investment easily, if at all. **Sales commissions may not be paid to anyone for selling securities unless the salesperson is licensed for such activity with the New Mexico Securities Division.**

It is useful to distinguish between those options that permit general solicitation, such as advertising, and those that do not (often referred to as “private placements.”)

In addition, anyone considering a securities offering must keep in mind that both state and federal laws apply to all offerings. A compliance strategy for the state and federal laws must be developed and implemented before any offering is commenced.

The 202X Exemption (formerly 27J)

The 202X is a state exemption (Statute 58-13C-202X) that permits general solicitation. The total offering, including interest on installment payments does not exceed \$2.5 million. There is no limit on the number of purchasers; however the following conditions apply:

- The issuer’s principal office or principal place of business or a majority of its employees or assets must be located in New Mexico.
- More than one-half of the offering proceeds must be used in New Mexico.
- An offering document must be delivered to each prospective purchaser prior to sale, disclosing such information as the Director requires; and
- Notice and the payment of \$350 fee must be filed with the Director ten (10) days prior to the first offer.

Because there is no corresponding provision in federal securities law, 202X offerings are usually limited to New Mexico residents. 202X offerings do not have to meet the substantive standards that are applied to registered offerings; however, resale of such securities is restricted.

The 202Y Exemption (formerly 27K)

This is a type of private placement (Statute 58-13C-202Y); therefore no general solicitation is permitted. It allows an issuer organized as a corporation, limited partnership or limited liability company to raise an unlimited amount of capital from up to 25 investors. Securities sold under this

provision cannot be readily sold or transferred. No disclosure format is specified for the offering, but the issuer must disclose all material facts to purchasers in compliance with the antifraud provisions of the Securities Act. Resale of such securities is restricted and therefore the issuer must have a reasonable belief that the securities are purchased for investment purposes. If the issuer is formed under the laws of another state or jurisdiction, it must file a notice with the securities Division on Form 202Y. If an issuer is formed in New Mexico, they must file with the New Mexico Securities Division a statement of purpose which outlines the directives and goals of the offering. There are no fees for this exemption.

Uniform Limited Offering Exemption (Reg. D, Rule 505)

This is another type of private placement that allows an issuer to raise up to \$5 million from up to 35 non-accredited investors and an unlimited number of accredited investors. The state exemption is based on a federal exemption (Regulation D, Rule 505). Because the state exemption is coordinated with the federal exemption, the same form (Form D) is used to file with both the state and the SEC. Determination of whether an investor is accredited or not is based on federal law. The issuer must determine that the investment is suitable based on the purchaser’s financial situation or business experience. The securities are restricted, and specific disclosure formats are specified for the offering when selling securities to non-accredited investors. General solicitation or advertising is prohibited.



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File an authenticated Form D along with a payment of \$350 at least five days prior to the first offer with the Director.

Private Offering Covered Securities (Reg. D, Rule 506)

This private placement is a federal “covered” security under Section 18(b)(4)(D) of the federal Securities Act of 1933, however unlike the Rule 505 exemption, all notice filings and payments must be made using the Electronic Funds Depository System (EFD) within 15 days after the first sale of the security in New Mexico. If you are not automatically directed to the EFD website, the information for accessing them is listed below.

<https://www.efdnasaa.org/>

Here is the contact information for any filers seeking help setting themselves up on EFD:

support@efdnasaa.org

Support phone number is 601-453-1979

There are two ways an issuer can make an offering in New Mexico under Rule 506:

1. Rule 506(b): involves no general solicitation and must be filed within 15 calendar days after the first sale in this state. An issuer can raise any dollar amount in an offering from up to 35 non-accredited investors and an unlimited number of accredited investors. Purchasers must have enough knowledge and experience in finance and business matters to evaluate the risk and merits of the investment or be able to bear the investment’s economic risk.

2. Rule 506(c): requires the issuer to file for an exemption with the SEC 15 days after the offering, and provide notice filing to the State within 15 calendar days after the first sale in New Mexico. Under 506(c), the issuer may use general solicitation / advertising (including on unrestricted websites) to market the offering; however, all sales must be to “Accredited Investors,” which is defined at Rule 501(a) (basically, for natural persons, there are income and net worth levels that that a purchaser must meet: Income = \$200,000 (single) / \$300,000 (married); net worth = \$1 Million (excluding primary residence)). Other investors may be “accredited” based on their status, such as employee benefit plans and institutional investors. Finally, an issuer using 506(c) must take “reasonable steps” to verify the purchaser is an accredited investor and the rule provides four non-exclusive safe harbors for verification.

Note: in an offering under Reg. D Rule 506, the issuer must choose *which* exemption it is using on Form D; meaning, an issuer cannot use both 506(b) and 506(c) in the same offering, since each exemption places different obligations on the issuer.

The 202N Exemption (formerly 27U)

The exemption provided by Statute 58-13C-202N is a state level private placement exemption. A completed Form 202N must be filed with the Director no less than five (5) business days before the first sale of securities in this state. The issuer may not sell to more than 10 persons in New Mexico within any 12-month period. In addition,

the issuer must meet one of the following two conditions:

- The company does not have more than 50 beneficial owners and has not raised more than \$1 million during any consecutive 12 month period, or;
- The seller reasonably believes that all of the purchasers in this state are purchasing for investment.

There are no fees for this exemption.

Accredited Investor Exemption

Under this exemption, sales of securities may be made exclusively to persons who are accredited investors as defined in Rule 501, Regulation D of the federal 1933 Securities Act. A general announcement of a limited nature may be made of the proposed offering by any means, including a brief description of the business in 25 words or less. The issuer may also deliver information in addition to the general announcement if delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors. Rule 12.11.12.19 NMAC requires that a Uniform Notice of Transaction for Accredited Investors, Form U-2, a copy of the general announcement, and a fee of \$350 be submitted to the Director within 15 days after the first sale in this state.



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Offerings Utilizing the new Regulation

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Regulation A allows companies to offer and sell securities to the public, but with more limited disclosure requirements than what you would expect from publicly reporting companies. Smaller companies in earlier stages of development may be able to use this rule to raise money. An offering circular is required to be given or made accessible to each potential investor. The registration requirements pursuant to Regulation A. are: The aggregate offering may not exceed \$20,000,000 in any 12-month period if using Tier I; or \$50,000,000 in any 12-month period if using Tier II. For Tier II users, New Mexico requires a notice filing to be made along with a fee of \$350. Please see the links below for the [form](#) and the temporary [order](#)

For Tier I users, please refer to the NASAA coordinated review protocol for those offerings. Here is the link to the [protocol](#) and the [application form](#).

Small Corporate Offering Registration (SCOR)

SCOR or Form U-7 is a coordinated state-federal provision that addresses the needs of small businesses. General solicitation is permitted. A simplified question and answer disclosure document is used for state registration of small company offerings that are exempt from federal registration requirements pursuant to Regulation A or rule 504 of Regulation D. The aggregate offering may not exceed \$1,000,000 or \$5,000,000 depending on whether Rule 504 or Regulation A is

being relied on under federal law. The principal advantage to issuers using SCOR is the availability of free secondary trading and the ability to engage in general advertising or solicitation. Small issuers have a difficult time reaching an adequate audience and the elimination of these restrictions provides a far broader potential source of investors. SCOR offerings are subject to more rigorous review standards and issuers are encouraged to consult with the staff of the New Mexico Securities Division regarding applicable standards. The securities offered under SCOR may be sold through a broker-dealer that has a licensed sales force or they may be sold directly by the Company. Persons acting for an issuer effecting offers and sales are exempt from the licensing requirements provided that no commission or other similar compensation is paid for effecting such transaction. SCOR offerings are registered by Qualification under Section 58-13C-304, and application must be made on Form U-1, accompanied by a fee of \$525 before the first offer. See [SCOR Filings](#) on our website www.rld.state.nm.us or call us at (505)476-4580