

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

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.

### **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.

For additional information please call (505) 476-4580 or visit our website [www.rld.state.nm.us](http://www.rld.state.nm.us)

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

This is another type of private placement much like the Rule 505 exemption discussed above. As with Rule 505, it is a state-federal coordinated exemption and the same documents are used to file with the SEC and any state in which the offering is sold. Because this private placement is a federal “covered” security under Section 18(b)(4)(D) of the federal Securities Act of 1933, only an authenticated Form D, and a \$350 fee must be filed with the Director within 15 days after the first sale in this state. An issuer can raise any dollar amount in an offering from 35 non-accredited investors and unlimited number of accredited investors. Once again, federal law determines the definition of “accredited investor”. 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.

### **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