

1 **14-4321. Defense; exempt transaction.**¹

2 ~~[Evidence has been presented that]~~ An issue in this case is whether the security which was
3 (sold)² (offered for sale) [as charged in Count _____]³ was an exempt transaction and was
4 not required to be registered under the state securities law.

5 [An isolated transaction⁴,]²

6 [OR]

7 [A transaction (by)² (between) (in) _____⁵,]

8 is an exempt transaction which is not required to be registered under the state securities law.

9 If you find that the (sale)² (offer to sell) of the unregistered security was

10 [an isolated transaction,]²

11 [OR]

12 [a transaction (by)² (between) (in) _____⁵,]

13 you must find the defendant not guilty of the sale of an unregistered security as charged in [Count
14 _____]³.

15 The burden is on the state to prove beyond a reasonable doubt that the security
16 (sold)² (offered for sale) was not an exempt transaction.

17

18 **USE NOTES**

19 1. For use if there is an issue that the sale or offer for sale was an exempt
20 transaction. *See* NMSA 1978, Section 58-13B-27 [~~NMSA 1978~~] for exempt transactions.

21 2. Use only the applicable alternative.

22 3. Insert the count number if more than one count is charged.

1 4. The definition of “isolated transaction”, UJI 14-4312 NMRA is to be given
2 immediately following this alternative.

3 5. Set forth the elements of the exempt transaction. *See* NMSA 1978, Section 58-13B-
4 27 [~~NMSA-1978~~] for the type of exempt securities transactions.
5 [Approved, effective September 1, 1988; as amended by Supreme Court Order No. 20-8300-004,
6 effective for all cases pending or filed on or after December 31, 2020.]

7 **Committee commentary.** — Although the sale of all of the stock of a business is a
8 transaction subject to the New Mexico Securities Act of 1986, a non-issuer may sell as an “isolated
9 sale” a whole business by selling 100% of the securities without registration if the purpose of the
10 sale is to pass complete ownership, including managerial control, of the business of the corporation
11 to the buyer. *See* *White v. Solomon*, 1986-NMCA-136, 105 N.M. 366, 732 P.2d 1389 [~~Ct. App.,~~
12 ~~1986~~]; *State v. Sheets*, [~~supra~~] 1981-NMCA-054, 96 N.M. 75, 628 P.2d 320; and *State v. Shafer*,
13 1985-NMCA-018, 102 N.M. 629, 698 P.2 902, for the definition of “isolated sale”. *See also* the
14 Committee commentaries to UJI 14-4301 and 14-4312 NMRA.
15 [As amended for stylistic compliance by Supreme Court Order No. 20-8300-004, effective for all
16 cases pending or filed on or after December 31, 2020.]