

1 **14-4302. Fraudulent practices; sale of securities; essential elements.**

2 For you to find the defendant guilty of fraudulent practices [as charged in Count  
3 \_\_\_\_\_]<sup>1</sup>, the State must prove beyond a reasonable doubt each of the following elements of  
4 the crime:

5 1. The defendant [~~offered to sell~~<sup>2</sup>-(sold) (~~offered to purchase~~)-(or) (~~purchased~~)  
6 offered to sell] sold] offered to purchase] or] purchased]<sup>2</sup> a security<sup>3</sup>;

7 2. In connection with the [~~offer to sell~~<sup>2</sup>-(sale) (~~offer to purchase~~)-(or) (~~purchase~~)  
8 offer to sell] sale] offer to purchase] or] purchase]<sup>2</sup> of the security, the defendant purposely  
9 and directly or indirectly:

10 [used a plan or scheme to deceive or cheat others;]<sup>2</sup>

11 [OR]

12 [made an untrue statement of fact that under the circumstances would have been  
13 important or significant to the investment decision of a reasonable person;]

14 [OR]

15 [omitted a fact that under the circumstances would have been misleading to the  
16 investment decision of a reasonable person;]

17 [OR]

18 [engaged in an act, practice or course of business which would cheat or would  
19 operate as a fraud or deceit upon a reasonable person;]

20 3. This happened in New Mexico on or about the \_\_\_\_\_ day of  
21 \_\_\_\_\_, \_\_\_\_\_.<sup>4</sup>

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USE NOTES

- 1           1.       Insert the Count Number if more than one count is charged.
- 2           2.       Use only the applicable alternatives.
- 3           3.       UJI 14-4310 NMRA, the definition of “security”, must also be given immediately
- 4 after this instruction.
- 5           4.       UJI 14-141 NMRA, General criminal intent, must also be given.

6 [Approved, effective September 1, 1988; as amended by Supreme Court Order No. 21-8300-009,

7 effective for all cases pending or filed on or after December 31, 2021.]

8           **Committee commentary.** — Unlike general “criminal fraud”, the fraudulent sale of

9 securities is not a specific intent crime. *State v. Ross*, 1986-NMCA-015, ¶¶ 14-18, 104 N.M. 23,

10 [26,] 715 P.2d 471 [~~(Ct.App., 1986)~~]. UJI 14-141 NMRA, general criminal intent, must be given

11 with this instruction.

12           The general rule is that the question of what constitutes a “security” is a mixed question of

13 law and fact. *See* committee commentary to UJI 14-4301 NMRA.

14 [As amended by Supreme Court Order No. 21-8300-009, effective for all cases pending or filed

15 on or after December 31, 2021.]