

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

2 An issue in this case is whether the security which was [~~(sold)~~²-~~(offered for sale)~~] [sold]
3 [offered for sale]²-[as charged in Count _____]³ was an exempt transaction and was not
4 required to be registered under the [~~state securities law~~] New Mexico Uniform Securities Act.

5 [An isolated transaction⁴,]²

6 [OR]

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

8 is an exempt transaction which is not required to be registered [~~under the state securities law~~] under
9 the New Mexico Uniform Securities Act.

10 If you find that the [~~(sale)~~²-~~(offer to sell)~~] [sale] [offer to sell]² of the unregistered security
11 was

12 [an isolated transaction,]²

13 [OR]

14 [a transaction [~~(by)~~²-~~(between)~~-~~(in)~~] [by] [between] [in]² _____⁵,]

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

17 The burden is on the state to prove beyond a reasonable doubt that the security [~~(sold)~~²
18 ~~(offered for sale)~~] [sold] [offered for sale]² was not an exempt transaction.

19

20 USE NOTES

21 1. For use if there is an issue that the sale or offer for sale was an exempt transaction.

22 See Section [~~58-13B-27~~] 58-13C-202 NMSA 1978 for exempt transactions.

23 2. Use only the applicable alternative.

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

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

4 5. Set forth the elements of the exempt transaction. *See* Section [~~58-13B-27~~] 58-13C-
5 202 NMSA 1978 for the type of exempt securities transactions.

6 [Approved, effective September 1, 1988; as amended by Supreme Court Order No. 2020-8300-
7 004, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme
8 Court Order No. 21-8300-009, effective for all cases pending or filed on or after December 31,
9 2021.]

10 **Committee commentary.** — Although the sale of all of the stock of a business is a transaction
11 subject to the [~~New Mexico Securities Act of 1986~~] New Mexico Uniform Securities Act,
12 apparently a non-issuer may sell as an “isolated sale” a whole business by selling 100% of the
13 securities without registration if the purpose of the sale is to pass complete ownership, including
14 managerial control, of the business of the corporation to the buyer. *See White v. Solomon*, [405
15 N.M. 366, 732 P.2d 1389 (Ct. App., 1986); *State v. Sheets, supra*; and *State v. Shafer*, for the
16 ~~definition of “isolated sale”~~ 1986-NMCA-136, 105 N.M. 366, 732 P.2d 1389-. *See also* the
17 Committee commentaries to UJIs 14-4301 and 14-4312 NMRA.

18 [As amended by Supreme Court Order No. 21-8300-009, effective for all cases pending or filed
19 on or after December 31, 2021.]