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**BEFORE THE ARIZONA CORPORATION CC**  
Arizona Corporation Commission

1  
2 WILLIAM A. MUNDELL  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 MARC SPITZER  
COMMISSIONER  
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6 IN THE MATTER OF:  
7 PROPOSED RULEMAKING TO AMEND RULE  
R14-4-116 LISTING NASAA STATEMENTS OF  
8 POLICY AS REGISTRATION STANDARDS.

DOCKET NO. RS-00000A-02-0304

DECISION NO. 65458

**OPINION AND ORDER**

9 DATE OF HEARING: October 22, 2002  
10 PLACE OF HEARING: Phoenix, Arizona  
11 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
12 APPEARANCES: Ms. Sharleen A. Day, Associate General Counsel  
on behalf of the Securities Division of the  
13 Arizona Corporation Commission.

**BY THE COMMISSION:**

14 On July 3, 2002, the Securities Division ("Division") of the Arizona Corporation Commission  
15 ("Commission") forwarded a proposal recommending that the Commission amend A.A.C. R14-4-116  
16 ("Rule 116")<sup>1</sup>.

17 On July 18, 2002, the Commission issued Decision No. 65036, which directed the Hearing  
18 Division to schedule a hearing on the Division's proposed amendment to Rule 116 for the purpose of  
19 taking public comment.

20 On May 31, 2002 and September 6, 2002, the Notice of Rulemaking Docket Opening and  
21 Notice of Proposed Rulemaking, respectively, were published by the Arizona Secretary of State's  
22 office in the Arizona Administrative Register ("Register").

23 On October 22, 2002, a public comment hearing was held before a duly authorized  
24 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. There were no  
25 members of the public or interested parties in attendance at the proceeding and the Division has not  
26

27 <sup>1</sup> Rule 116 identifies and incorporates by reference certain policy statements issued by the North American Securities  
28 Administrators Association ("NASAA") regarding the registration of securities. The Division requires issuers registering  
specified securities to comply with the terms of these policy statements.

1 received any written or oral comments regarding the proposed amendment of Rule 116. Following  
 2 the conclusion of the proceeding, the matter was taken under advisement pending the submission of a  
 3 Recommended Opinion and Order to the Commission.

4 \* \* \* \* \*

5 Having considered the entire record herein and being fully advised in the premises, the  
 6 Commission finds, concludes, and orders that:

7 **FINDINGS OF FACT**

8 1. Bond offerings by non-profit religious organizations were exempt from registration  
 9 until the Arizona legislature amended A.R.S. § 44-1843(A)(6) (effective July 18, 2000) requiring  
 10 registration of debt offerings by charitable organizations. The Division anticipated proposing both  
 11 the adoption of the Denominational Guidelines by amending Rule 116 and the making of new rule,  
 12 A.A.C. R14-4-149 ("Rule 149") for Church Bonds Guidelines in response to that amendment<sup>2</sup>.

13 2. On July 3, 2002, the Division forwarded to the Commission a proposal recommending  
 14 the amendment of Rule 116.

15 3. July 18, 2002, the Commission issued Decision No. 65036, which directed a hearing  
 16 be scheduled regarding Rule 116 for the purpose of taking public comment.

17 4. On August 8, 2002, by Procedural Order, the Commission scheduled a public  
 18 comment hearing on October 22, 2002.

19 5. Pursuant to law, Notice of Proposed Rulemaking was given on September 6, 2002, in  
 20 the Register.

21 6. The Division recommends amending Rule 116 to add two NASAA guidelines: The  
 22 NASAA Guidelines for General Obligation Financing by Religious Denominations ("Denominational  
 23 Guidelines"), and the NASAA Statement of Policy Regarding Church Bonds ("Church Bonds  
 24

25 <sup>2</sup> While the Division was drafting Rule 149, NASAA began the process to amend the Church Bonds Guidelines.  
 26 The Division participated in the NASAA amendment process with the objective of adopting the finalized Church Bonds  
 27 Guidelines in lieu of adopting a separate Rule 149. At this time, members of industry commented to the Division that a  
 28 national uniform registration standard would be preferred by industry, and beneficial to both industry and investors.  
 During the process to amend the Church Bonds Guidelines, the Division stayed all rulemaking activities regarding  
 proposed Rules 116 and 149. The amended Church Bonds Guidelines were finalized and adopted by the NASAA  
 membership on April 14, 2002. The docket for Rule 149 was then closed in the interest of amending Rule 116 to include  
 both NASAA guidelines.

1 Guidelines”).

2 7. Rule 116 identifies and incorporates by reference certain policy statements issued by  
3 NASAA regarding the registration of securities. The Division requests that the Commission approve  
4 a requirement that issuers register specified securities to meet the terms of these policy statements.

5 8. The Denominational Guidelines will represent the registration requirements for  
6 applications for the registration of debt issued by a denomination for the purpose of funding projects  
7 of various affiliated churches or related religious organizations at either a local or national level.

8 9. The Church Bonds Guidelines will represent the registration requirements for  
9 applications for registration of debt issued by individual religious entities to fund projects associated  
10 with use by the individual entity.

11 10. At the public comment hearing on October 22, 2002, no members of the public  
12 appeared to make comment on the proposed amendment to Rule 116. The Division did not receive  
13 any written or oral comments with respect to the proposed amendment to Rule 116 after Notice of the  
14 Proposed Rulemaking was given.

15 11. Rule 116 is set forth in Appendix A, attached hereto and incorporated by reference.

16 12. The Economic, Small Business and Consumer Impact Statement is set forth in  
17 Appendix B, attached hereto and incorporated by reference.

18 **CONCLUSIONS OF LAW**

19 1. Pursuant to A.R.S. § 44-1821, and Article XV, Sections 4, 6 and 13 of the Arizona  
20 Constitution, the Commission has jurisdiction to amend Rule 116.

21 2. Notice of the hearing was given in the manner prescribed by law.

22 3. The proposed amendment to Rule 116 is in the public interest and is reasonably  
23 necessary to carry out the provisions of the Arizona Securities Act.

24 4. There has been no objection to the amendment of Rule 116.

25 5. The Economic, Small Business and Consumer Impact Statement as set forth in  
26 Appendix B should be adopted.

27 ...

28 ...

**ORDER**

IT IS THEREFORE ORDERED that A.A.C. R14-4-116, as set forth in Appendix A and the Economic, Small Business and Consumer Impact Statement, as set forth in Appendix B, are hereby adopted.

IT IS FURTHER ORDERED that the Commission's Securities Division shall submit amended Rule A.A.C. R14-4-116 and the Economic, Small Business, and Consumer Impact Statement as set forth in Appendix B to the Office of the Attorney General for certification.

IT IS FURTHER ORDERED that the Commission's Securities Division is authorized to make non-substantive changes in the adopted Rule A.A.C. R14-4-116 and to the adopted Economic, Small Business and Consumer Impact Statement in response to comments received from the Attorney General's office during the approval process under A.R.S. § 41-1044 unless, after notification of those changes, the Commission requires otherwise.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



CHAIRMAN



COMMISSIONER



COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 18<sup>th</sup> day of December, 2002.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

MES:mlj

1 SERVICE LIST FOR: RULEMAKING A.A.C. R14-4-116

2 DOCKET NO. RS-00000A-02-0304

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## APPENDIX A

## R14-4-116. NASAA Statements of Policy

A. Unless otherwise provided in A.R.S. Title 44, Chapter 12, Article 7, transactions that fall within one or more of the following North American Securities Administrators Association (NASAA) statements of policy shall comply with the requirements of those statements of policy to qualify for registration or renewal under A.R.S. Title 44, Chapter 12, Article 7. This Section shall not apply to the registration of securities under A.R.S. § 44-1901.

1. Statement of policy regarding loans and other material affiliated transactions, amended November 18, 1997.
2. Registration of asset-backed securities, adopted October 25, 1995.
3. NASAA mortgage program guidelines, adopted September 10, 1996.
4. Registration of commodity pool programs, adopted on September 21, 1983, effective January 1, 1984; amended and adopted August 30, 1990.
5. Equipment programs, adopted on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991.
6. Registration of oil and gas programs, adopted on September 22, 1976, amended October 12, 1977, October 31, 1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, and October 24, 1991.
7. Statement of policy regarding real estate investment trusts, revised and adopted on September 29, 1993.
8. Real estate programs, last revised September 29, 1993.
9. Statement of policy regarding unequal voting rights, adopted and effective October 24, 1991.
10. Omnibus Guidelines, adopted on March 29, 1992.
11. Guidelines for general obligation financing by religious denominations, adopted April 17, 1994.
12. Statement of policy regarding church bonds, adopted April 14, 2002.

The statements of policy listed in subsection (A) are incorporated by reference. The incorporated statements of policy do not contain later editions or amendments. The statements of policy are published in *NASAA Reports* by Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646. Copies are also available from NASAA, 10 G Street, N.E., Suite 710, Washington D.C. 20002, and at the Office of the Secretary of State and the Commission.

## APPENDIX B

**Arizona Corporation Commission, Securities Division  
Chapter 4, Corporation Commission—Securities  
A.A.C. R14-4-116. NASAA Statements of Policy**

**Economic, Small Business, and Consumer Impact Statement**

**A. Economic, small business, and consumer impact summary.**

**1. Proposed rulemaking.**

The Arizona Corporation Commission (the "Commission") proposes the amendment of Section R14-4-116 ("rule 116").

**2. Summary of information included in this report.**

The economic, small business, and consumer impact statement for rule 116 analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. With the adoption of the proposed rule, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The estimated additional cost to the office of the attorney general is minimal. The benefits provided by rule 116 are not quantifiable. Rule 116 should benefit the Commission's relations with the regulated public because of specified standards for registration and increased uniformity with other state registration standards. The public will benefit from the continuation of certain standards for registered offerings. The Commission anticipates that the proposed rulemaking will not significantly increase monitoring, record keeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are not increased or are only marginally increased and such increase does not equal or exceed the reduction in burdens.

**3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in this statement.**

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**B. Economic, small business, and consumer impact statement**

The Arizona Corporation Commission (the "Commission") has not conducted any study and is not aware of any study that measure the cost of implementation or compliance with the proposed rule amendment. The time and dollar expenditures necessary to obtain such data are prohibitive. Adequate data, therefore, is not reasonably available to provide quantitative responses to the items required under A.R.S. § 41-1055(B).

**1. Proposed rulemaking.**

The Commission proposes the amendment of Section R14-4-116 ("rule 116") in order to: (i) provide greater specificity for non-profit religious organizations regarding registration requirements for debt securities; and (ii) provide greater uniformity with other state laws.

Rule 116 formally identifies and incorporates by reference certain policy statements issued by the North American Securities Administrators Association ("NASAA") regarding the registration of securities. The Commission requires issuers registering securities to comply with the terms of these policy statements. The Commission proposes to amend rule 116 to add the NASAA Guidelines for General Obligation Financing by Religious Denominations and the NASAA Statement of Policy Regarding Church Bonds. The NASAA Guideline for General Obligation Financing by

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Religious Denominations will be the standard of review for debt issued by a denomination for the purpose of funding projects of various affiliated churches or related religious organizations. The Statement of Policy Regarding Church Bonds will be the standard of review for debt issued by individual religious entities to fund projects associated with the individual entity.

**2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.**

Those affected by rule 116 include non-profit religious organizations seeking to issue debt securities to the public, and the investing public.

**Cost bearers.**

The costs of compliance with rule 116 will be borne directly by the non-profit religious organizations seeking to issue debt securities to the public. The costs of enforcement of rule 116 will be borne by the Commission and the office of the attorney general. The costs of implementation of the proposed rulemaking will be borne by the Commission.

The costs of compliance and enforcement remain substantially the same as under the criteria by which registration of debt securities are reviewed under A.R.S. §§ 44-1891 and 44-1921. The costs of implementation are minimal. The Commission anticipates that the proposed rulemaking will not significantly increase, monitoring, record keeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are not increased or are only marginally increased and such increase does not equal or exceed the reduction in burdens.

**Beneficiaries.**

Persons seeking to purchase debt securities offered by non-profit religious organizations will benefit from the continued imposition of certain standards on registered offerings of debt securities.

**3. Cost/benefit analysis.****a. Cost/benefit analysis of the probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.**

The benefits of the proposed rulemaking outweigh the probable costs. The implementation costs to the Commission are minimal because the systems, forms, etc., implemented in connection with the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921 will not vary materially. The costs to the Commission and the office of the attorney general to enforce the proposed rules remain substantially the same as the costs incurred in connection with the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921. The Commission and the office of the attorney general will benefit from the amendment of rule 116 which will (i) provide greater specificity to the non-profit religious organizations regarding registration requirements for debt securities; and (ii) provide greater uniformity with other state laws.

**b. Cost/benefit analysis of the probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

None.

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**c. Cost/benefit analysis of the probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

The benefits of the proposed rulemaking outweigh the probable costs. The Commission anticipates that the costs of compliance by regulated persons will be substantially the same as those incurred under the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921. The non-profit religious organizations seeking to issue debt securities to the public will be required to provide specific disclosure of material matters, make certain financial demonstrations, and submit supporting documentation. These requirements should not result in an increase in registration costs to regulated persons as they must already submit similar demonstrations and documents to the Commission for registration. The Commission does not anticipate any effect on the revenues or payroll expenditures of regulated persons.

The non-profit religious organizations should benefit from amendment of rule 116 which will (i) provide greater specificity for non-profit religious organizations regarding registration requirements for debt securities; and (ii) provide greater uniformity with other state laws.

**4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.**

The Commission anticipates that the impact of the proposed rulemaking on public and private employment will be minimal because the proposed rulemaking incorporates in large part benefits and requirements contained in the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921. The proposed rulemaking also requires specific disclosure of material matters, financial demonstrations, and the submission of supporting documentation.

**5. Statement of the probable impact of the proposed rulemaking on small businesses.**

**a. An identification of the small businesses subject to the proposed rulemaking.**

All non-profit religious organizations seeking to register debt securities for sale to the public are subject to the proposed rulemaking. The Commission anticipates that non-profit religious organizations seeking to register debt securities for sale to the public may include small local religious organizations as well as the larger regional religious organizations. These organizations are not typically considered to be businesses.

**b. The administrative and other costs required for compliance with the proposed rulemaking.**

The cost of compliance with rule 116 will not differ from those costs associated with registration under the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921. Associated costs may even decrease slightly due to increased uniformity with the laws of other states.

**c. A description of the methods that the agency may use to reduce the impact on small businesses.**

Rule 116 will be imposed only on those non-profit religious organizations seeking to register debt securities for sale to the public which may include small organizations. Such regulation is deemed necessary and appropriate to provide investor protection under the Securities Act. While these organizations are not typically considered to be businesses, the proposed rulemaking incorporates as much uniformity as possible in the interest of reducing the impact of compliance, as described above.

**d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

Nonregulated persons and consumers will bear no direct cost as a result of the proposed rulemaking package. Persons seeking to purchase debt securities that have been registered for sale to the public will benefit from a continued standard of investor protection by ensuring appropriate disclosures are made and that such issuers have the means to service the debt they intend to issue.

**6. Statement of the probable effect on state revenues.**

The Commission anticipates that the effect on state revenues of the proposed rulemaking will be minimal because the proposed rulemaking has no impact on the fee structure contained in the Securities Act.

**7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.**

The goal of the proposed rulemaking is to effectuate the least intrusive and costly method of regulation of debt securities offered by non-profit religious organizations required to achieve the statutorily mandated level of public protection.