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Arizona Corporation Commission  
BEFORE THE ARIZONA CORPORATION COMMISSION

**DOCKETED**

MAR 25 2002

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2 WILLIAM A. MUNDELL  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 MARC SPITZER  
COMMISSIONER  
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DOCKETED BY CLP

6 IN THE MATTER OF:  
7 PROPOSED RULEMAKING TO AMEND RULE  
A.A.C. R14-4-131.

DOCKET NO. RS-00000A-01-0512

DECISION NO. 64647

OPINION AND ORDER

8  
9 DATE OF HEARING: December 5, 2001  
10 PLACE OF HEARING: Phoenix, Arizona  
11 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
12 APPEARANCES: Ms. Cheryl Farson, General Counsel, on behalf  
of the Securities Division of the Arizona  
13 Corporation Commission.

14 **BY THE COMMISSION:**

15 On August 14, 2001, the Securities Division ("Division") of the Arizona Corporation  
16 Commission ("Commission") forwarded a proposal recommending that the Commission amend  
17 A.A.C. R14-4-131 ("Rule 131").

18 On September 18, 2001, the Commission issued Decision No. 64049, which directed the  
19 Hearing Division to schedule a hearing on the Division's proposed amendment to Rule 131 for the  
20 purpose of taking public comment.

21 On July 20, 2001, and October 19, 2001, the Notice of Rulemaking Docket Opening and  
22 Notice of Proposed Rulemaking, respectively, were published by the Arizona Secretary of State's  
23 office in the Arizona Administrative Register ("Register"). In October 2001, the Division received a  
24 letter from Ms. Tamara K. Reed, Associate Counsel of the Investment Company Institute, supporting  
25 the proposed amendment to Rule 131.

26 On December 5, 2001, a public comment hearing was held before a duly authorized  
27 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. There were no  
28 members of the public or interested parties in attendance at the proceeding. Following the conclusion

1 of the proceeding, the matter was taken under advisement pending the submission of a Recommended  
2 Opinion and Order to the Commission.

3 \* \* \* \* \*

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

6 FINDINGS OF FACT

7 1. On August 14, 2001, the Division forwarded to the Commission a proposal  
8 recommending the amendment of Rule 131.

9 2. On September 18, 2001, the Commission issued Decision No. 64049, which directed  
10 that a hearing be scheduled regarding Rule 131 for the purpose of taking public comment.

11 3. On October 3, 2001, by Procedural Order, the Commission scheduled a public  
12 comment hearing on December 5, 2001.

13 4. Pursuant to law, Notice of Proposed Rulemaking was given on October 19, 2001, in  
14 the Register.

15 5. Currently, Rule 131 provides that no dealer shall be deemed to have failed to  
16 reasonably supervise their salesmen for purposes of A.R.S. § 44-1961(A)(12) if the dealer complies  
17 with the procedure set forth in the rule. In 2000, the Arizona Legislature amended A.R.S. § 44-  
18 1962(A)(11) to give the Commission the authority to deny, revoke or suspend a salesman's license if  
19 that salesman has supervisory responsibility and fails to fulfill that obligation. The Division proposes  
20 to amend Rule 131 to extend the "safe harbor" to supervisory salesmen if they comply with the  
21 procedures set forth within the rule, which require the establishment of written procedures and their  
22 application to prevent and detect violations of the Arizona Securities Act ("Act").

23 6. The Division's proposed amendment to Rule 131 will provide a "safe harbor" for  
24 supervisory salesmen wherein they shall not be found to have failed to reasonably supervise the  
25 salesmen under their supervision for purposes of A.R.S. § 44-1962 if the supervisory salesman  
26 complies with the procedures set forth in the amended rule. The amendment of Rule 131 expands  
27 this protection from dealers to include supervisory salesmen who also follow the provisions of the  
28 rule to avoid denial, revocation or suspension pursuant to A.R.S. § 44-1962 if salesmen under their

1 supervision violate their supervisor's written directions which are designed to prevent violations of  
2 the Act.

3 7. At the public comment hearing on December 5, 2001, no members of the public  
4 appeared to make comment on the proposed amendment to Rule 131. The Division received a letter  
5 from Ms. Tamara K. Reed, Associate Counsel of the Investment Company Institute, supporting the  
6 proposed amendment of Rule 131.

7 8. Rule 131 is set forth in Appendix A, attached hereto and incorporated by reference.

8 9. The Concise Explanatory Statement is set forth in Appendix B, attached hereto and  
9 incorporated herein by reference.

10 10. The Economic, Small Business and Consumer Impact Statement required pursuant to  
11 A.R.S. § 41-1055 is set forth in Appendix C, attached hereto and incorporated herein by reference.

12 **CONCLUSIONS OF LAW**

13 1. Pursuant to A.R.S. § 44-1821, and Article XV, Sections 4, 6 and 13 of the Arizona  
14 Constitution, the Commission has jurisdiction to amend Rule 131.

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

16 3. The proposed amendment to Rule 131 is in the public interest.

17 4. The Concise Explanatory Statement as set forth in Appendix B and the Economic,  
18 Small Business and Consumer Impact Statement as set forth in Appendix C should adopted.

19 **ORDER**

20 IT IS THEREFORE ORDERED that A.A.C. R14-4-131 as set forth in Appendix A, the  
21 Concise Explanatory Statement, as set forth in Appendix B, and the Economic, Small Business and  
22 Consumer Impact Statement, as set forth in Appendix C, are hereby adopted.

23 IT IS FURTHER ORDERED that the Commission's Securities Division shall submit  
24 amended Rule A.A.C. R14-4-131 to the Office of the Attorney General for certification.

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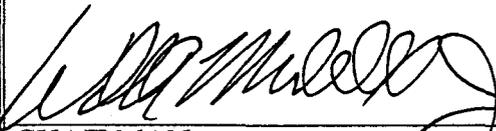
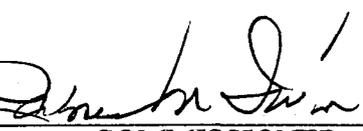
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1 IT IS FURTHER ORDERED that the Commission's Securities Division is authorized to  
2 make changes to the adopted Rule A.A.C. R14-4-131, to the adopted Concise Explanatory Statement  
3 and to the adopted Economic, Small Business and Consumer Impact Statement in response to  
4 comments received from the Attorney General's office during the approval process under A.R.S. §  
5 41-1044 unless, after notification of those changes, the Commission requires otherwise.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9     
10 CHAIRMAN COMMISSIONER COMMISSIONER  
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12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Secretary of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this 25<sup>TH</sup> day of MARCH, 2002.

17   
18 BRIAN C. McNEIL  
19 EXECUTIVE SECRETARY

20 DISSENT \_\_\_\_\_

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1 SERVICE LIST FOR: RULEMAKING A.A.C. R14-4-131

2 DOCKET NO. RS-00000A-01-0512

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APPENDIX A

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND  
ASSOCIATIONS; SECURITIES REGULATION  
CHAPTER 4. CORPORATION COMMISSION  
SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section R14-4-131. Supervision of Salesmen

For purposes of A.R.S. §§ 44-1961(A)(12) and 44-1962(A)(11), no ~~dealer-person~~ shall be deemed to have failed to reasonably supervise ~~its salesmen~~ any other person if:

1. There have been established and maintained written procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such ~~salesman~~ other person of the Arizona Securities Act, or of any rule or regulation adopted thereunder; and
2. Such ~~dealer-person~~ has reasonably discharged the duties and obligations incumbent upon ~~it~~ that person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

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**APPENDIX B**  
**CONCISE EXPLANATORY STATEMENT**

This explanatory statement is provided to comply with the provisions of A.R.S. § 41-1036.

**I. CHANGES IN THE TEXT OF THE PROPOSED AMENDMENT TO THE RULE FROM THAT CONTAINED IN THE NOTICE OF PROPOSED RULEMAKING FILED WITH THE SECRETARY OF STATE.**

None.

**II. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED RULE.**

**A.A.C. R14-4-131:** Supervision of Salesmen.

Issue: A.A.C. R14-4-131 ("Rule 131"). Rule 131 provides that no dealer shall be deemed to have failed to reasonably supervise its salesmen if the dealer complies with the procedures set forth in the rule which describes the maintaining of written procedures and a system of applying these procedures which would reasonably be expected to prevent and detect any violations by salesmen of the Arizona Securities Act or any rules adopted thereunder, if the dealer has complied with the requirements to establish written procedures and a system to monitor compliance therewith and is without reasonable cause to believe that the procedures are not being followed. Under A.R.S. § 44-1961(A)(12), the Commission has long held the authority to deny, revoke, or suspend a dealer's registration for failure to reasonably supervise its salesmen. Rule 131 provides that no dealer shall be deemed to have failed to reasonably supervise its salesmen if the dealer complies with the procedures set forth in the rule. In 2000, the Arizona legislature amended A.R.S. § 44-1962(A)(11) to give the Commission the authority to deny, revoke, or suspend a salesman's license if that salesman has supervisory responsibility and fails to fulfill

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that obligation. The Commission's amendment of Rule 131 will extend the "safe harbor" provision to supervisory salesmen if they comply with the provisions of the rule. The Investment Company Institute has written a letter in support of the Commission's amendment of Rule 131.

Evaluation: We concur with the Division.

Resolution: Rule 131 should be amended as recommended by the Division.

## APPENDIX C

Arizona Corporation Commission, Securities Division  
Chapter 4, Corporation Commission—Securities  
Article 1. In General Relating to the Arizona Securities Act  
Economic, Small Business, and Consumer Impact Statement

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

**1. Proposed rulemaking.**

The Arizona Corporation Commission (the "Commission") amends Section R14-4-131 ("Rule 131").

**2. Summary of information included in this economic, small business, and consumer impact statement.**

The economic, small business, and consumer impact statement for Rule 131 analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. Rule 131 has previously provided a safe harbor for dealers and as amended will extend that safe harbor to supervisory salesmen. Compliance with Rule 131 ensures compliance with A.R.S. §§ 44-1961 and 44-1962 supervisory requirements. With the adoption of the proposed amendment, 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 131 are nonquantifiable.

Rule 131 should benefit the general public and the Commission's relations with the regulated public because the rule allows dealers and salesmen to establish objective standards by which their supervisory performance may be measured. The Commission anticipates that the proposed rulemaking may decrease monitoring, record keeping, or reporting burdens on businesses or persons by allowing the application of specified objective standards to supervising salesmen. The costs of implementation or enforcement are not increased or are only marginally increased.

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

Cheryl T. Farson  
Securities Division  
Arizona Corporation Commission  
1300 W. Washington, Third Floor  
Phoenix, AZ 85007

**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 rules promulgated under the Arizona Securities Act (the "Securities Act"). 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. § 41-155(B).

1. **Proposed rulemaking.**

Rule 131 provides a safe harbor for dealers in that dealers complying with the rule will not be deemed to have failed to reasonably supervise any other person for purposes of A.R.S. § 44-1961(A)(12). As amended, Rule 131 will extend that safe harbor to supervisory salesmen for purposes of A.R.S. § 44-1962(A)(11).

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

Those affected by the amendment to Rule 131 include supervisory salesmen and the investing public. As of December 4, 2001, the Commission registered approximately 2,141 dealers and 128,184 salesmen.

**Cost bearers.**

The costs of compliance with Rule 131 will be borne directly by the regulated persons. The costs of enforcement of Rule 131 will be borne by the Commission and the office of the

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attorney general. The costs of implementation of the proposed rulemaking will be borne by the Commission.

**Beneficiaries.**

Supervisory salesmen will benefit from the opportunity to define standards by which their compliance with supervision obligations may be measured. Persons engaging in securities transactions will benefit from the extension of defined, objective supervisory standards to supervisory salesmen.

**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. The costs of enforcement of statutory supervisory obligations on supervising salesmen by the Commission and the office of the attorney general may be decreased by the safe harbor contained in Rule 131 because it provides the salesmen the opportunity to develop objective standards. The Commission and the office of the attorney general will benefit from the amendment to Rule 131 because, if the safe harbor is used by supervisory salesmen, the agencies may evaluate the supervisory salesman's compliance with supervision obligations with the standards developed under the rule.

**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.

**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 in connection with compliance with the rule prior to this amendment. The Commission does not anticipate any effect on the revenues or payroll expenditures of regulated persons.

Regulated persons should benefit from the amendment to the rule, which will provide a safe harbor for compliance with supervisory obligations imposed by A.R.S. § 44-1962.

**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 does not anticipate that the amendment to Rule 131 will impact public or private employment.

**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.**

Supervisory salesmen are subject to the proposed amendment to Rule 131. Some of these individuals may work for dealers that may be small businesses.

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

Rule 131 has previously provided that dealers that established and maintained written procedures and systems for applying such procedures, as described by the rule, would not be deemed to have failed to reasonably supervise their salesmen. The extension of the safe harbor to supervisory salesmen should not cause the development of additional procedures and systems beyond those already in place in connection with the supervisory obligations of dealers.

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

Rule 131 is available only to dealers and supervisory salesman and imposes that regulation deemed necessary and appropriate under the Securities Act. The proposed rulemaking

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package includes changes that may reduce the impact of compliance with statutory supervision obligations, 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 participating in securities transactions will benefit from the continued registration of, and imposition of standards on, dealers, salesmen, and securities transactions.

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

The Commission anticipates no effect on state revenues.

**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 dealers, salesmen, and securities transactions required to achieve the statutorily mandated level of public protection.

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