

Docket # RS-00000A-99-0691

ORIGINAL 47S



STATE OF ARIZONA



2001 DEC 11 A 11:05

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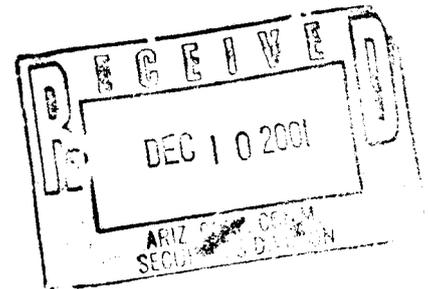
December 6, 2001

Arizona Corporation Commission
DOCKETED

DEC 11 2001

Mark Sendrow, Director
Securities Division
Arizona Corporation Commission
1300 West Washington, Third Floor
Phoenix, Arizona 85007-2996

DOCKETED BY



RE: A.G. Rule No. R01-015; A.A.C. R14-4-148

Dear Mr. Sendrow:

We have reviewed the above-referenced rule adopted by the Arizona Corporation Commission on July 25, 2001. We have determined that the rule is in proper form, is clear, concise and understandable, within the power of the agency to adopt and within legislative standards, and was adopted in compliance with appropriate procedures.

Accordingly, pursuant to A.R.S. § 41-1044, I have affixed my signature to the original Approval of Final Rules and have forwarded it together with the original rule, notice of final rulemaking, economic, small business, and consumer impact statement and concise explanatory statement and four copies of each to the Secretary of State.

We have enclosed a copy for your reference.

Sincerely,

Janet Napolitano
Attorney General

ATTORNEY GENERAL APPROVAL OF FINAL RULES

1. **Agency Name:** Arizona Corporation Commission
2. **Chapter Heading:** Corporation Commission, Securities
3. **Code Citation for the Chapter:** 14 A.A.C. 4
4. **The Articles and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<u>Sections</u>	<u>Action</u>
R14-4-148	New

5. **The rules contained in this package are approved as final rules pursuant to A.R.S. § 41-1044.**

6.  12.6.01
JANET NAPOLITANO, Date
Attorney General

AGENCY CERTIFICATE

for

NOTICE OF FINAL RULEMAKING

1. Agency name: Arizona Corporation Commission, Securities Division
2. Chapter heading: Chapter 4. Corporation Commission, Securities
3. Code citation for Chapter: 14 A.A.C. 4

4. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in numerical order:

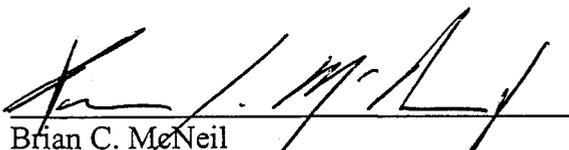
Articles and Sections

Action

Article 1. In General Relating to the Arizona Securities Act

R14-4-148 Transactions Effected by Canadian Dealers and Salesmen New section

5. The rule being submitted is a true and correct version of the rule made by the agency.



Brian C. McNeil
Executive Secretary
Arizona Corporation Commission

26 JUL 01

Date

6. Exempt from Governor's Regulatory Review Council: A.R.S. § 41-1057

APPENDIX B

CONCISE EXPLANATORY STATEMENT

I. CHANGES IN THE TEXT OF THE PROPOSED RULE THAT WAS CONTAINED IN DECISION NO. 63321 (PUBLISHED ON MARCH 2, 2001, VOL. VII, ISSUE 9 OF THE ARIZONA ADMINISTRATIVE REGISTER).

To comply with format Rules of the Secretary of State, the Division has reformatted the capitalization of section headings because the Secretary of State recommended a technical correction by assigning the letter "A" to the introductory paragraph to Rule 148. In response to written comments, the Division made several minor revisions to Rule 148, but they are not substantially different from proposed Rule 148 as published on March 2, 2001 in the Register and a new rulemaking proceeding is not required.

The following section reflects the changes to Section "B":

~~A.B.~~ The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office of, or a branch of, ~~or a natural person associated with~~ a dealer domiciled in the United States.

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

A.A.C. R14-4-148: Transactions Effected by Canadian Dealers and Salesmen

A.A.C. R14-4-148 ("Rule 148") provides for an exemption from registration for dealers (i) domiciled in Canada; (ii) with no office or other physical presence in the United States, and (iii) that are not an office or branch of a dealer domiciled in the United States. It also provides for an exemption from registration for salesmen representing dealers effecting transactions under Rule 148. Under Rule 148, a dealer and salesman may only effect transactions in securities with or for, or induce or attempt to induce the

purchase or sale of any security by (i) an individual from Canada who temporarily resides in or is temporarily present in this state and with whom the Canadian dealer has a bona fide dealer-client relationship before the individual entered the United States; or (ii) an individual present in this state whose transactions are in a Canadian self-directed tax-advantaged retirement account of which the individual is the holder or contributor. Rule 148 is generally supported by the industry.

Issue: Rule 148(A). Edward Jones and Dorsey & Whitney recommended that proposed Rule 148(A) should have a change as follows: that the Commission delete the language "or a natural person associated with" because it might preclude the Canadian salesmen of a Canadian subsidiary to a United States dealer from utilizing the exemption embodied in Rule 148 and it might preclude the Canadian sister entities or Canadian subsidiaries of United States' dealers in the United States from using the exemption in Rule 148. The Division agreed with Edward Jones and Dorsey & Whitney that the subject language was redundant and might cause confusion and deleted the phrase "or a natural person associated with."

Evaluation: We concur with the Division.

Resolution: Modify Rule 148(A) as described above.

Issue: Rule 148(D). Proposed Rule 148(D) utilizes language that automatically disqualifies certain entities and persons from using the applicable exemption arising from Rule 148. Dorsey & Whitney proposed that the Commission amend the language of the disqualifying provision in Rule 148(D)(2) to eliminate the following language: "involving fraud, deceit, racketeering, or consumer protection laws" and to substitute a requirement for a "finding of fraud or deceit or a finding of a violation of racketeering or consumer protection laws" because the use of the word "finding" would be more explicit. With respect to Dorsey & Whitney's proposal, the Division recommended that no change be made because changing the language of Rule 148 as proposed by Dorsey & Whitney would render it inconsistent with other similar exemptions. The Division pointed out that

the subject language in Rule 148(D)(2) is identical to numerous other disqualifying provisions in the Act and the A.A.C. The Division's proposed disqualification provision is designed to prevent certain entities and persons with poor disciplinary histories from conducting business in Arizona pursuant to an exemption. The Division believes that any change in the recommended language would imply a distinction from other similar exemptions that is not there or substantial in nature and if made, would require re-noticing in the Register. It is the position of the Division that the language in Rule 148(D)(2) should be subject to the same application and interpretation as other identical disqualifying provisions and thus no change is necessary.

Evaluation: We concur with the Division.

Resolution: No change is needed to Rule 148(D)(2).

Issue: Rule 148(E). Rule 148(E) as proposed contains the notice filing requirements from salesmen effecting transactions under Rule 148. Dorsey & Whitney recommended that the Commission eliminate the notice filing requirement for all salesmen conducting business in Arizona under Rule 148(E)(5) because Canadian dealers can only employ salesmen who are appropriately registered and in good standing in the Canadian jurisdiction from which they are effecting transactions and the notice requirement would impose significant cost to the dealers while adding little protection for investors. The Division argued that the annual notice filing for salesmen would consist of a copy of the latest registration or renewal document on file with their home jurisdiction and a consent to service of process. The annual filing requirement is consistent with other filing requirements for dealers and salesmen filing with the Commission under other provisions of the Acts and Rules of the A.A.C. The Commission will retain full jurisdiction over all activities of Canadian dealers and salesmen that fall outside of the language of Rule 148 as well as jurisdiction over all fraudulent activities. The required annual filing as proposed by the Division is to provide

consistency and efficiency in order to monitor compliance with Rule 148 and to provide investor assistance when needed and thus no change is necessary.

Evaluation: We concur with the Division.

Resolution: No change is needed to Rule 148(E).

APPENDIX C

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION—SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE 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") proposes the making of Section R14-4-148 ("rule 148").

2. Summary of information included in this report.

The economic, small business, and consumer impact statement for the rule 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 the rule are not quantifiable. The rule should benefit the Commission's relations with the regulated public because the grant of an exemption from registration will permit Canadian dealers and salesmen to manage and transact business in the accounts of their clients while those clients are in Arizona. The public will benefit from the continuation of certain standards for entities and persons transacting business in Arizona, and will benefit from the convenience of effecting transactions in their accounts while in Arizona. 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.

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

Sharleen A. Day
Associate General Counsel
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 measures the cost of implementation or compliance with the proposed rule. 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 making of rule 148 in order to: (i) provide for an exemption from registration for Canadian dealers and salesmen; and (ii) provide greater uniformity with other federal and state laws.

Rule 148 provides for an exemption from registration for dealers (i) domiciled in Canada; (ii) with no office or other physical presence in the United States, and (iii) that are not an office or branch of a dealer domiciled in the United States. It also provides for

an exemption from registration for a salesman representing dealers registered under rule 148.

Rule 148 prescribes the activity in which a dealer and salesman effecting transactions under this rule may engage. A dealer and salesman may only effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by (i) an individual from Canada who temporarily resides in or is temporarily present in this state and with whom the Canadian dealer had a bona-fide dealer-client relationship before the individual entered the United States; or (ii) an individual present in this state whose transactions are in a Canadian self-directed tax-advantaged retirement account of which the individual is the holder or contributor.

To effect transactions under this rule, the dealer must (i) be registered with or a member of a Canadian SRO, stock exchange, or the Bureau des Services Financiers and maintain that registration or membership in good standing, (ii) disclose to its clients in this state that the dealer and its salesmen are not subject to the full regulatory requirements of the Arizona Securities Act, (iii) not have been convicted within ten years of the date of filing of the notice under rule 148 of a felony or misdemeanor of which fraud is an essential element, or a felony or misdemeanor involving the purchase or sale of securities or arising out of the conduct of the business of the applicant as a dealer or salesman, and (iv) not be subject to an order, judgment, or decree of a competent administrative or judicial jurisdiction entered within 10 years of the filing of the notice under rule 148 enjoining or restraining the salesman or dealer from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering, or consumer protection laws.

Prior to effecting transactions under rule 148, a dealer shall file with the Division a notice that contains the following (i) a copy of the last registration or renewal application filed in the jurisdiction in which the dealer has its principal office, with all amendments since that filing, (ii) a consent to service of process pursuant to A.R.S. § 44-1862, (iii) the fee required under A.R.S. § 44-1861(G), (iv) written evidence that the dealer's membership in a Canadian SRO, stock exchange, or the Bureau des Services Financiers is in good standing, (v) for each salesman effecting transactions in Arizona, the dealer shall file (a) a copy of the last registration or renewal application filed in the jurisdiction in which the salesman is registered and resident, with all amendments since that filing, (b) a consent to service of process, and (c) written evidence that the salesman is registered and in good standing in the jurisdiction from which he or she is effecting a transaction into this state.

All notices filed under rule 148 are effective on the date received by the Commission and expire on December 31.

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

Those affected by the rule include Canadian dealers, Canadian salesmen, Canadian residents visiting Arizona, and Arizona residents with certain types of Canadian retirement accounts. Those that will bear the costs of the rule will be Canadian dealers and Canadian salesmen. Those that will directly benefit from the proposed rulemaking will be Canadian residents visiting Arizona and Arizona residents with certain types of Canadian retirement accounts.

Cost bearers.

The costs of compliance with the rule will be borne directly by the Canadian dealers and salesmen that seek an exemption from registration in Arizona. The costs of enforcement of the rule 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 or are slightly decreased from the efforts associated with dealer and salesmen registration under A.R.S. §§ 1941 and 44-1945. 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.

Canadian residents visiting Arizona and Arizona residents with certain types of Canadian retirement accounts will benefit from being able to effect transactions in their Canadian accounts while in Arizona through a Canadian dealer and salesmen that have been granted an exemption from registration under the rule.

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 registration and monitoring of dealers and salesmen under A.R.S. §§ 44-1941 and 44-1945 will not vary materially. The costs to the Commission and the office of the attorney general to enforce the proposed rule remain substantially the same as the costs incurred in connection with registration and monitoring of dealers and salesmen under A.R.S. §§ 44-1941 and 44-1945.

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 less than those incurred under the criteria by which registration and monitoring of dealers and salesmen are effected under A.R.S. §§ 44-1941 and 44-1945. Canadian dealers and salesmen seeking an exemption from registration in Arizona will be required to comply with certain filing and disciplinary requirements. These requirements should not result in a significant increase in filing costs to regulated persons as they must submit similar demonstrations and documents to the Securities Commission of their own provinces in

Canada. The Commission does not anticipate any effect on the revenues or payroll expenditures of regulated persons.

Canadian dealers and salesmen should benefit from the making of the rules which will (i) enable them to effect transactions in the accounts of their clients; and (ii) provide greater uniformity with other federal and 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 material aspects the benefits and requirements contained in the criteria by which registration and monitoring of dealers and salesmen are effected under A.R.S. §§ 44-1941 and 44-1945.

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 Canadian dealers and salesmen seeking an exemption from registration in Arizona are subject to the proposed rulemaking. There is no data to support any conclusion regarding the percentage of small businesses in Canada the proposed rulemaking may effect.

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

The cost of compliance with the rule will be less than those costs associated with registration and monitoring of dealers and salesmen under A.R.S. §§ 44-1941 and 44-1945. Cost efficiencies achieved from the increased uniformity with federal laws and the laws of other states may decrease compliance costs even further.

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

The rule will be imposed only on those Canadian dealers and salesmen seeking an exemption from registration in Arizona to effect transactions in the accounts of their customers. This may include small businesses. Such regulation is deemed necessary and appropriate to provide investor protection under the Securities Act. 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. Canadian residents visiting Arizona and Arizona residents with certain types of Canadian retirement accounts will benefit from being able to effect transactions in their Canadian accounts while in Arizona through a Canadian dealer and salesmen that have been granted an exemption from registration under the rule.

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 dealers and salesmen required to achieve the statutorily mandated level of public protection.

AGENCY RECEIPT

for

NOTICE OF FINAL RULEMAKING

1. **Agency Name:** Arizona Corporation Commission, Securities Division

2. **Title and its Heading:** Title 14. Public Service Corporations; Corporations
and Associations; Securities Regulation

Chapter and its Heading: Chapter 4. Corporation Commission - Securities

Article and its Heading: Article 1. In General Relating to the Arizona
Securities Act

Sections

R14-4-148

Action

New section

AGENCY RECEIPT

for

NOTICE OF FINAL RULEMAKING

1. Agency Name: Arizona Corporation Commission, Securities Division

2. Title and its Heading: Title 14. Public Service Corporations; Corporations
and Associations; Securities Regulation

Chapter and its Heading: Chapter 4. Corporation Commission - Securities

Article and its Heading: Article 1. In General Relating to the Arizona
Securities Act

Sections

R14-4-148

Action

New section

Phone: (602) 542-4242
Fax Number: (602) 594-7421

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Arizona Corporation Commission (Commission) adds new section R14-4-148 in order to: (i) provide for an exemption for transactions effected by Canadian dealers and their salesmen in certain Canadian accounts; (ii) detail the requirements for the grant and maintenance of the exemption; (iii) enumerate the application and renewal requirements for the exemption; and (iv) detail the extent of the activity permitted in Arizona under the exemption. A brief description of the section covered by this rulemaking follows:

To effect transactions under this section, the Canadian dealers must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office or a branch of a dealer domiciled in the United States.

The Canadian dealer and its salesmen may only effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by (i) a person from Canada who temporarily resides in or is present in Arizona and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States, or (ii) a person who resides in or is temporarily present in Arizona and whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

To effect transactions under this section, a dealer shall (i) be a member of a Canadian SRO, stock exchange or Bureau des Service Financiers, and (ii) maintain in good standing provincial or territorial registration and membership in a Canadian SRO, stock exchange or Bureau des Service Financiers. Salesmen may effect transactions under this section to the

same extent as their dealer provided they are registered and in good standing in the jurisdiction from which they are effecting transactions, has not been convicted of a felony or misdemeanor of which fraud is an essential element, or is currently enjoined from engaging in any conduct in connection with the purchase and sale of securities.

Prior to effecting transactions under this section, a dealer must file (i) a copy of its last registration or renewal application filed in the jurisdiction in which the dealer has its principal office, (ii) a consent to service of process; (iii) the fee required under A.R.S. § 44-1861(G); (iv) written evidence that the dealer's membership in the Canadian SRO, stock exchange, or the Bureau des Services Financiers is in good standing; and (v) a copy of each salesman's registration or renewal application filed in the jurisdiction in which the salesman is registered and resident, and a consent to service of process for each salesman.

Each notice filed under this Section shall be effective on the date received by the Commission and expire on December 31.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

The economic, small business, and consumer impact statement for Section R14-4-148 ("rule 148") 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 rule 148, 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 148 are nonquantifiable. Rule 148 should benefit the Commission's relations with the regulated public because the grant of an exemption will permit Canadian dealers and salesmen to manage and transact business in the accounts of their clients while those clients are in Arizona. The public will benefit from the continuation of certain standards for dealers and salesmen and will benefit from the convenience of effecting transactions in their accounts while in Arizona. The Commission anticipates that the rulemaking will not significantly increase monitoring, record keeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are only marginally increased. Please provide comment regarding the accuracy of this summary to the individual named in item 5 above.

9. A description of the changes between the proposed rule, including supplemental notices, and the final rule (if applicable):

The Commission originally proposed a limited registration for Canadian dealers and their salesmen effecting certain transactions in Arizona. Based upon information obtained during the public comment period, the Commission amended its proposal in the Notice of Supplemental Proposed Rulemaking to propose an exemption for Canadian dealers and their salesmen effecting certain transactions in Arizona. In response to written comments on the amended proposal, the Commission has proposed changes to the text of one section, which is not substantially different from the proposed rule reflected in the Notice of Supplemental Proposed Rulemaking. That change is set forth below and has been incorporated into the rule attached to this Notice.

14-4-148(B): The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office of, or a branch of, or a natural person associated with a dealer domiciled in the United States.

10. A summary of the principal comments and the agency response to them:

The agency received four comment letters following the Notice of Supplemental Proposed Rulemaking from the following organizations: the Investment Dealers Association of Canada (the "IDA"), Dorsey & Whitney, a follow up letter from Dorsey & Whitney, and Edward Jones. The letter from the IDA expressed general support with no substantive comments. Comments from the other organizations addressed the following:

R14-4-148(B) limits the availability of the exemption to those entities domiciled in Canada, with no office or other physical presence in the United States. That limitation excluded offices, branches or natural persons associated with a dealer domiciled in the United States from using the exemption. Edward Jones and Dorsey & Whitney recommended the language in section B be amended to clarify that the exemption is available to Canadian salesmen of a Canadian subsidiary of a United States dealer as well as Canadian sister entities or Canadian subsidiaries of United States dealers. Edward Jones recommended the Commission delete the phrase "or a natural person associated with" in that section. Because a natural person located in the United States who is associated with a United States dealer would constitute a "physical presence" in the United States, the Commission considers the subject language to be redundant and revised the rule in accordance with the recommendation.

R14-4-148(E) provides for automatic disqualification from use of the exemption for certain individuals and entities that have poor disciplinary histories. Dorsey & Whitney recommended the Commission amend the language of the disqualifying provision in rule 148(E)(2) to eliminate the language “involving fraud, deceit, racketeering or consumer protection laws” and replace it with a requirement for a “finding of fraud or deceit or a finding of a violation of racketeering or consumer protection laws.” The Commission did not make the recommended change because the subject language in rule 148(E) is identical to numerous other disqualifying provisions in the Securities Act and the Arizona Administrative Code and was intended to be subject to the same application and interpretation as those provisions.

R14-4-148(F) enumerates the filing requirements for dealers and salesmen effecting transactions under the exemption. Dorsey & Whitney recommended the Commission eliminate the requirement for a notice filing for all salesmen conducting business in Arizona under rule 148(F)(5) because Canadian dealers must employ salesmen that are appropriately registered and in good standing in the Canadian jurisdiction from which they are effecting transactions. Dorsey & Whitney contended that, in the absence of substantive regulation, the notice filing would impose significant costs to the dealers while adding little to investor protection. The Commission imposed an annual notice filing in order to ensure the Commission has current information regarding the entities and persons effecting securities transactions in Arizona by which to monitor compliance with rule 148 and to provide assistance to any investor seeking it from the Commission. Because the Commission retains full jurisdiction over all activities that fall outside of rule 148 as well as jurisdiction over all

activities involving fraud, the Commission considered the information sought in the annual notice important and did not make the recommended change.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rule:

Not applicable.

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule.

Not applicable.

14. The full text of the rule follows:

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

R14-4-148. Transactions Effected by Canadian Dealers and Salesmen

R14-4-148. Transactions Effected by Canadian Dealers and Salesmen.

- A. A transaction effected by or through a Canadian dealer or its salesmen is added to the class of transactions exempt under A.R.S. § 44-1844, provided the transaction is conducted in accordance with the terms of this Section.
- B. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office or branch of a dealer domiciled in the United States.
- C. The dealer and its salesmen may only effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:
1. An individual from Canada who temporarily resides in or is temporarily present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the individual entered the United States; or
 2. An individual present in this state whose transactions are in a Canadian self-directed tax-advantaged retirement account of which the individual is the holder or contributor.
- D. To effect transactions under this Section, a dealer shall:
1. Comply with the requirements of Subsection F.
 2. Be registered with or a member of a Canadian SRO, stock exchange, or the Bureau des Services Financiers and maintain that registration or membership in good standing.
 3. Disclose to its clients in this state that the dealer and its salesmen are not subject to the full regulatory requirements of the Arizona Securities Act.
- E. An exemption under this Section shall not be available to a dealer or salesman if the dealer or salesman:

1. Has been convicted within ten years of the date of filing of the notice under this Section of a felony or misdemeanor of which fraud is an essential element, or a felony or misdemeanor involving the purchase or sale of securities or arising out of the conduct of the business as a dealer or salesman.
2. Is subject to an order, judgment, or decree issued by a court of competent jurisdiction, SRO, or administrative tribunal entered within 10 years preceding the filing of the notice under this Section enjoining or restraining the dealer or salesman from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering or consumer protection laws.

F. Prior to a dealer or salesman effecting a transaction under this Section, a dealer shall file with the Division a notice that contains the following:

1. A copy of the last registration or renewal application filed in the jurisdiction in which the dealer has its principal office, with all amendments since that filing.
2. A consent to service of process pursuant to A.R.S. § 44-1862.
3. The fee required under A.R.S. § 44-1861(G).
4. Written evidence that the dealer's membership in a Canadian SRO, stock exchange, or the Bureau des Services Financiers is in good standing.
5. For each salesman effecting transactions in Arizona, the dealer shall file
 - a. A copy of the last registration or renewal application filed in the jurisdiction in which the salesman is registered and resident, with all amendments since that filing.
 - b. A consent to service of process.

c. Written evidence that the salesman is registered and in good standing in the jurisdiction from which he or she is effecting a transaction into this state.

G. A notice filed under this Section is effective on the date received by the Commission and expires on December 31.

R14-4-148. Transactions Effected by Canadian Dealers and Salesmen.

- A. A transaction effected by or through a Canadian dealer or its salesmen is added to the class of transactions exempt under A.R.S. § 44-1844, provided the transaction is conducted in accordance with the terms of this Section.
- B. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office or branch of a dealer domiciled in the United States.
- C. The dealer and its salesmen may only effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:
1. An individual from Canada who temporarily resides in or is temporarily present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the individual entered the United States; or
 2. An individual present in this state whose transactions are in a Canadian self-directed tax-advantaged retirement account of which the individual is the holder or contributor.
- D. To effect transactions under this Section, a dealer shall:
1. Comply with the requirements of Subsection F.
 2. Be registered with or a member of a Canadian SRO, stock exchange, or the Bureau des Services Financiers and maintain that registration or membership in good standing.
 3. Disclose to its clients in this state that the dealer and its salesmen are not subject to the full regulatory requirements of the Arizona Securities Act.
- E. An exemption under this Section shall not be available to a dealer or salesman if the dealer or salesman:

1. Has been convicted within ten years of the date of filing of the notice under this Section of a felony or misdemeanor of which fraud is an essential element, or a felony or misdemeanor involving the purchase or sale of securities or arising out of the conduct of the business as a dealer or salesman.
2. Is subject to an order, judgment, or decree issued by a court of competent jurisdiction, SRO, or administrative tribunal entered within 10 years preceding the filing of the notice under this Section enjoining or restraining the dealer or salesman from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering or consumer protection laws.

F. Prior to a dealer or salesman effecting a transaction under this Section, a dealer shall file with the Division a notice that contains the following:

1. A copy of the last registration or renewal application filed in the jurisdiction in which the dealer has its principal office, with all amendments since that filing.
2. A consent to service of process pursuant to A.R.S. § 44-1862.
3. The fee required under A.R.S. § 44-1861(G).
4. Written evidence that the dealer's membership in a Canadian SRO, stock exchange, or the Bureau des Services Financiers is in good standing.
5. For each salesman effecting transactions in Arizona, the dealer shall file
 - a. A copy of the last registration or renewal application filed in the jurisdiction in which the salesman is registered and resident, with all amendments since that filing.
 - b. A consent to service of process.

c. Written evidence that the salesman is registered and in good standing in the jurisdiction from which he or she is effecting a transaction into this state.

G. A notice filed under this Section is effective on the date received by the Commission and expires on December 31.