

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

ORIGINAL
OPEN MEETING ITEM



0000044254

EXECUTIVE SECRETARY

RECEIVED

ARIZONA CORPORATION COMMISSION 2001 JUL 10 A 8:36

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: July 10, 2001
DOCKET NO: RS-00000A-99-0691

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

SECURITIES RULEMAKING
(RULE - R14-4-201 through 14-4-209)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 19, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 24 AND JULY 25, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

JUL 10 2001

DOCKETED BY

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
5

6 IN THE MATTER OF:
7 PROPOSED RULEMAKING TO PROVIDE AN
EXEMPTION FOR TRANSACTIONS EFFECTED
8 BY CANADIAN DEALERS AND SALESMEN
A.A.C. R-14-4-148

DOCKET NO. RS-00000A-99-0691

DECISION NO. _____

9 **OPINION AND ORDER**

10 DATE OF HEARING: April 25, 2001
11 PLACE OF HEARING: Phoenix, Arizona
12 PRESIDING ADMINISTRATIVE
LAW JUDGE: Marc E. Stern
13 APPEARANCES: Mr. W. Mark Sendrow, Director of Securities and
14 Ms. Sharleen A. Day, Associate General Counsel, on
behalf of the Securities Division of the Arizona
15 Corporation Commission

16 **BY THE COMMISSION:**

17 On July 5, 2000, the Securities Division ("Division") of the Arizona Corporation Commission
18 ("Commission") forwarded a proposal recommending that the Commission enact Rules under the
19 Arizona Administrative Code ("A.A.C.") R4-14-4-201 through A.A.C. R14-4-209 (collectively
20 "Article 2") under the Arizona Securities Act ("Act"). Article 2 was to provide for a limited
21 registration for certain Canadian dealers and their salesmen to effect transactions in Arizona.
22

23 On July 24, 2000, the Commission issued Decision No. 62735 which directed the Hearing
24 Division to schedule a hearing on the Division's proposed rulemaking for the purpose of taking
25 public comment regarding Article 2.

26 On August 2, 2000, the Commission, by Procedural Order, scheduled a public comment
27 hearing to be held on September 26, 2000.
28

1 On August 25, 2000, the Notice of Proposed Rulemaking was published by the Arizona
2 Secretary of State's office in the Arizona Administrative Register ("Register").

3 On September 13, 2000, the Division filed a motion to continue the public comment hearing
4 indefinitely in order to allow the Division time to address significant comments made by members of
5 the Canadian regulatory community and the securities industry that would be affected by the
6 proposed rulemaking.

7
8 On September 14, 2000, the Commission, by Procedural Order, continued the public
9 comment hearing indefinitely and suspended all filing requirements for responses to comments.

10 On January 16, 2001, the Division forwarded a proposal recommending that the Commission
11 enact Rule A.A.C. R14-4-148 ("Rule 148") under the Act. Proposed Rule 148 would replace the
12 previously proposed Article 2, and would create an exemption from registration for certain Canadian
13 dealers and their salesmen to effect transactions in Arizona.

14
15 On February 1, 2001, the Commission issued Decision No. 63321 which directed the Hearing
16 Division to schedule a hearing on the Division's proposed rulemaking for the purpose of taking
17 public comment on Rule 148.

18 On February 6, 2001, the Commission, by Procedural Order, scheduled a public comment
19 hearing to be held on April 25, 2001.

20 On March 2, 2001, the Notice of Supplemental Proposed Rulemaking was published by the
21 Arizona Secretary of State's office in the Register.

22
23 On April 17, 2001, the Division filed its Response to Comments ("Response") which had
24 been received pursuant to the Commission's Procedural Order.

25 On April 25, 2001, a public comment hearing was held before a duly authorized
26 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. There were no
27 interested parties in attendance at the proceeding, but the Division received four comment letters
28

1 following the Notice of Supplemental Proposed Rulemaking from the following organizations: the
 2 Investment Dealers Association of Canada ("IDA"); Dorsey & Whitney, LLP ("Dorsey & Whitney");
 3 Edward Jones ("Edward Jones"); and a follow-up letter from Dorsey & Whitney. The Division also
 4 received several informal written comments from members of the industry. Following the conclusion
 5 of the proceeding, the matter was taken under advisement pending submission of a Recommended
 6 Opinion and Order to the Commission.

7
 8 * * * * *

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

11 **FINDINGS OF FACT**

12
 13 1. On July 5, 2000, the Division forwarded a proposal to the Commission recommending
 14 that the Commission enact rules which would become Article 2 under the Act.

15 2. The Division's proposal would have provided for a limited registration for certain
 16 Canadian dealers and their salesmen to effect transactions in Arizona.

17 3. On July 24, 2000, the Commission issued Decision No. 62735 which directed that a
 18 hearing be scheduled regarding the Division's proposed Article 2 for the purpose of taking public
 19 comment.

20
 21 4. On August 2, 2000, by Procedural Order, a public comment hearing was scheduled for
 22 September 26, 2000.

23 5. Pursuant to law, notice of proposed rulemaking was given on August 25, 2000 in the
 24 Register.

25 6. On September 13, 2000, the Division filed a motion to continue the public comment
 26 hearing indefinitely in order to address the concerns of members of the Canadian regulatory
 27 community and the securities industry that would be affected by the proposed rulemaking.
 28

1 7. On September 14, 2000, the Commission, by Procedural Order, continued the public
2 comment hearing indefinitely.

3 8. On January 16, 2001, the Division amended its proposal with regard to its proposed
4 limited registration by forwarding a proposal which recommended that the Commission enact Rule
5 148 under the Act.

6 9. Rule 148 was proposed to replace the previously proposed Article 2 and will create an
7 exemption from registration for certain Canadian dealers and their salesmen to effect transactions in
8 Arizona. The Division patterned the exemption in Rule 148 after other exemptions from registration
9 under the Act and the Investment Management Act (collectively the "Acts").

10 10. On February 1, 2001, the Commission issued Decision No. 63321 which directed that
11 a hearing be scheduled regarding the Division's proposed rulemaking for the purpose of taking public
12 comment on Rule 148.

13 11. On February 6, 2001, by Procedural Order, a public comment hearing was scheduled
14 for April 25, 2001.

15 12. Pursuant to law, Notice of Supplemental Proposed Rulemaking was given on March 2,
16 2001 in the Register.

17 13. Subsequent to the Commission's February 6, 2001 Procedural Order, written
18 comments were submitted to the Division by the following: the IDA on February 6, 2001, Dorsey &
19 Whitney on March 9, 2001; Edward Jones on April 4, 2001; and a follow-up submission by Dorsey
20 & Whitney on April 5, 2001.

21 14. Although these comments were supportive of the Division's efforts, Dorsey &
22 Whitney and Edward Jones did suggest some changes which, in the case of the recommendations of
23 Dorsey & Whitney with respect to Rule 148 (D), were substantial in nature and, if adopted by the
24 Commission, would require re-noticing in the Register. The recommended change to Rule 148(D)
25
26
27
28

1 proposed by Dorsey & Whitney is set forth hereinafter.

2 15. On April 17, 2001, pursuant to the Commission's Procedural Order, the Division filed
3 its Response.

4 16. The Division's Response includes some revisions to Rule 148; however, they are not
5 substantially different from Rule 148 as filed with the Secretary of State's office, and will not require
6 a new rulemaking proceeding if they are adopted.

7
8 17. The hearing was held as scheduled on April 25, 2001, and no members of the public
9 appeared to comment on the proposed Rule 148.

10 18. Under Rule 148, the Division will rely on the Canadian self-regulatory organizations
11 and the territorial and provincial regulations for the oversight of daily activities.

12 19. Rule 148(A) provides that, in order for a Canadian dealer or its salesmen to effect
13 transactions under the Rule, the dealer must be domiciled in Canada, have no office or other physical
14 presence in the United States, and not be an office or a branch of, or a natural person associated with,
15 a dealer domiciled in the United States.

16
17 20. Edward Jones commented that the language "or a natural person associated with a
18 dealer domiciled in the United States" might preclude the Canadian salesmen of a Canadian
19 subsidiary to a United States dealer from utilizing the exemption embodied in Rule 148.

20 21. Dorsey & Whitney commented that the same language in Rule 148 (A) might preclude
21 the Canadian sister entities or Canadian subsidiaries of United States' dealers in the United States
22 from using the exemption in Rule 148.

23
24 22. The Division agreed that the subject language might cause confusion and deleted the
25 phrase "or a natural person associated with." The Division found the subject language to be
26 redundant because a natural person located in the United States who was associated with a United
27 States' dealer would constitute a "physical presence" in the United States.

1 23. We find that with the deletion of the aforementioned language, the Division has
2 adequately addressed the concerns expressed by Edward Jones and Dorsey & Whitney concerning the
3 possible preclusion of Canadian salesmen of a Canadian subsidiary to a United States dealer from
4 using the exemption in Rule 148.

5 24. Rule 148(D) utilizes language that automatically disqualifies certain entities and
6 persons from using the applicable exemption arising from Rule 148.

7 25. Dorsey & Whitney proposed that the Commission amend the language of the
8 disqualifying provision in Rule 148(D)(2) to eliminate the language "involving fraud, deceit,
9 racketeering or consumer protection laws" and to substitute a requirement for a "finding of fraud or
10 deceit or a finding of a violation of racketeering or consumer protection laws" because the use of the
11 word "finding" would be more explicit.
12

13 26. The Division recommended that no change be made because a change in the language
14 of Rule 148 would render it inconsistent with other similar exemptions. The subject language in Rule
15 148(D)(2) is identical to numerous other disqualifying provisions in the Act and the A.A.C.
16

17 27. The disqualification provision of Rule 148 was included by the Division to assure that
18 certain entities and persons with poor disciplinary histories are not conducting business in Arizona
19 pursuant to an exemption. The stated purpose of Rule 148's disqualifying provision is the same as
20 the other exemptions in the Acts and in the Code, and any change in the recommended language
21 would imply a distinction from other similar exemptions that is not there. The Division believes that
22 the language in Rule 148(D)(2) should be subject to the same application and interpretation as other
23 identical disqualifying provisions.
24

25 28. We find that the Division's treatment of the proposed language is reasonable because
26 it is consistent with other disqualifying provisions under the Act and in the A.A.C. and there is no
27 reason for a unique disqualifying provision for this exemption.
28

1 29. Rule 148(E) contains the notice filing requirements for salesmen effecting transactions
2 under Rule 148.

3 30. Dorsey & Whitney proposed that the Commission eliminate the requirement for a
4 notice filing for all salesmen conducting business in Arizona under Rule 148(E)(5) because Canadian
5 dealers can only employ salesmen that are appropriately registered and in good standing in the
6 Canadian jurisdiction from which they are effecting transactions and the notice requirement would
7 impose significant cost to the dealers while adding little protection for investors.
8

9 31. An annual notice filing was proposed by the Division for all dealers and salesmen that
10 would effect securities transactions in Arizona under Rule 148. The annual notice filing for salesmen
11 would consist of a copy of the latest registration or renewal document on file with their home
12 jurisdiction and a consent to service of process.

13 32. The annual filing requirement is consistent with other filing requirements for dealers
14 and salesmen filing with the Commission under other provisions of the Acts and rules of the A.A.C.
15

16 33. The Commission retains full jurisdiction over all activities of Canadian dealers and
17 salesmen that fall outside of the language of Rule 148 as well as jurisdiction over all fraudulent
18 activities.

19 34. The stated objective of the annual filing as proposed by the Division is to provide
20 consistency and efficiency for review by the Division and to insure the Commission has current
21 information regarding the entities and people effecting transactions in securities in Arizona in order
22 to monitor compliance with Rule 148 enabling the Commission to provide investor assistance when
23 needed. The Division recommended no change be made to the annual filing requirement.
24

25 35. We find that the Division's recommendation that Rule 148 include an annual filing
26 requirement for Canadian dealers and salesmen is consistent with the other provisions under the Act
27 and the A.A.C. An annual filing will provide efficiency for review by the Division and protect the
28

1 public interest.

2 36. The office of the Secretary of State proposed that the introductory paragraph to Rule
3 148 be a numbered or lettered paragraph. The Division's response was to revise Rule 148 in such a
4 way that the first paragraph is assigned the letter "A" and all subsequent paragraphs of equal standing
5 are assigned the next succeeding letter.

6 37. Rule 148 is set forth in Appendix A, attached hereto and incorporated herein by
7 reference.

8 38. The Concise Explanatory Statement is set forth in Appendix B, attached hereto and
9 incorporated herein by reference.
10

11 39. The Economic, Small Business, and Consumer Impact Statement required pursuant to
12 A.R.S. § 41-1057 is set forth in Appendix C, attached hereto and incorporated by reference.
13

14
15 **CONCLUSIONS OF LAW**

16 1. Pursuant to A.R.S §§ 44-1821 and 44-1845 and Article XV Sections, 4, 6 and 13 of
17 the Arizona Constitution, the Commission has jurisdiction to adopt proposed Rule 148.

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

19 3. Adoption of Rule 148 is in the public interest.

20 4. The Concise Explanatory Statement as set forth in Appendix B should be adopted.

21 5. The Economic, Small Business and Consumer Impact Statement as set forth in
22 Appendix C should be adopted.
23

24 **ORDER**

25 IT IS THEREFORE ORDERED that Rule 148, as set forth in Appendix A and the Concise
26 Explanatory Statement, as set forth in Appendix B, and the Economic, Small Business and Consumer
27 Impact Statement, as set forth in Appendix C, are hereby adopted.
28

1 IT IS FUTHER ORDERED that the Commission's Securities Division shall submit Rule 148
2 as adopted herein to the Attorney General's office for certification.

3 IT IS FURTHER ORDERED that the Commission's Securities Division is authorized to
4 make changes in the adopted Rule 148 and to the adopted Concise Explanatory Statement, the
5 Economic Small Business and Consumer Impact Statement in response to comments received by the
6 Attorney General's office during the approval process under A.R.S. § 41-1044 unless, after
7 notification of those changes, the Commission requires otherwise.
8

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
11
12
13
14

15 CHAIRMAN

COMMISSIONER

COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this ____ day of _____, 2001.

22 BRIAN C. McNEIL
EXECUTIVE SECRETARY

23 DISSENT _____

24 MES:mlj
25
26
27
28

1 SERVICE LIST FOR:

RULEMAKING

2 DOCKET NO.

RS-00000A-99-0691

3 Jennifer Boucek
4 Assistant Attorney General
5 ARIZONA ATTORNEY GENERAL'S OFFICE
6 1275 West Washington Street
7 Phoenix, Arizona 85007

8 W. Mark Sendrow, Director
9 Securities Division
10 ARIZONA CORPORATION COMMISSION
11 1300 West Washington Street
12 Phoenix, Arizona 85007

13 Cheryl T. Farson
14 Securities Division
15 ARIZONA CORPORATION COMMISSION
16 1300 West Washington Street
17 Phoenix, Arizona 85007

18 Sharleen A. Day
19 Securities Division
20 ARIZONA CORPORATION COMMISSION
21 1300 West Washington Street
22 Phoenix, Arizona 85007

23
24
25
26
27
28

APPENDIX A

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

CHAPTER 4. CORPORATION COMMISSION – SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE SECURITIES ACT

Section

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 a 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 who resides in or is temporarily 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.

DECISION NO. _____

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 10 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 of 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.

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

DECISION NO. _____

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

DECISION NO. _____

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

DECISION NO. _____

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.

DECISION NO. _____

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.

DECISION NO. _____

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.

DECISION NO. _____

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

DECISION NO. _____

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.

DECISION NO. _____

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.

DECISION NO. _____

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.

DECISION NO. _____