

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER



ORIGINAL
BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION



MEMORANDUM

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

FROM: Mark Sendrow, Director
Securities Division

DATE: January 16, 2001

RE: Proposed Rule A.A.C. R14-4-148 – Transactions effected by Canadian dealers and salesmen
Docket No. RS-00000A-99-0691

cc: Brian C. McNeil, Executive Secretary

Arizona Corporation Commission
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DOCUMENT CONTROL

The Securities Division (the "Division") is seeking authorization from the Commission to publish a Notice of Supplemental Proposed Rulemaking concerning A.A.C. R14-4-148 ("rule 148"). Proposed rule 148 will create an exemption for certain transactions effected by Canadian dealers and their salesmen. The Commission had ordered publication of a Notice of Proposed Rulemaking on July 18, 2000 for the purpose of obtaining public comment on proposed rules A.A.C. R14-4-201 through A.A.C. R14-4-209 ("article 2"). Article 2 proposed to create a limited registration for Canadian dealers and their salesmen effecting transactions in certain Canadian retirement accounts or on behalf of Canadian citizens. The Division received substantial comment from Canadian industry and regulatory representatives. Based upon the comments received, the Division amends its proposed rulemaking to reflect an exemption in the form of proposed rule 148.

Previous Proposal: Article 2 – Limited Registration

A limited registration under article 2 does not provide greater investor protection than an exemption under rule 148. Article 2 was previously proposed to create a limited registration for Canadian dealers and their salesmen effecting transactions in certain Canadian retirement accounts or on behalf of Canadian citizens. Article 2 contained many of the same standards that are retained in proposed rule 148. The most significant substantive difference between the proposed limited registration (article 2) and the proposed exemption (rule 148) is the reporting requirement, and the Division's responsibility relating to that information. Under proposed article 2, the Division required the Canadian dealer to file information detailing its activity in Arizona. Additionally, the Division would conduct field examinations to review the dealer's

books and records relating to any Arizona activity. The Division would determine whether revocation, denial or suspension of the limited registration would be necessary based upon information obtained from examinations and reports. Under rule 148, the Division relies on the self-regulatory organizations and the territorial and provincial regulators for the oversight of daily activities.

Industry Comment on Limited Registration Proposal

Industry comment supports an exemption instead of a limited registration. The Canadian territorial and provincial securities regulators strongly support the move toward relaxing registration standards for Canadian dealer transactions regarding Canadian retirement plans. The majority of the comments to proposed article 2 requested that the Division recognize and refrain from unnecessarily duplicating the enforcement and oversight efforts of the territorial and provincial securities regulators and those of the Canadian self-regulatory organizations.

Canadian Regulatory Structure

The Commission may rely on the Canadian securities regulators for daily oversight of dealer and salesmen activities. The Canadian regulatory scheme is similar to that of the U.S. Each territory and province has a governmental securities regulator. In addition, there are several self-regulatory organizations that provide member oversight that are very similar to the National Association of Securities Dealers ("NASD"). Every dealer that engages in activity in Canada belongs to the Investment Dealers Association of Canada ("IDA"). There are also several exchanges with their own member regulations much like the New York and American Stock Exchanges. If a dealer conducts transactions on any of the regional exchanges, it must comply with the exchange regulations in addition to those of the IDA and the territorial or provincial governments.

The IDA has provided the Division with significant information relating to their investor protection efforts. The IDA has comprehensive member reporting requirements, investor protection standards, arbitration requirements, member audits, market regulation, and general member oversight. Data forwarded to the Division indicates their enforcement efforts and regulatory scheme is similar to that of the NASD.

Reciprocity for U.S. Dealers and Salesmen in Canada

U.S. dealers and salesmen will be given a similar exemption in Canada. The Canadian territories and provinces, collectively the Canadian Securities Administrators, have passed a national instrument that is to go into effect this month. The national instrument provides for an exemption for U.S. dealers effecting transactions in the accounts of U.S. investors while they are in Canada. The Canadian securities regulators have encouraged all U.S. states to pass similar rules to provide for reciprocal treatment.

NAFTA and Mexico

At this time, the Commission does not face a similar proposal regarding Mexico. In many areas, NAFTA requires the U.S. and the states to provide similar treatment to both Canada

and Mexico. Article 1406 of NAFTA, which addresses the Most-Favored Nation requirement, requires that, to receive similar treatment regarding dealer activity in the U.S., Mexico would have to demonstrate there would be regulation, oversight, implementation of regulation, and information sharing procedures equivalent to those of the U.S. The securities regulatory scheme of Canada is similar to that of the U.S. Currently, the securities regulatory scheme of Mexico does not meet those requirements. Mexico must first request an exemption from the Securities and Exchange Commission and then demonstrate the regulatory oversight is comparable. At this time, Mexico has not requested a similar exemption from the SEC.

Proposed Rule 148 – Exemption for Transactions Effected by Canadian Dealers and Salesmen

Proposed rule 148 will create an exemption for transactions effected by Canadian dealers and salesmen. The primary provisions of proposed rule 148 will (i) establish the standards regarding the grant and maintenance of the exemption, (ii) specify the limitations on the permitted activity under the exemption, and (iii) detail the application and renewal requirements of the exemption.

Canadian dealers and their salesmen may only effect transactions under the rule 148 exemption in certain Canadian retirement accounts or for Canadians temporarily present in Arizona. The dealers and salesmen must be registered and in good standing with the relevant Canadian regulatory authorities. Dealers and salesmen with poor disciplinary records are automatically disqualified from using the exemption. The Division retains enforcement authority to investigate activities that fall outside the terms of the exemption. Under all circumstances, the Division retains antifraud jurisdiction.

A dealer must file certain information with the Division before the dealer or its salesmen may effect transactions under the rule 148 exemption, including written evidence the dealer and salesmen are registered and in good standing with the Canadian self regulatory organizations and territorial or provincial governments, a copy of the application filed with their territorial or provincial government, and a consent to service of process should a private citizen wish to serve notice of process on the dealer via the Commission.

Division Recommendation

Attached is a copy of the proposed rule 148. The Division has solicited the informal advice and comments of the office of the attorney general, the securities section of the Arizona State Bar, members of securities industry organizations, and the Division's staff regarding the proposed rule.

The Division recommends that a Notice of Supplemental Proposed Rulemaking regarding proposed rule 148 be sent to the secretary of state's office and public comment be obtained.

Originator: Sharleen A. Day
Asst. AG Assigned: Jennifer Boucek

BEFORE THE ARIZONA CORPORATION COMMISSION

1 WILLIAM A. MUNDELL

2 Chairman

3 JIM IRVIN

Commissioner

4 MARC SPITZER

Commissioner

5 In the matter of)

6)

7 PROPOSED RULEMAKING)

TO PROVIDE AN EXEMPTION)

8 FOR TRANSACTIONS EFFECTED BY)

9 CANADIAN DEALERS AND SALESMEN)

DOCKET NO. RS-00000A-99-0691

DECISION NO. _____

ORDER

10 Open Meeting

January 30 and 31, 2001

11 Phoenix, AZ

12 BY THE COMMISSION:

13 INTRODUCTION

14 The Securities Division of the Arizona Corporation Commission (the "Commission") has
15 forwarded to the Commission a proposal recommending that the Commission add new section
16 A.A.C. R14-4-148 ("rule 148") to the Arizona Administrative Code rules governing the
17 administration of the securities statutes. The Securities Division is seeking permission from the
18 Commission to publish a notice of supplemental proposed rulemaking concerning rule 148.

19 FINDINGS

20 1. On July 18, 2000, the Commission granted permission to publish a notice of
21 proposed rulemaking for the purpose of obtaining public comment on proposed rules A.A.C. R14-
22 4-201 through A.A.C. R14-4-209 ("article 2"). Article 2 proposed to create a limited registration
23 for Canadian dealers and their salesmen effecting transactions in certain Canadian retirement
24 accounts or on behalf of Canadian citizens.

25 2. The Securities Division received substantial public comment concerning proposed
26 article 2 from Canadian industry and regulatory representatives. Based upon the comments

1 received, the Securities Division amends its proposed rulemaking to reflect an exemption in the
2 form of proposed rule 148.

3 3. Rule 148 is proposed to add a class of exempt transactions to A.R.S. § 44-1844 for
4 certain transactions effected by Canadian dealers and their salesmen.

5 4. The Securities Division has recommended that rule 148 be made to (i) provide for an
6 exemption for certain transactions effected by Canadian dealers and their salesmen; (ii) detail the
7 requirements for the grant and maintenance of the exemption; (iii) enumerate the application and
8 renewal requirements for the exemption; and (iv) detail the extent of the activity permitted in Arizona
9 under the exemption.

10 5. The Securities Division has recommended that a notice of supplemental proposed
11 rulemaking regarding the making of rule 148 be forwarded to the secretary of state. The Division
12 also has recommended that the Hearing Division schedule a public proceeding on rule 148 no
13 sooner than April 2, 2001.

14 CONCLUSION OF LAW

15 The Commission has the authority for the proposed rulemaking under the Arizona
16 Constitution Article XV §§ 4, 6, and 13, and under A.R.S. §§ 44-1821 and 44-1845.

17 ORDER

18 THEREFORE IT IS ORDERED that a hearing be set by the Hearing Division on this
19 matter at the Commission Offices in Phoenix, Arizona, no earlier than April 2, 2001.

20 IT IS FURTHER ORDERED that the Division prepare a notice of supplemental proposed
21 rulemaking and forward it to the office of the secretary of state for publication in the Arizona
22 Administrative Register.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. MCNEIL, EXECUTIVE SECRETARY OF THE ARIZONA CORPORATION COMMISSION, HAVE HEREUNTO SET MY HAND AND CAUSED THE OFFICIAL SEAL OF THE COMMISSION TO BE AFFIXED AT THE CAPITOL, IN THE CITY OF PHOENIX, THIS _____ DAY OF _____, 2001.

BRIAN C. McNEIL
Executive Secretary

DISSENT

(sad)

This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator, voice phone number 602-542-3931, E-mail shood@cc.state.az.us

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

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.

- A. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office of, branch of, or a natural person associated with a dealer domiciled in the United States.
- B. 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.
- C. To effect transactions under this Section, a dealer shall:
 - 1. Comply with the requirements of Subsection E.
 - 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.
- D. 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.
- E. 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.
- F. A notice filed under this Section is effective on the date received by the Commission and expires on December 31.