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MEMORANDUM

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Cheryl T. Farson, General Counsel
Corporation Commission—Securities Division
Direct line: 602-542-0193
Facsimile: 602-594-7476
E-mail: cfarson@azcc.gov

TO: Docket Control
FROM: Cheryl T. Farson 
DATE: March 10, 2006
RE: Docket # RS-00000A-05-0702

Please file the attached letter to the office of the attorney general, notice of final rulemaking, and agency certificate in docket # RS-00000A-05-0702. No distribution is necessary.

Thank you.

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ARIZONA CORPORATION COMMISSION

March 10, 2006

The Honorable Terry Goddard
Attorney General
1275 West Washington
Phoenix, Arizona 85007

Re: R14-4-149

Dear Mr. Goddard:

The above-referenced rule was made on March 2, 2006, by the Arizona Corporation Commission ("ACC"), subject to approval by the Attorney General.

The following information is provided for your use in reviewing the enclosed rule for approval pursuant to A.R.S. § 41-1044:

I. Agency Rules Not Published in Code

To my knowledge, all Securities Division rules are published in the Code.

II. Procedures Followed

The ACC's rulemaking process was as follows:

- (1) A Notice of Rulemaking Docket Opening was published in the Arizona Administrative Register in 11 A.A.R. 4311, October 28, 2005.
- (2) A Notice of Proposed Rulemaking was published in the Arizona Administrative Register in 11 A.A.R. 5036, December 2, 2005.
- (3) The Notice of Proposed Rulemaking provided notice of the public hearing (oral proceedings) for the rule. In addition, on January 4 and January 11, 2006, the ACC posted notice of the public hearing in compliance with Arizona open meeting laws.
- (4) No supplemental notices were made in this rulemaking proceeding.

- (5) Public participation pursuant to A.R.S. § 41-1023 was as follows:
 - (a) The ACC accepted written comments through January 17, 2006, the date of the public hearing.
 - (b) No request was made for an oral proceedings; however, the ACC scheduled an oral proceeding for the rule.
 - (c) A public hearing (oral proceeding) occurred on January 17, 2006.
- (6) The ACC closed the record on the rule at its March 2, 2006, open meeting.
- (7) The ACC made the rule by unanimous vote during the March 2, 2006, open meeting. The signed order making the rule is dated March 6, 2006.
- (8) The ACC complied with the open meeting laws, where applicable.
- (9) The ACC's statutes do not specifically require any other procedures.

III. Supporting Documents

I have enclosed, for your information, the following documents:

- (1) Original and two copies of the Notice of Final Rulemaking, including the preamble and text of the new rule.
- (2) Original and two copies of the ACC's Agency Certificate.
- (3) One copy of the material incorporated into rule 149 by reference.
- (4) Original and two copies of the ACC's Agency Receipt.
- (5) Original form for Attorney General approval of final rules.
- (6) One copy of the Notice of Rulemaking Docket Opening, as published.
- (7) One copy of the Notice of Proposed Rulemaking, as published.
- (8) One copy of the procedural order for the January 17, 2006, public hearing.
- (9) One copy of the transcript of the public hearing on the rule.
- (10) One copy of the ACC order making the rule subject to Attorney General approval.

The Honorable Terry Goddard
March 10, 2006
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Under A.R.S. § 41-1055(D)(3), the ACC is not required to prepare an Economic, Small Business And Consumer Impact Statement for this rulemaking.

Please let me know if you would like any additional copies of these items. We have included a disk containing the Notice of Final Rulemaking in rich text format for the secretary of state. My understanding is that you will forward the final rulemaking packet (including the disk) to the secretary of state.

Please let me know if I can be of any assistance to you in your review process. My direct line is 542-0643. You should also feel free to contact Cheryl Farson, General Counsel for the Division, at 542-0193. Thank you for your cooperation.

Very truly yours,



Matthew Neubert
Director of Securities

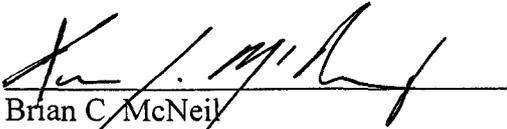
cc: Jeffrey Hatch-Miller, Chairman (w/o encl.)
William A. Mundell, Commissioner (w/o encl.)
Marc Spitzer, Commissioner (w/o encl.)
Mike Gleason, Commissioner (w/o encl.)
Kristin K. Mayes, Commissioner (w/o encl.)
Brian C. McNeil, Executive Director (w/o encl.)
Cheryl Farson, General Counsel (w/o encl.)

AGENCY CERTIFICATE
NOTICE OF FINAL RULEMAKING

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

<u>Subchapters, Articles, Parts, and Sections</u>	<u>Action</u>
Article 1, Section R14-4-149	Amend

5. The rule contained in this package is a true and correct version of the rule made by the agency.

6.  _____ 6 MAR 06 _____
Brian C. McNeil
Executive Director
Arizona Corporation Commission
Date

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

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;

SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION--SECURITIES

PREAMBLE

1. Sections Affected Rulemaking Action

A.A.C. R14-4-149 Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 44-1821 and 44-1845

Implementing statute: A.R.S. § 44-1844

Constitutional authority: Arizona Constitution, Article XV, §§ 6 and 13

3. The effective date of the rule:

The rule is effective 60 days after the date filed with the office of the secretary of state.

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening 11 A.A.R. 4311 October 28, 2005

Notice of Proposed Rulemaking 11 A.A.R. 5036, December 2, 2005

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheryl T. Farson

Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996

Telephone: (602) 542-0193

Fax Number: (602) 594-7476

E-mail: cfarson@azcc.gov

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

A.A.C. R14-4-149 provides an exemption from registration for offers of securities made in accordance with the requirements under 17 C.F.R. 230.134 (2001) ("rule 134"), 17 C.F.R. 230.255 (2001) ("rule 255"), or 17 C.F.R. 230.430 (2001) ("rule 430"). Rules 134, 255, and 430 are incorporated into A.A.C. R14-4-149 by reference in accordance with A.R.S. § 41-1028 and A.A.C. R1-1-414. As reflected in SEC Release No. 33-8591, the Securities and Exchange Commission has amended rule 134, effective December 1, 2005.

Additionally, as reflected in SEC Release No. 33-8088, the Securities and Exchange Commission amended rule 430 effective June 1, 2002. The amendment to rule 430 was a technical amendment to reflect the use of a new Securities and Exchange Commission registration form.

The Commission amends A.A.C. R14-4-149 to incorporate rules 134 and 430 as amended by the Securities and Exchange Commission.

The Securities and Exchange Commission modified and expanded the information rule 134 permits issuers to provide to potential purchasers after an application for registration of a securities offering has been filed and before the registration is effective. The goal of the Securities and Exchange Commission is to enhance disclosure about upcoming securities offerings to investors while retaining appropriate issuer liability for the communications. The Commission amends Arizona rule 149 to reflect the changes made in federal law to benefit the public and investors by allowing issuers to provide the same information to

Arizona investors that they may provide under federal law. The amendment does not jeopardize the investor protections contained in Arizona rule 149, which include the requirement that an issuer file an application for registration of the securities before offers can be made under the exemption, restrictions on content and manner of the exempted communications, prohibition on the use of the exemption by parties that fall within "bad boy" provisions, prohibitions on the use of the exemption for offers of securities defined by the Securities Act as blind pools or defined as speculative or high risk, and prohibitions on the actual sale of any securities until registration of the offering is effective.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None.

8. 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.

9. A summary of the economic, small business, and consumer impact:

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

10. A description of the changes between the proposed rule, including supplemental notices, and the final rule:

None.

11. A summary of the comments made regarding the rule and the agency response to them:

The Commission did not receive written comments to the rules.

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

None.

13. Any material incorporated by reference and its location in the text:

17 C.F.R. 230.134 (2006), 17 C.F.R. 230.255 (2005), 17 C.F.R. 230.430 (2005), located in A.A.C. R14-4-149(A).

14. Whether the rule was previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the final rule:

Not applicable.

15. 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

Sections

R14-4-149. Exemption from registration for offers made in connection with a pending application.

R14-4-149. Exemption from registration for offers made in connection with a pending application.

A. If all of the following apply, offers made in accordance with the requirements under U.S. Securities and Exchange Commission rule 134, 17 C.F.R. 230.134 (~~2004~~2006), rule 255, 17 C.F.R. 230.255 (~~2004~~2005), or rule 430, 17 C.F.R. 230.430 (~~2004~~2005), which are incorporated by reference and contain no later editions or amendments, shall be added to the class of transactions exempt under A.R.S. § 44-1844.

1. The issuer has applied for registration of the securities to which the offers relate under the Securities Act of 1933, or the securities are exempt from registration under that act.
2. The issuer has filed with the Commission an application for registration of the securities to which the offers relate, or the issuer has filed a notice under A.R.S. § 44-1843.01(B).
3. The issuer, or any of its predecessors, affiliates, directors, officers, general partners, or individuals holding a similar position of leadership, or beneficial owners of ten percent or more of any class of its equity securities do not fall within any of the disqualification provisions of A.R.S. § 44-1901(G)(1) through (6).
4. The issuer is not applying for registration under A.R.S. § 44-1902.
5. The offering is not of a blind pool as defined in A.R.S. § 44-1801(1).
6. The offering is not of speculative or high risk securities as defined by A.A.C. R14-4-118(C).
7. No part of the purchase price is received until the securities are registered in Arizona, or the exemption under A.R.S. § 44-1843.01(B) is effective.

8. An indication of interest in response to an offer made under this Section involves no obligation or commitment of any kind.

B. ~~The rules incorporated by reference are on file with the Office of the Secretary of State.~~

Copies of the incorporated material are available from the Commission and the Superintendent of Documents, Government Printing Office, Washington, DC, 20402.

Copies are also available at <http://www.gpoaccess.gov/cfr/index.html>.