

5/25/06

**COMMISSIONERS**  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

**ORIGINAL**



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**ARIZONA CORPORATION COMMISSION**

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**MEMORANDUM**

**TO:** Jeff Hatch-Miller, Chairman  
William A. Mundell, Commissioner  
Marc Spitzer, Commissioner  
Mike Gleason, Commissioner  
Kristin K. Mayes, Commissioner

**FROM:** Matthew Neubert *enju*  
Director of Securities

**DATE:** May 9, 2006

**RE:** Proposed Amendment to Rule A.A.C. R14-4-135  
Docket No. RS-00000A-06-0210

**cc:** Brian C. McNeil, Executive Director

**RECEIVED**  
2006 MAY 12 1P 3:28  
AZ CORP COMMISSION  
DOCUMENT CONTROL

The Securities Division is seeking permission from the Commissioners to publish a Notice of Proposed Rulemaking concerning A.A.C. R14-4-135 ("rule 135"). The publication in the Arizona Administrative Register of a Notice of Proposed Rulemaking begins the formal rulemaking process by soliciting comments from the public regarding the proposed changes. Attached for your review is a copy of the proposed rule 135 and a copy of the proposed order.

On July 1, 1991, the Multijurisdictional Disclosure System ("MJDS") became effective upon its implementation by the United States Securities and Exchange Commission ("SEC") and regulatory authorities in Canada. (SEC Release No. 33-6902; SEC Release No. 34-29354). MJDS provides a mechanism for reciprocity in cross-border offerings between the U.S. and Canada. The basis for this reciprocity is the principle of mutual acceptance of the home jurisdiction's disclosure requirements and review procedures. Under MJDS, Canadian issuers that qualify as "substantial issuers" are able to use registration statements prepared in accordance with Canadian requirements to offer their securities in the U.S. Such an offering may be part of a simultaneous offering in the U.S. and Canada, or it may be made only in the U.S. Except in special circumstances, the SEC will grant "no review" status to Canadian MJDS offerings. For offerings made simultaneously in both jurisdictions, the registration statement will automatically become effective with the SEC when it is cleared by the Canadian securities regulator. Offerings made only in the U.S. will automatically obtain SEC effectiveness within a specified number of days after filing.

In order to accommodate MJDS offerings in their jurisdictions, state securities agencies promulgated legislation implementing the system, i.e. harmonizing state review periods with the

Memorandum regarding A.A.C. R14-4-135

May 9, 2006

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Canadian review period which, at the time of adoption in 1991, was seven days. Arizona adopted Rule 14-4-135 in 1991, providing an exemption for MJDS offerings effective with the SEC, as long as a filing had been made with the Commission seven days before an offering in Arizona was made.

Since adoption, the review period in Canada has been reduced to three days. The Securities Division recommends that the Arizona rule be amended so that offerings filed pursuant to the MJDS system become effective in Arizona upon the effective date with the SEC, provided that a prospectus or offering circular is filed with the Commission before the offer is made and the requisite fee is paid.

The impetus behind the original legislation was the encouragement of legitimate capital raising activities across national borders. Removal of the seven-day period underscores this original intent; predicating the offering's exemption on its being effective with the SEC ensures investor protection.

The Securities Division has solicited the informal advice and comments of the securities section of the Arizona State Bar and the Division's staff regarding the proposed amendments to rule 135.

The Securities Division recommends that the Commission order that a Notice of Proposed Rulemaking be submitted to the secretary of state's office for publication and a hearing be scheduled for a date no earlier than August 1, 2006, to solicit public comment.

Originator: ah

R14-4-135. Exempt Securities – Multijurisdictional Disclosure System

An offering of securities within this state which has been declared effective with the U.S. Securities and Exchange Commission (the "SEC") on Form F-7, F-8, F-9, or F-10 shall be added to the class of securities exempt under A.R.S. §44-1843, provided that before an offer is made in Arizona:

1. A prospectus or an offering circular, the standards of form or content which are prescribed by any provision of the Securities Act of 1933, or rules and regulations promulgated thereunder, and Form F-7, F-8, F-9, or F-10, whichever is applicable, shall be filed with the Commission ~~at least seven days before the offering is made~~; and
2. A nonrefundable exemption fee as provided in A.R.S. §44-1861(G) shall be paid to the Commission.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Jeff Hatch-Miller, Chairman  
William A. Mundell  
Marc Spitzer  
Mike Gleason  
Kristin K. Mayes

In the matter of  
PROPOSED RULEMAKING TO AMEND  
A.A.C. R14-4-135

DOCKET NO. RS-00000A-06-0210

DECISION NO. \_\_\_\_\_

ORDER

Open Meeting  
May 25, 2006  
Phoenix, AZ

BY THE COMMISSION:

INTRODUCTION

The Securities Division of the Arizona Corporation Commission (the "Commission") has forwarded to the Commission a proposal recommending that the Commission amend A.A.C. R14-4-135 ("rule 135") of the Arizona Administrative Code governing the administration of the securities statutes.

FINDINGS

1. Rule 135 provides an exemption from registration for offers declared effective with the Securities and Exchange Commission (the "SEC") pursuant to its multi-jurisdictional rules, provided that a filing is made with the Commission seven days before the offering is made in Arizona. The Securities Division recommends that the Commission amend rule 135 by deleting the seven-day period and providing an exemption upon SEC effectiveness provided a prospectus or offering circular is filed with the Commission before an offer is made in the state.

2. The Securities Division has recommended that a notice of the proposed rulemaking regarding rule 135 be forwarded to the secretary of state. The Securities Division also has

1 recommended that the Hearing Division schedule a hearing on rule 135 for a date no earlier than  
2 August 1, 2006.

3 3. The Commission finds that the Securities Division's recommendations have merit  
4 and that the proposed amendment to rule 135 should be published and public comment obtained.

5 CONCLUSION OF LAW

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

8 ORDER

9 THEREFORE IT IS ORDERED that a hearing be set by the Hearing Division on this  
10 matter to be held at the Commission Offices in Phoenix, Arizona, on a date no earlier than August  
11 1, 2006.

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1 IT IS FURTHER ORDERED that the Securities Division prepare a notice of the proposed  
2 rulemaking and forward it to the office of the secretary of state for publication in the Arizona  
3 Administrative Register.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
Executive Director 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  
\_\_\_\_\_, 2006.

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BRIAN C. McNEIL  
Executive Director

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DISSENT

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This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator,  
voice phone number 602-542-3931, E-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov)

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