

ORIGINAL



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MEMORANDUM

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Cheryl T. Farson, General Counsel
Corporation Commission—Securities Division
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TO: Docket Control
FROM: Cheryl T. Farson 
DATE: June 22, 2006
RE: Docket # RS-00000A-05-0702

Please file the attached in docket # RS-00000A-05-0702. No distribution is necessary. Attached are the June 21, 2006, letter from the attorney general notifying the Division of approval of the amendment to A.A.C. R14-4-149 with attachments, including copies of the receipt, the attorney general certificate of approval, the Commission certificate, and the Notice of Final Rulemaking.

Thank you.

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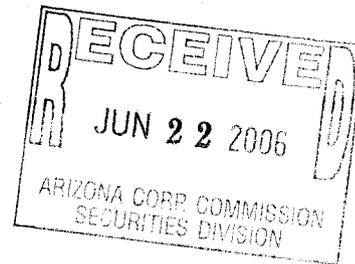
OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

June 21, 2006

Matthew Neubert
Director of Securities
Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007

Re: A.G. Rule No. 06-002; A.A.C. R14-4-149
Arizona Corporation Commission



Dear Mr. Neubert:

We have reviewed the above-referenced rule adopted by the Arizona Corporation Commission. 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 and notice of final rulemaking and four copies of each to the Secretary of State.

We have enclosed a copy for your reference.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Goddard".

Terry Goddard
Attorney General

AGENCY RECEIPT

for

NOTICE OF FINAL RULEMAKING

SECRETARY OF STATE

2006 JUN 20 PM 3:23

FILED

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 Securities Act

Sections

R14-4-149

Action

Amend

SECRETARY OF STATE

ATTORNEY GENERAL APPROVAL OF FINAL RULES

2006 JUN 20 PM 3:23

FILED

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 Articles and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<u>Sections</u>	<u>Action</u>
R14-4-149	Amend

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

6. Terry Goddard June 9 2006
TERRY GODDARD, Date
Attorney General

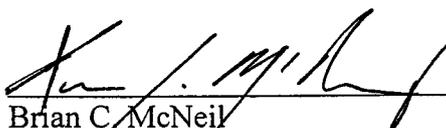
AGENCY CERTIFICATE
NOTICE OF FINAL RULEMAKING

SECRETARY OF STATE

2006 JUN 20 PM 3: 23

FILED

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. 

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

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

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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 (~~2001~~2006), rule 255, 17 C.F.R. 230.255 (~~2001~~2005), or rule 430, 17 C.F.R. 230.430 (~~2001~~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>.