

OPEN MEETING ITEM



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ORIGINAL



COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

AUG 24 2006

DATE: August 24, 2006

DOCKET NO.: RS-00000A-06-0210

DOCKETED BY	nr
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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:

RULEMAKING
(AMEND A.A.C. R14-4-135)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 5, 2006

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 Open Meeting to be held on:

SEPTEMBER 7, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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AZ CORP COMMISSION
DOCUMENT CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

IN THE MATTER OF THE PROPOSED
RULEMAKING TO AMEND A.A.C. R14-4-135.

DOCKET NO. RS-00000A-06-0210

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: August 9, 2006
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Ms. Abby Henig, Assistant General Counsel, on behalf of the Securities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On May 9, 2006, the Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) forwarded a proposal recommending that the Commission amend A.A.C. R14-4-135 (“Rule 135”).¹

On April 28, 2006, the Notice of Rulemaking Docket Opening was published in the Arizona Administrative Register (“Register”).

On June 1, 2006, the Commission issued Decision No. 68716, which directed the Hearing Division to schedule a hearing on the Division’s proposed amendment to Rule 135 for the purpose of taking public comment.

On June 29, 2006, by Amended Procedural Order, a public comment hearing was scheduled for August 9, 2006.

On June 30, 2006, the Notice of Proposed Rulemaking was published in the Register.

On August 9, 2006, a public comment hearing on Rule 135 was held before a duly authorized

¹ Rule 135 provides an exemption from registration for securities transactions that qualify for federal registration under the Multi-Jurisdictional Disclosure System (“MJDS”).

1 Administrative Law Judge at the Commission's offices in Phoenix, Arizona. The Division appeared
2 through counsel. There were no formal comment letters received and no members of the public
3 appeared to make public comment on Rule 135 at the hearing following the Notice of Proposed
4 Rulemaking.

5 * * * * *

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

8 **FINDINGS OF FACT**

9 1. Effective July 1, 1991, the U. S. Securities and Exchange Commission ("S.E.C.") and
10 regulatory authorities in Canada implemented the MJDS. The MJDS provides a mechanism for
11 reciprocity in cross-border offerings between the U.S. and Canada.

12 2. On May 9, 2006, the Division forwarded to the Commission a proposal recommending
13 that the Commission amend Rule 135.

14 3. On April 28, 2006, pursuant to law, the Notice of Rulemaking Docket Opening was
15 published in the Register.

16 4. On June 1, 2006, the Commission issued Decision No. 68716, which directed that a
17 hearing be scheduled regarding Rule 135 for the purpose of taking public comment.

18 5. On June 29, 2006, by Amended Procedural Order, the Commission scheduled a public
19 comment hearing on August 9, 2006.

20 6. On June 30, 2006, the Notice of Proposed Rulemaking was published in the Register.

21 7. On August 9, 2006, the public comment hearing was held as scheduled. After the
22 publication of the Notice of Proposed Rulemaking, no members of the public appeared to make
23 comment on the proposed amendment of Rule 135 and no formal written comments concerning the
24 amendment of Rule 135 were filed with the Commission.

25 8. Currently, Rule 135, adopted in 1991, exempts from registration offers of securities
26 declared effective with the S.E.C. pursuant to the S.E.C.'s multi-jurisdictional rule, provided that a
27 filing is made with the Commission seven days before the offering is made in Arizona.

28 9. The Division proposes the amendment to Rule 135 to reflect changes which reduce the

1 Canadian registration application review period so that Rule 135, when amended, will provide that
2 offerings filed pursuant to the MJDS become effective in Arizona upon the S.E.C. effective date,
3 provided that before an offer is made in Arizona, a prospectus or offering circular is filed with the
4 Commission and the fee is paid pursuant to A.R.S. § 44-1861(G).

5 10. The Division believes that the amendment of Rule 135 will not decrease investor
6 protection because it is not a substantive change and in addition, the securities transactions that
7 qualify for the exemption are only made by substantial issuers, are reviewed by the Canadian
8 government and are registered with the S.E.C.

9 11. Rule 135 is set forth in Appendix A, attached hereto and incorporated by reference.

10 12. Pursuant to A.R.S. § 41-1055(D), because there is expected to be a decrease in record
11 keeping or reporting for the agency, businesses or persons with the amendment of Rule 135, the
12 Commission is exempt from the requirement to prepare an Economic, Small Business and Consumer
13 Impact Statement for this rulemaking.

14 **CONCLUSIONS OF LAW**

15 1. Pursuant to A.R.S. § 44-1821 and the Arizona Constitution, Article XV, §§ 6 and 13,
16 the Commission has jurisdiction to amend Rule 135.

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

18 3. The proposed amendment to Rule 135 is in the public interest and is reasonably
19 necessary to carry out the provisions of the Arizona Securities Act.

20 4. The amendment of Rule 135 as set forth in Appendix A should be adopted.

21 **ORDER**

22 IT IS THEREFORE ORDERED that A.A.C. R14-4-135, as set forth in Appendix A is hereby
23 adopted.

24 IT IS FURTHER ORDERED that the Commission's Securities Division shall submit the
25 amended Rule A.A.C. R14-4-135, as set forth in Appendix A, to the Attorney General's office for
26 approval pursuant to A.R.S. § 41-1044.

27 ...

28 ...

1 IT IS FURTHER ORDERED that the Commission's Securities Division is authorized to
2 make non-substantive changes to the adopted rule, A.A.C. R14-4-135, in response to comments
3 received from the Attorney General's office during the approval process under A.R.S. § 41-1044
4 unless, after notification of those changes, the Commission requires otherwise.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN	COMMISSIONER	
COMMISSIONER	COMMISSIONER	COMMISSIONER

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.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:mj

1 SERVICE LIST FOR: RULEMAKING TO AMEND RULE 135

2 DOCKET NO.: RS-00000A-06-0210

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4 Matt Neubert
5 Securities Division
6 ARIZONA CORPORATION COMMISSION
7 1200 West Washington Street
8 Phoenix, AZ 85007
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1 R14-4-135. Exempt Securities – Multi-jurisdictional Disclosure System

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

6 1. A prospectus or an offering circular, the standards of form or content which are
7 prescribed by any provision of the Securities Act of 1933, or rules and regulations promulgated
8 thereunder, and Form F-7, F-8, F-9, or F-10, whichever is applicable, shall be filed with the
9 Commission ~~at least seven days before the offering is made~~; and

10 2. A nonrefundable exemption fee as provided in A.R.S. §44-1861(G) shall be paid
11 to the Commission.

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DECISION NO. _____