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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: May 3, 2007
RE: Docket # RS-00000A-06-0210

Please file the attached letter from the attorney general, with attachments, in connection with #RS-00000A-06-0210. No distribution is necessary.

Thank you.

Arizona Corporation Commission
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DOCUMENT CONTROL



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

May 1, 2007

Matthew Neubert
Director of Securities
Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, Arizona 85007

Re: A.G. Rule No. 06-009; A.A.C. R14-4-135

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, is 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, notice of final rulemaking, and economic, small business, and consumer impact statement 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

SECRETARY OF STATE

2007 MAY -2 04:11:44

FILED

AGENCY RECEIPT

for

NOTICE OF FINAL RULEMAKING

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 Arizona
Securities Act

Section

Action

R14-4-135

Amend

ATTORNEY GENERAL APPROVAL OF FINAL RULES

2007 MAY -2 AM 11:46

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>
Article 1, Section R14-4-135	Amend

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

6. Terry Goddard April 30, 2007
TERRY GODDARD, Date
Attorney General

AGENCY CERTIFICATE

SECRETARY OF STATE

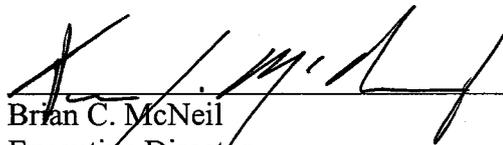
NOTICE OF FINAL RULEMAKING 2007 MAY -2 AM 11:46

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 R14-4-135	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

12 SEP 06

 Date

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

Telephone: (602) 542-0187

Fax Number: (602) 594-7402

E-mail: ahenig@azcc.gov

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

A.A.C. R14-4-135 ("rule 135") provides an exemption from registration with the Arizona Corporation Commission ("Commission") for securities that qualify for federal registration with the United States Securities and Exchange Commission ("SEC") under the Multijurisdictional Disclosure System.

On July 1, 1991, the Multijurisdictional Disclosure System ("MJDS") became effective upon its implementation by the SEC and regulatory authorities in Canada. (SEC Release No. 33-6902; SEC Release No. 34-29354). The MJDS provides a mechanism for reciprocity in cross-border offerings of securities 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 securities registration review procedures. Under MJDS, a Canadian issuer that qualifies as a "substantial issuer" is able to use a registration statement prepared in accordance with Canadian requirements to offer its 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 not conduct a review of the registration application in addition to the Canadian review for Canadian MJDS securities offerings. For offerings made simultaneously in both jurisdictions, the registration of the offering of securities 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, the Commission adopted rule 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 of rule 135, the review period in Canada has been reduced. The Commission amended rule 135 so that offerings filed pursuant to the MJDS system become effective in Arizona upon the effective date with the SEC, provided that before the offer is made a prospectus or offering circular is filed with the Commission and the requisite fee is paid.

The impetus behind the original rulemaking was the encouragement of legitimate capital raising activities across national borders. Removal of the seven-day period underscores this original intent; predicating the exemption on the securities registration being effective with the SEC and offering materials being filed with the Commission ensures investor protection.

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 rule.

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:

None.

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

Section

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

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.

Economic, Small Business, and Consumer Impact Statement

**Arizona Corporation Commission, Securities Division
Chapter 4. Corporation Commission--Securities Division
Article 1. In General Relating to the Arizona Securities Act
R14-4-135. Exempt Securities – Multijurisdictional Disclosure System**

- A. Economic, small business, and consumer impact summary.**
- 1. Proposed rulemaking.**

The Arizona Corporation Commission (the "Commission") proposes the amendment of A.A.C. Sections R14-4-135 ("rule 135").

- 2. Summary of information included in this economic, small business, and consumer impact statement.**

The economic, small business, and consumer impact statement for rule 135 analyzes the costs, savings, and benefits that accrue to the Commission, the regulated public, and the general public. The amendment to rule 135 should have no economic impact on the Commission. The costs experienced by the regulated public should decrease because issuers and underwriters will no longer have to record and comply with Arizona filing time requirements that differ from or exceed those of other jurisdictions. The Commission does not anticipate that the rule will impose costs upon the general public.

The benefits provided by the amendment to rule 135 are nonquantifiable. The regulated public should benefit from filing time frames that compliment those of other jurisdictions, which should alleviate monitoring and record keeping burdens through which the regulated public facilitates filing-time-frame compliance. The Commission anticipates that the general public may benefit from increased investment opportunities.

The Commission anticipates that the rulemaking will decrease monitoring, record keeping, or reporting burdens on businesses or persons. The costs of implementation are negligible and do not equal or exceed the reduction in burdens.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in this statement.

Cheryl Farson
General Counsel
Securities Division
Arizona Corporation Commission
1300 W. Washington, Third Floor
Phoenix, AZ 85007

B. Economic, small business, and consumer impact statement.

The Commission has not conducted any study and is not aware of any study that measures the cost of implementation or compliance with the proposed amendment. The time and dollar expenditures necessary to obtain such data are prohibitive. Adequate data, therefore, is not reasonably available to provide quantitative responses to the items listed under A.R.S. § 41-1055(B).

1. Proposed rulemaking.

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. See SEC Release No. 33-6902; SEC Release No. 34-29354. The MJDS provides a mechanism for reciprocity in connection with the registration under securities laws of cross-border offerings between the United States 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, a qualified Canadian issuer is able to use registration statements prepared

in accordance with Canadian requirements to offer its securities in the United States. Such an offering may be part of a simultaneous offering in the United States and Canada. Except in special circumstances, a simultaneous offering becomes effective in the United States upon filing with the SEC. For an offering made only in the United States by a qualified Canadian issuer, the registration statement becomes effective with the SEC in seven days or earlier upon SEC order after notification to the SEC that the offering is cleared by the Canadian securities regulator.

In order to accommodate MJDS offerings in their jurisdictions, state securities agencies made rules to facilitate the system; i.e. harmonizing state review periods with the Canadian review period, which, at the time of adoption in 1991, was seven days. The Commission made A.A.C. R14-4-135 ("rule 135") in 1991, providing an exemption from registration under the Arizona Securities Act for MJDS offerings effective with the SEC, as long as a filing had been made with the Commission seven days before an offering was made.

Since adoption, the review period in Canada has been reduced. The Commission proposes to amend rule 135 so that an issuer making a securities offering pursuant to the MJDS system may rely on the exemption provided in rule 135 upon the effective date with the SEC, provided that the issuer makes the requisite filing with the Commission before the offer is made in Arizona.

The impetus behind the original legislation was the encouragement of legitimate capital raising activities across national borders. Removal of the seven-day period facilitates this original intent. Investors are protected by the standards imposed on the Canadian issuers by the SEC and the regulatory oversight of Canadian authorities.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

Those affected by the proposed amendment to rule 135 include the Commission, Canadian issuers entitled to use the MJDS system, and Arizona investors.

Cost bearers.

The costs of compliance with rule 135 will be borne directly by the regulated persons. The cost of enforcement and implementation of rule 135 will be borne by the Commission.

Beneficiaries.

The regulated public will benefit from a filing time frame that facilitates the use of the MJDS registration system. The Commission anticipates that the general public may benefit from increased investment opportunities with respect to offerings made by qualified Canadian issuers.

3. Cost/benefit analysis.

a. Cost/benefit analysis of the probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The benefits of the rulemaking outweigh the probable costs to the Commission. The Commission will have no implementation costs because the procedures, forms, etc., implemented in connection with the rule will not vary from those currently used.

b. Cost/benefit analysis of the probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

No political subdivision of the state will incur costs by the implementation and enforcement of the proposed rulemaking.

c. Cost/benefit analysis of the probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The benefits of the rulemaking outweigh the probable costs to regulated persons. The amendment to rule 135 imposes no additional costs on regulated persons. In fact, the Commission anticipates that Canadian issuers may be more willing to offer securities in Arizona as the issuer will not incur the expense of monitoring and record keeping necessary to assure compliance with a filing time frame that is more extensive than that of other jurisdictions. The Commission does not anticipate that the rulemaking will have any material impact on revenues or payroll expenditures of employers who may utilize the benefit of the exemption from registration of MJDS securities offerings.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

Rule 135 offers an exemption from registration under the Arizona Securities Act to qualified Canadian issuers. The Commission does not anticipate any impact on private and public employment in Arizona businesses, agencies, and political subdivisions.

The Commission does not anticipate a material increase in the expenditure of Commission employee resources.

5. Statement of the probable impact of the proposed rulemaking on small businesses.

a. An identification of the small businesses subject to the proposed rulemaking.

Small businesses are not subject to the proposed rulemaking.

b. The administrative and other costs required for compliance with the proposed rulemaking.

Small businesses are not subject to the proposed rulemaking.

c. A description of the methods that the agency may use to reduce the impact on small businesses.

Small businesses are not subject to the proposed rulemaking.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Small businesses are not subject to the proposed rulemaking.

6. Statement of the probable effect on state revenues.

Filing fees paid to Arizona may increase to the extent the number of filings made pursuant to rule 135 increase. The Commission cannot anticipate the extent of such increase.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The goal of the amendment to rule 135 is to effectuate the least intrusive and costly method of regulation required to achieve the statutorily mandated level of public protection in connection with qualified Canadian MJDS issuers.