



0000076519

COMMISSIONERS  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR



Phoenix, AZ 85007  
TELEPHONE: (602) 542-4242  
FAX: (602) 594-7470  
E-MAIL: securitiesdiv@azcc.gov

615

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Mike Gleason, Chairman  
William A. Mundell, Commissioner  
Jeff Hatch-Miller, Commissioner  
Kristin K. Mayes, Commissioner  
Gary Pierce, Commissioner

FROM: Matthew Neubert  
Director of Securities

DATE: September 6, 2007

RE: Proposed Rule A.A.C. R14-4-116  
Docket No. RS-00000A-07-0421

cc: Dean Miller, Interim Executive Director

Arizona Corporation Commission

DOCKETED

AUG 24 2007

DOCKETED BY [NR]

AZ CORP COMMISSION  
DOCKET CONTROL

2007 AUG 24 P 12:00

RECEIVED

The Securities Division is seeking permission from the Commission to publish a Notice of Proposed Rulemaking concerning an amendment to A.A.C. R14-4-116 ("rule 116"). Following publication of the Notice, the public will have an opportunity to comment on the proposed rulemaking, after which the Hearing Division will make its recommendation to the Commission regarding adoption of the amendment.

Rule 116 incorporates by reference certain North American Securities Administrators Association ("NASAA") Statements of Policy used by the Commission's Securities Division as its standards of review for specified securities registration applications. Pursuant to A.R.S. § 41-1028 and A.A.C. R1-1-414, rule 116 does not include any later amendments or editions of the incorporated matter. Effective May 7, 2007, NASAA amended certain policy statements to revise suitability standards to reflect inflation. The amended policy statements are those relating to Asset-Backed Securities, Commodity Pool Programs, Equipment Programs, Mortgage Programs, Oil and Gas Programs, Real Estate Investment Trusts, and Real Estate Programs and its Omnibus Guidelines.

The Commission proposes to amend rule 116 to incorporate the NASAA amendments.

Suitability standards are financial standards designed to ensure that issuers do not sell complex and risky securities to investors for whom such investments are not suitable. Suitability standards are intended to preclude issuers from selling the securities to persons who do not have specified net worth and gross incomes sufficient to withstand a loss of investments. The NASAA amendments adjusted the suitability standards to reflect inflation since the standards were created or last increased. The NASAA statements of policy and guidelines may be viewed in their entirety at <http://www.nasaa.org/home/index.cfm> by clicking on "Direct Participation Programs."

States coordinate in the drafting of NASAA statements of policy and adopt them in order to facilitate uniformity among the states regarding the standards imposed on applicants for registration of securities. In drafting the amendments, the NASAA project group solicited comments from all of the state securities regulators and from the public. The project group held a public hearing regarding its proposed amendments on October 20, 2006. After receiving, reviewing, and considering 92 responses, the project group recommended the amendments and NASAA adopted them effective May 7, 2007.

With respect to the incorporation of the NASAA amendments, the Securities Division has solicited the informal advice and comments of the securities section of the Arizona State Bar and the Securities Division's staff. The Securities Division believes that the proposed adoption of the NASAA statements of policy as amended May 7, 2007, will benefit both the industry and potential investors by providing appropriate and consistent registration standards.

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 November 13, 2007, to solicit public comment.

Attached is a copy of the proposed order, the proposed amendment to rule 116, and a chart of the NASAA amendments.

Originator: Cheryl T. Farson

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Mike Gleason, Chairman  
William A. Mundell  
Jeff Hatch-Miller  
Kristin K. Mayes  
Gary Pierce

In the matter of  
PROPOSED RULEMAKING TO AMEND  
A.A.C. R14-4-116

DOCKET NO. RS-00000A-07-0421

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

**ORDER**

Open Meeting  
September 6, 2007  
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. R14-4-116 ("rule 116") of the Arizona Administrative Code governing the administration of the securities statutes.

FINDINGS

1. Rule 116 incorporates by reference certain North American Securities Administrators Association ("NASAA") statements of policy and guidelines used by the Arizona Corporation Commission's Securities Division as its standards of review for specified securities registration applications. Pursuant to A.R.S. § 41-1028 and A.A.C. R1-1-414, rule 116 does not include any later amendments or editions of the incorporated matter.

2. Effective May 7, 2007, NASAA amended its policy statements relating to Asset-Backed Securities, Commodity Pool Programs, Equipment Programs, Mortgage Programs, Oil and Gas Programs, Real Estate Investment Trusts, and Real Estate Programs and its Omnibus

1 Guidelines, revising suitability standards to reflect inflation. The Securities Division proposes that  
2 the Commission amend rule 116 to incorporate the NASAA amendments.

3 3. The Securities Division has recommended that a notice of the proposed rulemaking  
4 regarding rule 116 be forwarded to the secretary of state. The Securities Division also has  
5 recommended that the Hearing Division schedule a hearing on rule 116 for a date no earlier than  
6 November 13, 2007.

7 4. The Commission finds that the Securities Division's recommendations have merit  
8 and that the proposed amendment to rule 116 should be published and public comment obtained.

9 CONCLUSION OF LAW

10 The Commission has the authority for the proposed rulemaking under the Arizona  
11 Constitution Article XV, §§ 4 and 13, and under A.R.S. § 44-1821.

12 ORDER

13 THEREFORE IT IS ORDERED that the Hearing Division set a hearing on this matter to be  
14 held at the Commission Offices in Phoenix, Arizona, on a date no earlier than November 13, 2007.

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

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

---

CHAIRMAN

COMMISSIONER

---

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, DEAN MILLER,  
Interim 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 \_\_\_\_\_, 2007.

---

DEAN MILLER  
Interim Executive Director

---

DISSENT

---

DISSENT

ctf

This document is available in alternative formats by contacting Linda Hogan, Executive Assistant  
to the Executive Director, voice phone number 602-542-3931, e-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov).

R14-4-116. NASAA Statements of Policy

- A. Unless otherwise provided in A.R.S. Title 44, Chapter 12, Article 7, transactions that fall within one or more of the following North American Securities Administrators Association (NASAA) statements of policy shall comply with the requirements of those statements of policy to qualify for registration or renewal under A.R.S. Title 44, Chapter 12, Article 7. This Section shall not apply to the registration of securities under A.R.S. § 44-1901.
1. Statement of policy regarding loans and other material affiliated transactions, amended November 18, 1997.
  2. Registration of asset-backed securities, adopted October 25, 1995; amended May 7, 2007.
  3. NASAA mortgage program guidelines, adopted September 10, 1996; amended May 7, 2007.
  4. Registration of commodity pool programs, adopted September 21, 1983, effective January 1, 1984; amended and adopted ~~August 30, 1990~~ May 7, 2007.
  5. Equipment programs, adopted November 20, 1986, ~~effective January 1, 1987;~~ amended April 22, 1988, and ~~October 24, 1991,~~ May 7, 2007.
  6. Registration of oil and gas programs, adopted September 22, 1976; amended October 12, 1977, October 31, 1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, ~~and~~ October 24, 1991, and May 7, 2007.
  7. Statement of policy regarding real estate investment trusts, revised and adopted ~~September 29, 1993~~ May 7, 2007.
  8. Real estate programs, last revised ~~September 29, 1993~~ May 7, 2007.
  9. Statement of policy regarding unequal voting rights, adopted and effective October 24, 1991.
  10. Omnibus Guidelines, adopted March 29, 1992; amended May 7, 2007.
  11. Statement of policy regarding church extension fund securities, adopted April 17, 1994, entitled guidelines for general obligation financing by religious denominations; amended April 18, 2004.
  12. Statement of policy regarding church bonds, adopted April 14, 2002.
- B. The material listed in subsection (A) is incorporated by reference and on file with the Commission. The incorporated material does not contain later editions or amendments. The material is published in *NASAA Reports* by Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646. Copies are available from NASAA, 10 G Street, N.E., Suite 710, Washington D.C. 20002 and the Commission.

## CHART OF NASAA AMENDMENTS

POLICY STATEMENT	FORMER PROVISION	REVISED PROVISION
Asset-Backed Securities	<p>VI.B.1.(a) and (b) - a minimum \$45,000 annual gross income and a minimum net worth of \$150,000</p> <p>III.B.1.(a) and (b) - a minimum \$45,000 annual gross income and a minimum net worth of \$45,000 or a minimum net worth of \$150,000</p>	<p>a minimum \$70,000 annual gross income and a minimum net worth of \$70,000 or a minimum net worth of \$250,000</p> <p>a minimum \$70,000 annual gross income and a minimum net worth of \$70,000 or a minimum net worth of \$250,000</p>
Commodity Pool Programs Equipment Programs Real Estate Programs Omnibus Guidelines Mortgage Programs	<p>III.B.1.(a) and (b) - a minimum \$45,000 annual gross income and a minimum net worth of \$45,000 or a minimum net worth of \$150,000</p> <p>V.I.5.b - if total mortgage loans on any one property exceeds 80% of the value of the property, minimum annual gross income of \$60,000 and minimum net worth of \$225,000</p>	<p>a minimum \$70,000 annual gross income and a minimum net worth of \$70,000 or a minimum net worth of \$250,000</p> <p>a minimum \$70,000 annual gross income and a minimum net worth of \$70,000 or a minimum net worth of \$250,000</p>
Oil and Gas Programs	<p>III.B.1.(a) and (b) - a minimum \$45,000 annual gross income and a minimum net worth of \$225,000</p> <p>IV.B.2 - drilling programs that provide participant with statutory protection against unlimited liability, a minimum \$60,000 or a minimum net worth of \$225,000</p>	<p>a minimum \$85,000 annual gross income and a minimum net worth of \$70,000 or a minimum net worth of \$330,000</p> <p>a minimum \$70,000 annual gross income and a minimum net worth of \$70,000 or a minimum net worth of \$250,000</p>
Real Estate Investment Trusts	<p>IV.B.3(a) and (c) - drilling programs that do not provide participant with statutory protection against unlimited liability, a minimum net worth of \$225,000</p> <p>annual gross income of \$100,000 current and two previous years or a minimum net worth of \$500,000</p> <p>III.B.1.(a) and (b) - a minimum \$45,000 annual gross income and a minimum net worth of \$150,000</p> <p>III.B.2 - programs with mandatory deferred payments, a minimum \$60,000 annual gross income and a minimum net worth of \$60,000 or a minimum net worth of \$225,000</p>	<p>a minimum \$85,000 annual gross income and a minimum net worth of \$70,000 or a minimum net worth of \$330,000</p> <p>a minimum net worth of \$330,000 and a minimum gross income of \$150,000 current and two previous years or a minimum net worth of \$750,000</p> <p>a minimum \$70,000 annual gross income and a minimum net worth of \$70,000 or a minimum net worth of \$250,000</p> <p>a minimum \$85,000 annual gross income and a minimum net worth of \$85,000 or a minimum net worth of \$330,000</p>