

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

PREAMBLE

- | | |
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| 1. <u>Sections Affected</u>
R4-19-504 | <u>Rulemaking Action</u>
Amend |
|---|--|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-1606(A)(1)
Implementing statutes: A.R.S. §§ 32-1601(11) and (13), 1606(B)(11)
- 3. The effective date of the rules:**
September 28, 1999
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 2 A.A.R. 1069, February 23, 1996.
Notice of Proposed Rulemaking: 2 A.A.R. 1124, March 8, 1996.
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Janet M. Walsh, Associate Director

Address: State Board of Nursing
1651 E. Morten, Suite 150
Phoenix, AZ 85020

Telephone: (602) 331-8111, Ext. 145
Fax: (602) 906-9365
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Board's rule package on Title 4, Chapter 19, Article 1, Definitions and Article 5, Extended and Advanced Nursing Practice, was considered by GRRC at its meeting on November 5, 1996. At that meeting, GRRC approved the rule package with the exception of the amendment to A.A.C. R4-19-504(B), which was tabled to allow additional opportunity for public comment and response to the Board regarding the master's degree requirement for nurse practitioner certification. The original proposed amendment to R4-19-504(B) substituted the words "health related area" with the words "the clinical area for which the applicant is applying for certification."

On February 20, 1997, a workshop was held, and the Board considered the comments and feedback from the workshop at its meeting on May 23, 1997. At that meeting, the Board voted to keep the current language in R4-19-504(B) and add in the words "who is a new graduate" on the 1st line after the words "registered nurse practitioner" to clarify that the Board is grandfathering registered nurse practitioners certified prior to January 1, 2001.

Based on the recommendation of GRRC staff, the Board reconsidered the proposed amendment to R4-19-504(B) at its meeting on February 25, 1998, and voted to amend R4-19-504(B) by adding language to further clarify the existing exception to the masters degree requirement for nurse practitioner certification.
- 7. A reference to any study that the agency proposed to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None.

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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. The summary of the economic, small business, and consumer impact:

The proposed amendment is not expected to have any economic impact on the nurses regulated (approximately 1486 registered nurse practitioners as of June 25, 1999) or on the public. The current rule requires a masters degree in nursing or a masters degree in a health-related area for all applicants for nurse practitioner certification on or after January 1, 2001. The proposed amendment does not change this requirement; it simply clarifies the intent of the existing rule, which is that nurse practitioners certified prior to January 1, 2001, are not required to have a masters degree in these areas. As a result, the Board does not anticipate any financial impact from this clarification.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

R4-19-504(B) substitute “the clinical area for which the applicant is applying for certification” with “health-related area.”

R4-19-504(B) substitute “the Board shall continue to certify a registered nurse practitioner that the Board certified before January 1, 2001, if the registered nurse practitioner maintains a current license in good standing to practice as a professional nurse in Arizona” with “the Board shall continue to certify a registered nurse practitioner without the masters degree required by this Section who was certified prior to January 1, 2001, if the nurse practitioner: 1) Maintains a current license in good standing to practice as a professional nurse in Arizona,” 2) Qualifies for certification by endorsement, or 3) Maintains a current license in good standing to practice as a professional nurse outside the United States and qualifies as a registered nurse practitioner under subsection (A).”

11. A summary of the principal comments and the agency response to them:

Approximately 50% of the individuals who submitted public comment during this entire rulemaking procedure were in support of a masters degree requirement for nurse practitioner certification; approximately 50% were opposed. Some commenters stated that a masters degree requirement is inconsistent with the requirements of national organizations and most states. Twenty states either now require a masters degree for nurse practitioner certification or will be requiring it within the next 6 years. Every national organization, with the exception of the American College of Nurse Midwives, either requires a masters degree at the present time or will be requiring it within the next 8 years. Based on the increased trend in national organizations and states, the Board voted to keep the requirement as currently written in the rule.

Many commenters opposing the masters degree requirement expressed concern that the availability of nurse practitioners to work in rural areas would be compromised if the masters degree exception was not extended to nurse practitioners certified outside of Arizona before January 1, 2001. In order to assure an adequate supply of nurse practitioners in both the rural and non-rural areas, the Board amended the rule to clarify that any nurse practitioner certified in any state prior to January 1, 2001, will not be required to have a masters degree.

One commenter expressed concern that a masters degree program in 3 of the nurse practitioner specialty areas [nurse midwife, women’s health care nurse practitioner/obstetrical-gynecological nurse practitioner, and neonatal nurse practitioner] is not available in Arizona, and individuals seeking a masters degree for certification in these specialty areas would have to leave the state to attend an educational program. In Arizona, however, there are no educational programs at all [masters or non-masters] for these 3 specialty areas; nurse practitioners who wish to become certified in 1 of these specialty areas must obtain their educational training in another state even under the current requirement that no masters degree is necessary. Requiring a masters degree has no affect on the need of individuals, who wish to become certified in 1 of these specialty areas, to attend an educational program outside of the State of Arizona.

Several commenters requested that the Board include an exception to the masters degree requirement for nurse midwives. Because the majority of nurse midwifery programs are masters programs (37 out of 46), the Board did not believe that there was a need to create an exception for nurse midwives.

A number of commenters supported a mechanism to grandfather currently certified nurse practitioners. The Board agreed with this viewpoint and voted to amend R4-19-504(B) to clarify that the masters degree requirement does not apply to nurse practitioners certified prior to January 1, 2001.

Approximately 50% of the commenters supported a masters degree requirement; the majority supported a masters degree requirement in nursing or in a health-related area. The Board accepted this feedback and made the decision not to change the masters degree requirement as currently set forth in R4-19-504(B).

12. **Any other matters that are prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
13. **Incorporations by reference and their location in the rules:**
Not applicable.
14. **Was this rule previously adopted as an emergency rule?**
No.
15. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 5. EXTENDED AND ADVANCED NURSING PRACTICE

Section

R4-19-504. Requirements for Registered Nurse Practitioner Certification

ARTICLE 5. EXTENDED AND ADVANCED NURSING PRACTICE

R4-19-504. Requirements for Registered Nurse Practitioner Certification

- A. No change.
- B. An applicant for certification as a registered nurse practitioner on or after January 1, 2001, shall have a master of science degree in nursing or a masters degree in a health-related area. The Board shall continue to certify a registered nurse practitioner ~~that the Board certified before~~ without the masters degree required by this Section who was certified prior to January 1, 2001, if the nurse practitioner maintains a current license in good standing to practice as a professional nurse in Arizona.
1. Maintains a current license in good standing to practice as a professional nurse in Arizona.
 2. Qualifies for certification by endorsement, or
 3. Maintains a current license in good standing to practice as a professional nurse outside the United States and qualifies as a registered nurse practitioner under subsection (A).
- C. No change.

NOTICE OF FINAL RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R14-4-126 | Repeal |
| R14-4-126 | New Section |
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 44-1821 and 44-1845
Implementing statute: A.R.S. §§ 44-1844 and 44-1845
Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13
3. **The effective date of the rules:**
September 28, 1999

Notices of Final Rulemaking

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 4 A.A.R. 1073, May 8, 1998.

Notice of Proposed Rulemaking: 4 A.A.R. 3582, November 6, 1998.

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheryl T. Farson, General Counsel
Address: Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996
Telephone: (602) 542-4242
Fax: (602) 594-7470

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

R14-4-126 (the "Rule") provides for exemptions from the registration of securities transactions that are substantially similar to the exemptions provided pursuant to rules 505 and 506 of Regulation D promulgated under the federal Securities Act of 1933. The Division repeals Section R14-4-126 and adopts a new Section R14-4-126 that is substantially similar to the current R14-4-126, but includes clarification of the applicability of the notice filing requirements and corrections of technical errors and revisions mandated by rule-format requirements of the Office of the Secretary of State.

7. 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:

The new Section R14-4-126 is materially the same as the repealed Section R14-4-126. Thus, the new rule does not diminish a previous grant of authority of any political subdivision of this state.

8. The 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.

9. A description of the changes between the proposed rule, including supplemental notices, and the final rule (if applicable):

The following 3 subsections of the proposed rule have been revised in the final rule as marked below.

a. Under the Securities Act of 1933: Section 2(13), 15 U.S.C. 77b(a)(13) (~~1988~~Supp. II 1996) ("Section 2(13) of the Securities Act of 1933"); Section 3(a)(2), 15 U.S.C. 77c(a)(2) (~~1988~~1994) ("Section 3(a)(2) of the Securities Act of 1933"), and Section 3(a)(5)(A), 15 U.S.C. 77c(a)(5)(A) (~~1988~~1994) ("Section 3(a)(5)(A) of the Securities Act of 1933").

b. Section 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(48) (~~1988~~1994 & Supp. II 1996) ("Section 2(a)(48) of the Investment Company Act of 1940").

c. Section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(22) (~~1988~~1994) ("Section 202(a)(22) of the Investment Advisers Act of 1940").

10. A summary of the principal comments and the agency response to them:

The Commission did not receive written comment to the rule.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

15 U.S.C. § 77b(a)(13) (Supp. II 1996)	Sections (A)(3)(a), (B)(1)(a)
15 U.S.C. § 77c(a)(2) (1994)	Sections (A)(3)(a), (B)(1)(a)
15 U.S.C. § 77c(a)(5)(A) (1994)	Sections (A)(3)(a), (B)(1)(a)
15 U.S.C. § 80a-2(a)(48) (1994 & Supp. II 1996)	Sections (A)(3)(b), (B)(1)(a)
15 U.S.C. § 80b-2(a)(22) (1994)	Sections (A)(3)(c), (B)(1)(b)

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule:

Not applicable.

14. 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

~~R14-4-126. Limited offerings; definitions~~ Repealed

R14-4-126. Limited offerings; definitions

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-126. Limited offerings

A. The following rule relates to transactions exempted from the registration requirements of A.R.S. §§ 44-1841 and 44-1842.

1. Attempted compliance with any part of this rule does not act as an exclusive election. This rule is not available to any issuer for any transaction or chain of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration provisions of the Arizona Securities Act (the "Securities Act"). The rule may be used for business combinations that involve sales by virtue of Rule 145(a) under the Securities Act of 1933 or otherwise.
2. Securities may be offered and sold outside the United States in accordance with Regulation S under the Securities Act of 1933 and pursuant to an applicable registration or exemption under the Securities Act even if coincident offers and sales are made inside the United States in accordance with Regulation D and this rule. Thus, for example, persons who are offered and sold securities from Arizona in accordance with Regulation S would not be counted in the calculation of the number of purchasers under this rule if the securities are registered or otherwise exempt under the Securities Act (such as exempt under A.R.S. § 44-1844(A)(19)). Similarly, proceeds from such sales would not be included in the aggregate offering price. These provisions, however, do not apply if the issuer elects to rely solely on Regulation D and this rule for offers or sales to persons made outside the United States.
3. Incorporation by reference. The following statutes, rules, regulations, and forms are incorporated herein by reference and on file with the office of the Secretary of State:
 - a. Under the Securities Act of 1933: Section 2(13), 15 U.S.C. 77b(13) (1988) ("Section 2(13) of the Securities Act of 1933"); Section 3(a)(2), 15 U.S.C. 77c(a)(2) (1988) ("Section 3(a)(2) of the Securities Act of 1933"); Section 3(a)(5)(A), 15 U.S.C. 77c(a)(5)(A) (1988) ("Section 3(a)(5)(A) of the Securities Act of 1933"); Section 4(2), 15 U.S.C. 77d(2) (1988) ("Section 4(2) of the Securities Act of 1933"); Rule 145(a), 17 CFR 230.145(a) (1994) ("Rule 145(a) under the Securities Act of 1933"); Rule 405, 17 CFR 230.405 (1994) ("Rule 405 under the Securities Act of 1933"); Regulation A, 17 CFR 230.251 to 230.263 (1994) ("Regulation A"); Regulation D, 17 CFR 230.501 to 230.508 (1994) ("Regulation D"); Regulation S, 17 CFR 230.901 to 230.904 (1994) ("Regulation S"); Item 310 of Regulation S B, 17 CFR 228.310 (1994) ("Item 310 of Regulation S B"); Part II of Form 1-A, 17 CFR 239.90 (1994) ("Part II of Form 1-A"); Form S-1, 17 CFR 239.11 (1994) ("Form S-1"); Form SB-1, 17 CFR 239.9 (1994) ("Form SB-1"); Form SB-2, 17 CFR 239.10 (1994) ("Form SB-2"); Form S-11, 17 CFR 239.18 (1994) ("Form S-11"); Form S-4, 17 CFR 239.25 (1994) ("Form S-4"); Form D, 17 CFR 239.500 (1994) ("Form D"); Form F-1, 17 CFR 239.31 (1994) ("Form F-1");
 - b. Under the Securities Exchange Act of 1934: Section 13, 15 U.S.C. 78m (1988 & Supp. V 1993) ("Section 13 of the Securities Exchange Act of 1934"); Section 13(a), 15 U.S.C. 78m(a) (1988) ("Section 13(a) of the Securities Exchange Act of 1934"); Section 14(a), 15 U.S.C. 78n(a) (1988) ("Section 14(a) of the Securities Exchange Act of 1934"); Section 14(e), 15 U.S.C. 78n(e) (1988 & Supp. V 1993) ("Section 14(e) of the Securities Exchange Act of 1934"); Section 15, 15 U.S.C. 78o (1988 & Supp. V 1993) ("Section 15 of the Securities Exchange Act of 1934"); Section 15(d), 15 U.S.C. 78o(d) (1988) ("Section 15(d) of the Securities Exchange Act of 1934"); Rule 14a-3, 17 CFR 240.14a-3 (1994) ("Section 240.14a-3 under the Securities Exchange Act of 1934"); Rule 14c-3, 17 CFR 240.14c-3 (1994) ("Section 240.14c-3 under the Securities Exchange Act of 1934"); Form 10-K, 17 CFR 249.310 (1994) ("Form 10-K"); Form 10-KSB, 17 CFR 249.310b (1994) ("Form 10-KSB"); Form 10-SB, 17 CFR 249.210b (1994) ("Form 10-SB"); Form 10, 17 CFR 240.210 (1994) ("Form 10"); Form 20-F, 17 CFR 249.220f (1994) ("Form 20-F");
 - c. Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64 (1988 & Supp. V 1993) ("Investment Company Act of 1940") and Section 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(48) (1988) ("Section 2(a)(48) of the Investment Company Act of 1940");
 - d. Sections 301(c) and 301(d) of the Small Business Investment Act of 1958, 15 U.S.C. 681(e) and 681(d) (1988) ("Section 301(c) or (d) of the Small Business Investment Act of 1958");

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- e. Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 to 1169 (1988 & Supp. V 1993) (“Title I of the Employee Retirement Income Security Act of 1974”) and Section 3(21) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(21) (1988) (“Section 3(21) of the Employee Retirement Income Security Act of 1974”);
- f. Investment Advisers Act of 1940, 15 U.S.C. 80b-1 to 80b-21 (1988 & Supp. V 1993) (“Investment Advisers Act of 1940”) and Section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(22) (1988) (“Section 202(a)(22) of the Investment Advisers Act of 1940”);
- g. Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) (1988) (“Section 501(c)(3) of the Internal Revenue Code”).

B. Definitions and terms. As used in this rule, the following terms shall have the meaning indicated:

- 1. “Accredited investor”. “Accredited investor” shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:
 - a. Any bank as defined in Section 3(a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; any insurance company as defined in Section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
 - b. Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
 - c. Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
 - d. Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
 - e. Any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of his purchase exceeds \$1,000,000;
 - f. Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
 - g. Any trust, with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in subsection (F)(2)(b) of this rule; and
 - h. Any entity in which all of the equity owners are accredited investors.
- 2. “Affiliate”. An “affiliate” of, or person “affiliated” with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
- 3. “Aggregate offering price”. “Aggregate offering price” shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and non cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by generally accepted accounting principles. Such valuations of noncash consideration must be reasonable at the time made.
- 4. “Business combination”. “Business combination” shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent’s stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).

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5. ~~“Calculation of number of purchasers”. For purposes of calculating the number of purchasers under subsections (E) and (F) of this rule, the following shall apply:~~
- a. ~~The following purchasers shall be excluded:~~
 - i. ~~Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;~~
 - ii. ~~Any trust or estate in which a purchaser and any of the persons related to him as specified in subsections (B)(5)(a)(i) or (iii) collectively have more than 50% of the beneficial interest (excluding contingent interests);~~
 - iii. ~~Any corporation or other organization of which a purchaser and any of the persons related to him as specified in subsections (B)(5)(a)(i) or (ii) collectively are beneficial owners of more than 50% of the equity securities (excluding directors’ qualifying shares) or equity interests; and~~
 - iv. ~~Any accredited investor.~~
 - b. ~~A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under subsection (B)(1)(h), then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of this rule except to the extent provided in subsection (B)(5)(a).~~
 - c. ~~A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.~~

~~Note. The issuer must satisfy all of the other provisions of this rule for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker or dealer shall be considered the “purchasers” under this rule regardless of the amount of discretion given to the investment adviser or broker or dealer to act on behalf of the client or customer.~~
6. ~~“Executive officer”. “Executive officer” shall mean the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.~~
7. ~~“Issuer”. “Issuer” shall be as defined in A.R.S. § 44-1801.~~
8. ~~“Purchaser representative”. “Purchaser representative” shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:~~
- a. ~~Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the issuer, except where the purchaser is:~~
 - i. ~~A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;~~
 - ii. ~~A trust or estate in which the purchaser representative and any persons related to him as specified in subsections (B)(8)(a)(i) or (iii) collectively have more than 50% of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or~~
 - iii. ~~A corporation or other organization of which the purchaser representative and any persons related to him as specified in subsections (B)(8)(a)(i) or (ii) collectively are the beneficial owners of more than 50% of the equity securities (excluding directors’ qualifying shares) or equity interests;~~
 - b. ~~Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone or together with other purchaser representatives of the purchaser or together with the purchaser, the merits and risks of the prospective investment;~~
 - c. ~~Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and~~
 - d. ~~Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.~~
9. ~~Note 1. A person acting as a purchaser representative should consider the applicability of the registration and anti-fraud provisions:~~
- a. ~~Relating to brokers and dealers under the Securities Exchange Act of 1934 and dealers under the Securities Act (See R14-4-104(A)(7) with respect to dealer registration in Arizona), and~~
 - b. ~~Relating to investment advisers under the Investment Advisers Act of 1940 and the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.~~
10. ~~Note 2. The acknowledgment required by subsection (B)(8)(c) and the disclosure required by subsection (B)(8)(d) must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for “all securities transactions” or “all private placements”, is not sufficient.~~

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11. Note 3. Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the interest of the purchaser.
- C. General conditions to be met. The following conditions shall be applicable to offers and sales made under this rule:
1. Integration. All sales that are part of the same Rule R14-4-126 offering must meet all of the terms and conditions of this rule. Offers and sales that are made more than six months before the start of a Rule R14-4-126 offering or are made more than six months after completion of a Rule R14-4-126 offering will not be considered part of that Rule R14-4-126 offering, so long as during those six-month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under this rule, other than those offers or sales of securities under an employee benefit plan as defined in Rule 405 under the Securities Act of 1933.
 - a. Note 1. The term "offering" is not defined in the Securities Act or in this rule. If the issuer offers or sells securities for which the safe harbor rule in subsection (C)(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e., are considered "integrated") depends on the particular facts and circumstances.
 - b. Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States that are in compliance with Regulation S and are registered or otherwise exempt under the Securities Act.
 - c. The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under this rule:
 - i. Whether the sales are part of a single plan of financing;
 - ii. Whether the sales involve issuance of the same class of securities;
 - iii. Whether the sales have been made at or about the same time;
 - iv. Whether the same type of consideration is received; and
 - v. Whether the sales are made for the same general purpose.
 - d. Note 2. In determining whether offers and sales should be integrated for purposes of the exemptions under this rule, issuers should consider relevant Arizona rules and court decisions, federal court decisions, and Securities and Exchange Commission rules and regulations.
 2. Information requirements:
 - a. When information must be furnished.
 - i. If the issuer sells securities only to accredited investors, subsection (C)(2) does not require that specific information be furnished to purchasers.
 - ii. If the issuer sells securities to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in subsection (C)(2)(b) to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to any accredited investor.
 - iii. Note. When an issuer provides information to investors pursuant to subsection (C)(2)(b)(i), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal securities laws and of the Securities Act.
 - b. Type of information to be furnished.
 - i. If the issuer is not subject to the reporting requirements of Section 13 or 15 (d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser, to the extent material to an understanding of the issuer, its business, and the securities being offered:
 - (1) Non-financial statement information. If the issuer is eligible to use Regulation A, the same kind of information as would be required in Part II of Form 1-A. If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use.
 - (2) Financial Statement Information:
 - (a) Offerings up to \$2,000,000. The information required in Item 310 of Regulation S-B, except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.
 - (b) Offerings up to \$7,500,000. The financial statement information required in Form SB-2. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.
 - (c) Offerings over \$7,500,000. The financial statement as would be required in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offer-

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ing, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

- (d) If the issuer is a foreign private issuer eligible to use Form 20-F under the Securities Act of 1933, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by subsection (C)(2)(b)(i)(2)(a), (b), or (c) as appropriate.
- ii. If the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information specified in subsection (C)(2)(b)(ii)(1) or (2), and in either event the information specified in subsection (C)(2)(b)(ii)(3):
- (1) The issuer's annual report to shareholders for the most recent fiscal year, if such annual report meets the requirements of Section 240.14a-3 or 240.14c-3 under the Securities Exchange Act of 1934, the definitive proxy statement filed in connection with the annual report, and, if requested by the purchaser in writing, a copy of the issuer's most recent Form 10-K and Form 10-KSB under the Securities Exchange Act of 1934.
- (2) The information contained in an annual report on Form 10-K or Form 10-KSB under the Securities Exchange Act of 1934 or in a registration statement on Form S-1, SB-1, SB-2, or S-11 under the Securities Act of 1933 or on Form 10 or Form 10-SB under the Securities Exchange Act of 1934, whichever filing is the most recent required to be filed.
- (3) The information contained in any reports or documents required to be filed by the issuer under Sections 13(a), 14(a), 14(c), and 15(d) of the Securities Exchange Act of 1934 since the distribution or filing of the report or registration statement specified in subsections (C)(2)(b)(ii)(1) or (2), and a brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs that are not disclosed in the documents furnished.
- (4) If the issuer is a foreign private issuer, the issuer may provide, in lieu of the information specified in subsection (C)(2)(b)(ii)(1) or (2), the information contained in its most recent filing on Form 20-F under the Securities Exchange Act of 1934 or Form F-1 under the Securities Act of 1933.
- iii. Exhibits required to be filed with the Securities and Exchange Commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K and Form 10-KSB report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.
- iv. At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under subsections (E) or (F), the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such non-accredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request, a reasonable time prior to his purchase.
- v. The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under subsections (E) or (F) the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under subsection (C)(2)(b)(i) or (ii).
- vi. For business combinations or exchange offers, in addition to information required by Form S-4, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with subsection (C)(2)(b)(i).
- vii. At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under subsection (E) or (F), the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (C)(4)(b). Such disclosure may be contained in other materials required to be provided by this subsection (C)(2).
3. Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:
- a. Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

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- b. Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.
- 4. Limitations on resale. Securities acquired in a transaction under this rule shall have the status of securities acquired in an exempt transaction under A.R.S. § 44-1844 of the Securities Act and cannot be resold without registration under the Securities Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of A.R.S. § 44-1801 of the Securities Act. Such reasonable care may be demonstrated by the following:
 - a. Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;
 - b. Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act and, therefore, cannot be resold unless they are registered under the Securities Act or unless an exemption from registration is available; and
 - e. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act and setting forth or referring to the restrictions on transferability and sale of the securities.
 - d. Note. While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, subsection (C)(2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

D. Filing of notice of sales and fees.

- 1. The issuer shall file with the Commission one copy of a notice on Form D at the following times:
 - a. No later than 15 days after the first sale of securities in this state in an offering under this rule; and
 - b. No later than 30 days after the termination of an offering under this rule; provided, however, that non-compliance with this subsection (D)(1)(b) shall not result in the loss of the exemption under this rule, if the issuer has complied with the filing requirements of subsection (D)(1)(a). If the Arizona Securities Division sends a written request to an issuer to file a final Form D, the issuer shall deliver a final Form D to the Arizona Securities Division within 30 days of receipt of such request. No exemption under this rule shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment or decree of the Commission or any other court of competent jurisdiction temporarily, preliminary or permanently enjoining such person for failure to comply with the filing requirements of this subsection; provided, however, that the loss of exemption shall not apply if the Commission determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.
- 2. If the offering is completed within the 15-day period described in subsection (D)(1)(a) and if the notice is filed no later than the end of that period but after the completion of the offering, then only one notice need be filed to comply with subsections (D)(1)(a) and (b).
- 3. The notice on Form D shall contain a manual or facsimile signature of a person duly authorized by the issuer.
- 4. If sales are made under subsection (E), the notice shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished by the issuer under subsection (C)(2)(b) to any purchaser that is not an accredited investor.
- 5. If more than one notice for an offering is required to be filed under subsection (D)(1), notices after the first notice need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B of the first notice.
- 6. A notice on Form D shall be considered filed with the Commission:
 - a. Upon receipt at its Phoenix office.
 - b. As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's Phoenix office if the notice is delivered to such office after the date on which it is required to be filed.
- 7. Issuer shall pay the fee prescribed by A.R.S. § 44-1861(E).

E. Limited offers and sales not exceeding \$5,000,000.

- 1. Exemption. Offers and sales of securities that satisfy the conditions in subsection (E)(2) by an issuer that is not an investment company under the Investment Company Act of 1940 shall be added to the class of transactions exempt under A.R.S. § 44-1844.
- 2. Conditions and limitations.
 - a. General conditions. To qualify for exemption under this subsection (E), offers and sales must satisfy the terms and conditions of subsections (B) through (D).
 - b. Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this subsection (E) shall not exceed \$5,000,000, less the aggregate offering price for all securities sold within the 12 months before the start of and during such offering of securities in reliance on this subsection (E) or in violation of A.R.S. § 44-1841.
 - e. Limitation on number of purchasers. There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer in any offering under this subsection (E).

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3. **Disqualification.** No exemption under this subsection (E) shall be available for the securities of any issuer, if it or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of ten percent or more of any class of its equity securities, or the underwriter of such securities:
 - a. Has been convicted within the ten years preceding the filing of the notice required by the rule, or at any time thereafter prior to the termination of the offering, of a felony or misdemeanor involving racketeering or a transaction in securities, or of which fraud is an essential element;
 - b. Is subject to an order, judgment, or decree of a court of competent jurisdiction entered within five years of the date of filing of the notice required by this rule, temporarily, preliminarily, or permanently enjoining or restraining it or him from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities, or involving fraud, deceit, or racketeering;
 - c. Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within five years preceding the filing of the notice required by this rule, or at any time thereafter prior to the termination of the offering;
 - d. Is subject to the reporting requirements of the Securities Exchange Act of 1934 and not filed all required reports during the 12 calendar months preceding the filing of the notification required by subsection (D)(1) of this rule;
 - e. Is subject to an order of the Securities and Exchange Commission denying or revoking registration as a broker or dealer in securities under the Securities Exchange Act of 1934, or is subject to an order denying or revoking membership in a national securities association registered under the Securities Exchange Act of 1934, or has been suspended for a period exceeding six months or expelled from membership in a national securities exchange registered under the Securities Exchange Act of 1934;
 - f. The Commission may, at its discretion, waive any disqualification caused by this subsection (E). A disqualification caused by subsection (E) ceases to exist if:
 - i. The basis for the disqualification has been removed by the jurisdiction creating it;
 - ii. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification; or
 - iii. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- F. Private offerings without regard to dollar limitations:**
 1. **Conditions to be met.** Offers to sell or sales of securities by the issuer thereof that are part of an offering complying with all the conditions of subsections (B) through (D) and this subsection (F) shall be deemed to be "transactions by an issuer not involving any public offering" within the meaning of A.R.S. § 44-1844(A)(1). Issuers may make private offerings without compliance with this subsection (F) provided such offerings completely satisfy the criteria set forth in Arizona court decisions interpreting A.R.S. § 44-1844(A)(1) and in federal court decisions interpreting Section 4(2) of the Securities Act of 1933. Issuers are cautioned, however, that in all instances in which availability of an exemption from registration under the Securities Act is claimed, the claimant has the burden of proving that the exemption claimed is available to him. This subsection (F) does not shift such burden.
 2. **Specific conditions:**
 - a. **Limitation on number of purchasers.** There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer in any offering under this subsection (F).
 - b. **Nature of purchasers.** Each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sales that such purchaser comes within this description.
- G. Disqualifying provision relating to exemptions under subsections (E) and (F).**
 1. No exemption under subsections (E) and (F) shall be available for an issuer if such issuer, any of its predecessors, or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily, or permanently enjoining such person, or any final order of an administrative agency directing such person to cease and desist for failure to comply with subsection (D) or its counterpart, if any, in such jurisdiction.
 2. The Commission may, at its discretion, waive any disqualification caused by subsection (G)(1).
 3. A disqualification caused by subsection (G)(1) ceases to exist if:
 - a. The basis for the disqualification has been removed by the jurisdiction creating it;
 - b. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification; or
 - c. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- H. Insignificant deviations from a term, condition, or requirement.**
 1. A failure to comply with a term, condition, or requirement of subsections (E) or (F) will not result in the loss of the exemption from the requirements of A.R.S. § 44-1841 or A.R.S. § 44-1842 for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:
 - a. The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

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- b. ~~The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with subsections (C)(3), (E)(2)(b), (E)(2)(c), and (F)(2)(a) shall be deemed to be significant to the offering as a whole; and~~
- e. ~~A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subsections (E) and (F):~~
- 2. ~~Notwithstanding subsection (H)(1), an exemption established only through reliance upon subsection (H)(1) shall constitute a violation of this rule. In such event, the Commission may take action under A.R.S. §§ 44-2032 and 44-2036 for a violation of this rule.~~

R14-4-126. Limited offerings; definitions

A. The following Section relates to transactions exempted from the registration requirements of A.R.S. §§ 44-1841 and 44-1842.

- 1. Attempted compliance with any part of this Section does not act as an exclusive election. This Section is not available to any issuer for any transaction or chain of transactions that, although in technical compliance with the Section, is part of a plan or scheme to evade the registration provisions of the Securities Act of Arizona (the "Securities Act"). The Section may be used for business combinations that involve sales by virtue of Rule 145(a) under the Securities Act of 1933 or otherwise.
- 2. Securities may be offered and sold outside the United States in accordance with Regulation S under the Securities Act of 1933 and pursuant to an applicable registration or exemption under the Securities Act even if coincident offers and sales are made inside the United States in accordance with Regulation D and this Section. Thus, for example, persons who are offered and sold securities from Arizona in accordance with Regulation S would not be counted in the calculation of the number of purchasers under this Section if the securities are registered or otherwise exempt under the Securities Act (such as exempt under A.R.S. § 44-1844(A)(19)). Similarly, proceeds from such sales would not be included in the aggregate offering price. These provisions, however, do not apply if the issuer elects to rely solely on Regulation D and this Section for offers or sales to persons made outside the United States.
- 3. Incorporation by reference. The following statutes, rules, and regulations are incorporated herein by reference and on file with the office of the Secretary of State. The incorporated material contains no later editions or amendments.
 - a. Under the Securities Act of 1933: Section 2(13), 15 U.S.C. 77b(a)(13) (Supp. II 1996) ("Section 2(13) of the Securities Act of 1933"); Section 3(a)(2), 15 U.S.C. 77c(a)(2) (1994) ("Section 3(a)(2) of the Securities Act of 1933"), and Section 3(a)(5)(A), 15 U.S.C. 77c(a)(5)(A) (1994) ("Section 3(a)(5)(A) of the Securities Act of 1933").
 - b. Section 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(48) (1994 & Supp. II 1996) ("Section 2(a)(48) of the Investment Company Act of 1940").
 - c. Section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(22) (1994) ("Section 202(a)(22) of the Investment Advisers Act of 1940").

B. Definitions and terms. As used in this Section, the following terms have the meaning indicated:

- 1. "Accredited investor" means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:
 - a. Any bank as defined in Section 3(a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; any insurance company as defined in Section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
 - b. Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
 - c. Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
 - d. Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

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- e. Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of that person's purchase exceeds \$1,000,000;
 - f. Any natural person who had an individual income in excess of \$200,000 in each of the 2 most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
 - g. Any trust, with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in subsection (F)(2)(b) of this Section; and
 - h. Any entity in which all of the equity owners are accredited investors.
2. "Affiliate." An "affiliate" of, or person "affiliated" with, a specified person means a person that directly, or indirectly through 1 or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
 3. "Aggregate offering price" means the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price is based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency is translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price is based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by generally accepted accounting principles. Such valuations of noncash consideration shall be reasonable at the time made.
 4. "Business combination" means any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by 1 issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).
 5. "Calculation of number of purchasers." For purposes of calculating the number of purchasers under subsections (E) and (F) of this Section, the following apply. The issuer shall satisfy all of the other provisions of this Section for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker or dealer are considered the "purchasers" under this Section regardless of the amount of discretion given to the investment adviser or broker or dealer to act on behalf of the client or customer.
 - a. The following purchasers are excluded:
 - i. Any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as the purchaser;
 - ii. Any trust or estate in which a purchaser and any of the persons related to the purchaser as specified in subsections (B)(5)(a)(i) or (iii) collectively have more than 50% of the beneficial interest (excluding contingent interests);
 - iii. Any corporation or other organization of which a purchaser and any of the persons related to the purchaser as specified in subsections (B)(5)(a)(i) or (ii) collectively are beneficial owners of more than 50% of the equity securities (excluding directors' qualifying shares) or equity interests; and
 - iv. Any accredited investor.
 - b. A corporation, partnership, or other entity is counted as 1 purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under subsection (B)(1)(h), then each beneficial owner of equity securities or equity interests in the entity counts as a separate purchaser for all provisions of this Section except to the extent provided in subsection (B)(5)(a).
 - c. A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 counts as 1 purchaser where the trustee makes all investment decisions for the plan.
 6. "Executive officer" means the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy-making functions for the issuer.
 7. "Issuer" is as defined in A.R.S. § 44-1801.
 8. "Purchaser representative" means any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:
 - a. Is not an affiliate, director, officer, or other employee of the issuer, or beneficial owner of 10% or more of any class of the equity securities or 10% or more of the equity interest in the issuer, except where the purchaser is:
 - i. A relative of the purchaser representative by blood, marriage, or adoption and not more remote than a 1st cousin;
 - ii. A trust or estate in which the purchaser representative and any persons related to the purchaser representative as specified in subsections (B)(8)(a)(i) or (iii) collectively have more than 50% of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any

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- similar capacity; or
- iii. A corporation or other organization of which the purchaser representative and any persons related to the purchaser representative as specified in subsections (B)(8)(a)(i) or (ii) collectively are the beneficial owners of more than 50% of the equity securities (excluding directors' qualifying shares) or equity interests;
 - b. Has such knowledge and experience in financial and business matters that the purchaser representative is capable of evaluating, alone or together with other purchaser representatives of the purchaser or together with the purchaser, the merits and risks of the prospective investment;
 - c. Is acknowledged by the purchaser in writing, during the course of the transaction, to be the purchaser's purchaser representative in connection with evaluating the merits and risks of the prospective investment; and
 - d. Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between the purchaser representative or the purchaser representative's affiliates and the issuer or its affiliates that then exist, that is mutually understood to be contemplated, or that has existed at any time during the previous 2 years, and any compensation received or to be received as a result of such relationship.
 - e. A person acting as a purchaser representative should consider the applicability of the registration and anti-fraud provisions:
 - i. Relating to dealers under the Securities Act (See R14-4-104(A)(7) with respect to dealer registration in Arizona), and
 - ii. Relating to investment advisers under the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.
 - f. The acknowledgment required by subsection (B)(8)(c) and the disclosure required by subsection (B)(8)(d) shall be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements," is not sufficient.
 - g. Disclosure of any material relationships between the purchaser representative or the purchaser representative's affiliates and the issuer or its affiliates does not relieve the purchaser representative of the obligation to act in the interest of the purchaser.
- C.** General conditions to be met. Except as otherwise provided, the following conditions are applicable to offers and sales made under this Section:
- 1. Integration. All sales that are part of the same Section R14-4-126 offering shall meet all of the terms and conditions of this Section. Offers and sales that are made more than 6 months before the start of a Section R14-4-126 offering or are made more than 6 months after completion of a Section R14-4-126 offering will not be considered part of that Section R14-4-126 offering, so long as during those 6-month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered of sold under this Section, other than those offers or sales of securities under any written purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension, or similar plan, or written compensation contract, solely for employees, directors, general partners, trustees (where the issuer is a business trust), officers, or consultants or advisors, provided that bona fide services shall be rendered by consultants or advisors and such services must not be in connection with the offer or sale of securities in a capital-raising transaction.
 - a. The term "offering" is not defined in the Securities Act or in this Section. If the issuer offers or sells securities for which the safe harbor rule in subsection (C)(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (that is, are considered "integrated") depends on the particular facts and circumstances.
 - b. Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States that are in compliance with Regulation S and are registered or otherwise exempt under the Securities Act.
 - c. The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under this Section:
 - i. Whether the sales are part of a single plan of financing;
 - ii. Whether the sales involve issuance of the same class of securities;
 - iii. Whether the sales have been made at or about the same time;
 - iv. Whether the same type of consideration is received; and
 - v. Whether the sales are made for the same general purpose.
 - 2. Information requirements.
 - a. When information shall be furnished. If the issuer sells securities to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in subsection (C)(2) to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to any accredited investor.
 - b. Type of information to be furnished if the issuer is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. At a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser, to the extent material to an understanding of the issuer, its business, and the securities being offered:
 - i. Nonfinancial statement information. If the issuer is eligible to use Regulation A, the same kind of informa-

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- tion as would be required in Part II of Form 1-A. If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use.
- ii. Financial statement information for offerings up to \$2,000,000. The information required in Item 310 of Regulation S-B, except that only the issuer's balance sheet, which shall be dated within 120 calendar days of the start of the offering, shall be audited.
 - iii. Financial statement information for offerings up to \$7,500,000. The financial statement information required in Form SB-2. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 calendar days of the start of the offering, shall be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.
 - iv. Financial Statement information for offerings over \$7,500,000. The financial statement as would be required in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 calendar days of the start of the offering, shall be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.
 - v. Information from a foreign private issuer. If the issuer is a foreign private issuer eligible to use Form 20-F under the Securities Act of 1933, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by subsection (C)(2)(b)(ii), (iii), or (iv) as appropriate.
- c. Type of information to be furnished if the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. At a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information specified in subsection (C)(2)(c)(i) or (ii), and in either event the information specified in subsection (C)(2)(c)(iii):
- i. The issuer's annual report to shareholders for the most recent fiscal year, if such annual report meets the requirements of Section 240.14a-3 or 240.14c-3 under the Securities Exchange Act of 1934, the definitive proxy statement filed in connection with the annual report, and, if requested by the purchaser in writing, a copy of the issuer's most recent Form 10-K and Form 10-KSB under the Securities Exchange Act of 1934.
 - ii. The information contained in an annual report on Form 10-K or Form 10-KSB under the Securities Exchange Act of 1934 or in a registration statement on Form S-1, SB-1, SB-2, or S-11 under the Securities Act of 1933 or on Form 10 or Form 10-SB under the Securities Exchange Act of 1934, whichever filing is the most recent required to be filed.
 - iii. The information contained in any reports or documents required to be filed by the issuer under Sections 13(a), 14(a), 14(c), and 15(d) of the Securities Exchange Act of 1934 since the distribution or filing of the report or registration statement specified in subsections (C)(2)(c)(i) or (ii), and a brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs that are not disclosed in the documents furnished.
 - iv. If the issuer is a foreign private issuer, the issuer may provide, in lieu of the information specified in subsection (C)(2)(c)(i) or (ii), the information contained in its most recent filing on Form 20-F under the Securities Exchange Act of 1934 or Form F-1 under the Securities Act of 1933.
- d. Exhibits required to be filed with the Securities and Exchange Commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K and Form 10-KSB report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon the purchaser's written request, a reasonable time prior to the purchase.
- e. At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under subsections (E) or (F), the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such nonaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon the purchaser's written request, a reasonable time prior to the purchase.
- f. The issuer shall also make available to each purchaser at a reasonable time prior to the purchaser's purchase of securities in a transaction under subsections (E) or (F) the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer pos-

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sesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under subsection (C)(2)(b) or (c).

- g. For business combinations or exchange offers, in addition to information required by Form S-4, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer that is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with subsection (C)(2)(b).
- h. At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under subsection (E) or (F), the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (C)(4)(b). Such disclosure may be contained in other materials required to be provided by this subsection (C)(2).
- 3. Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:
 - a. Any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and
 - b. Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.
- 4. Limitations on resale. Securities acquired in a transaction under this Section have the status of securities acquired in an exempt transaction under A.R.S. § 44-1844 of the Securities Act and cannot be resold without registration under the Securities Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of A.R.S. § 44-1801 of the Securities Act. Such reasonable care may be demonstrated by the following. While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, subsection (C)(2)(h) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.
 - a. Reasonable inquiry to determine if the purchaser is acquiring the securities for the purchaser or for other persons;
 - b. Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act and, therefore, cannot be resold unless they are registered under the Securities Act or unless an exemption from registration is available; and
 - c. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act and setting forth or referring to the restrictions on transferability and sale of the securities.

D. Filing of notice of sales and fees.

- 1. The issuer shall file with the Commission 1 copy of a notice on Form D at the following times:
 - a. No later than 15 calendar days after the 1st sale of securities in or from this state in an offering under this Section; and
 - b. No later than 30 calendar days after the termination of an offering under this Section; provided, however, that noncompliance with this subsection (D)(1)(b) shall not result in the loss of the exemption under this Section, if the issuer has complied with the filing requirements of subsection (D)(1)(a). If the Arizona Securities Division sends a written request to an issuer to file a final Form D, the issuer shall deliver a final Form D to the Arizona Securities Division within 30 calendar days of receipt of such request. No exemption under this Section shall be available for an issuer if such issuer or any of its predecessors or affiliates have been subject to any order, judgment, or decree of the Commission or any other court of competent jurisdiction temporarily, preliminarily, or permanently enjoining such person for failure to comply with the filing requirements of this subsection; provided, however, that the loss of exemption shall not apply if the Commission determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.
- 2. If the offering is completed within the 15-day period described in subsection (D)(1)(a) and if the notice is filed no later than the end of that period but after the completion of the offering, then only 1 notice need be filed to comply with subsections (D)(1)(a) and (b).
- 3. The notice on Form D shall contain a manual or facsimile signature of a person duly authorized by the issuer.
- 4. If sales are made under subsection (E), the notice shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished by the issuer under subsection (C)(2) to any purchaser that is not an accredited investor.
- 5. If more than 1 notice for an offering is required to be filed under subsection (D)(1), notices after the 1st notice need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B of the 1st notice.
- 6. A notice on Form D shall be considered filed with the Commission:
 - a. Upon receipt at its Phoenix office.

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- b. As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's Phoenix office if the notice is delivered to such office after the date on which it is required to be filed.
7. Issuer shall pay the fee prescribed by A.R.S. § 44-1861(E).
- E.** Limited offers and sales not exceeding \$5,000,000.
1. Exemption. Offers and sales of securities that satisfy the conditions in subsection (E)(2) by an issuer that is not an investment company under the Investment Company Act of 1940 shall be added to the class of transactions exempt under A.R.S. § 44-1844.
2. Conditions and limitations.
- a. General conditions. To qualify for exemption under this subsection (E), offers and sales shall satisfy the terms and conditions of subsections (B) through (D).
- b. Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this subsection (E) shall not exceed \$5,000,000, less the aggregate offering price for all securities sold within the 12 months before the start of and during such offering of securities in reliance on this subsection (E) or in violation of A.R.S. § 44-1841.
- c. Limitation on number of purchasers. There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer in any offering under this subsection (E).
3. Disqualification. No exemption under this subsection (E) shall be available for the securities of any issuer, if it or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities, or the underwriter of such securities:
- a. Has been convicted within the 10 years preceding the filing of the notice required by the Section, or at any time thereafter prior to the termination of the offering, of a felony or misdemeanor involving racketeering or a transaction in securities, or of which fraud is an essential element;
- b. Is subject to an order, judgment, or decree of a court of competent jurisdiction entered within 5 years of the date of filing of the notice required by this Section, temporarily, preliminarily, or permanently enjoining or restraining it, him, or her from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities, or involving fraud, deceit, or racketeering;
- c. Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within 5 years preceding the filing of the notice required by this Section, or at any time thereafter prior to the termination of the offering.
- d. Is subject to the reporting requirements of the Securities Exchange Act of 1934 and not filed all required reports during the 12 calendar months preceding the filing of the notification required by subsection (D)(1) of this Section.
- e. Is subject to an order of the Securities and Exchange Commission denying or revoking registration as a broker or dealer in securities under the Securities Exchange Act of 1934, or is subject to an order denying or revoking membership in a national securities association registered under the Securities Exchange Act of 1934, or has been suspended for a period exceeding 6 months or expelled from membership in a national securities exchange registered under the Securities Exchange Act of 1934.
- f. The Commission may, at its discretion, waive any disqualification caused by this subsection (E). A disqualification caused by subsection (E) ceases to exist if:
- i. The basis for the disqualification has been removed by the jurisdiction creating it;
- ii. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification; or
- iii. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- F.** Private offerings without regard to dollar limitations.
1. Conditions to be met. Offers to sell or sales of securities by the issuer thereof that are part of an offering complying with all the conditions of subsections (B) through (D) and this subsection (F) shall be deemed to be "transactions by an issuer not involving any public offering" within the meaning of A.R.S. § 44-1844(A)(1). Issuers may make private offerings without compliance with this subsection (F) provided such offerings completely satisfy the criteria set forth in Arizona court decisions interpreting A.R.S. § 44-1844(A)(1) and in federal court decisions interpreting Section 4(2) of the Securities Act of 1933. Issuers are cautioned, however, that in all instances in which availability of an exemption from registration under the Securities Act is claimed, the claimant has the burden of proving that the exemption claimed is available to the claimant. This subsection (F) does not shift such burden.
2. Specific conditions.
- a. Limitation on number of purchasers. There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer in any offering under this subsection (F).
- b. Nature of purchasers. Each purchaser who is not an accredited investor either alone or with the purchaser's purchaser representative(s) has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sales that such purchaser comes within this description.
- G.** Disqualifying provision relating to exemptions under subsections (E) and (F).

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1. No exemption under subsections (E) and (F) shall be available for an issuer if such issuer, any of its predecessors, or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily, or permanently enjoining such person, or any final order of an administrative agency directing such person to cease-and-desist, for failure to comply with subsection (D) or its counterpart, if any, in such jurisdiction.
 2. The Commission may, at its discretion, waive any disqualification caused by subsection (G)(1).
 3. A disqualification caused by subsection (G)(1) ceases to exist if:
 - a. The basis for the disqualification has been removed by the jurisdiction creating it;
 - b. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification; or
 - c. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- H.** Insignificant deviations from a term, condition, or requirement.
1. A failure to comply with a term, condition, or requirement of subsections (E) or (F) will not result in the loss of the exemption from the requirements of A.R.S. § 44-1841 or A.R.S. § 44-1842 for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:
 - a. The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and
 - b. The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with subsections (C)(3), (E)(2)(b), (E)(2)(c), and (F)(2)(a) shall be deemed to be significant to the offering as a whole; and
 - c. A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subsections (E) and (F).
 2. Notwithstanding subsection (H)(1), an exemption established only through reliance upon subsection (H)(1) shall constitute a violation of this Section. In such event, the Commission may take action under A.R.S. §§ 44-2032 and 44-2036 for a violation of this Section.