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FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 197

SENATE BILL 1383

AN ACT

AMENDING SECTIONS 13-2314.04, 44-1813, 44-1991, 44-2003, 44-2004 AND 44-2054, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 12, ARTICLE 13, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 44-1996 THROUGH 44-2000; AMENDING TITLE 44, CHAPTER 12, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 18 AND 19; RELATING TO SECURITIES LITIGATION.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-2314.04, Arizona Revised Statutes, is amended
3 to read:

4 13-2314.04. Racketeering; unlawful activity; civil remedies by
5 private cause of action; definitions

6 A. A person who sustains reasonably ~~foreseeable~~ FORESEEABLE injury to
7 his person, business or property by a pattern of racketeering activity, or
8 by a violation of section 13-2312 involving a pattern of racketeering
9 activity, may file an action in superior court for the recovery of up to
10 treble damages and the costs of the suit, including reasonable attorney fees
11 for trial and appellate representation. If the person against whom a
12 racketeering claim has been asserted, including a lien, prevails on that
13 claim, the person may be awarded costs and reasonable attorney fees incurred
14 in defense of that claim. NO PERSON MAY RELY ON ANY CONDUCT THAT WOULD HAVE
15 BEEN ACTIONABLE AS FRAUD IN THE PURCHASE OR SALE OF SECURITIES TO ESTABLISH
16 AN ACTION UNDER THIS SECTION EXCEPT AN ACTION AGAINST A PERSON WHO IS
17 CONVICTED OF A CRIME IN CONNECTION WITH THE FRAUD, IN WHICH CASE THE PERIOD
18 TO INITIATE A CIVIL ACTION STARTS TO RUN ON THE DATE ON WHICH THE CONVICTION
19 BECOMES FINAL.

1 B. The superior court has jurisdiction to prevent, restrain and remedy
2 a pattern of racketeering activity as defined by this section or a violation
3 of section 13-2312 involving a pattern of racketeering activity, after making
4 provision for the rights of all innocent persons affected by the violation
5 and after a hearing or trial, as appropriate, by issuing appropriate orders.

6 C. Before a determination of liability these orders may include, but
7 are not limited to, entering restraining orders or prohibitions or taking
8 such other actions, including the acceptance of satisfactory performance
9 bonds, the creation of receiverships and the enforcement of constructive
10 trusts, in connection with any property or other interest subject to damage
11 or other remedies or restraints pursuant to this section as the court deems
12 proper.

13 D. After a determination of liability these orders may include, but
14 are not limited to:

15 1. Ordering any person to divest himself of any interest, direct or
16 indirect, in any enterprise.

17 2. Imposing reasonable restrictions on the future activities or
18 investments of any person, including prohibiting any person from engaging in
19 the same type of endeavor as the enterprise engaged in, the activities of
20 which affect the laws of this state, to the extent the constitutions of the
21 United States and this state permit.

22 3. Ordering dissolution or reorganization of any enterprise.

23 4. Ordering the payment of up to treble damages to those persons
24 injured by a pattern of racketeering activity or a violation of section
25 13-2312 involving a pattern of racketeering activity.

26 5. Prejudgment interest on damages, except THAT prejudgment interest
27 may not be awarded on any increase in the damages authorized under paragraph
28 4 of this subsection.

29 6. A person or enterprise that acquires any property through an
30 offense included in the definition of racketeering in section 13-2301,
31 subsection D, paragraph 4 or a violation of section 13-2312 is an involuntary
32 trustee. The involuntary trustee and any other person or enterprise, except
33 a bona fide purchaser for value who is reasonably without notice of the
34 unlawful conduct and who is not knowingly taking part in an illegal
35 transaction, hold the property, its proceeds and its fruits in constructive
36 trust for the benefit of persons entitled to remedies under this section.

37 E. A defendant convicted in any criminal proceeding is precluded from
38 subsequently denying the essential allegations of the criminal offense of
39 which he was convicted in any civil proceedings. For the purpose of this
40 subsection, a conviction may result from a verdict or plea including a no
41 contest plea.

42 F. Notwithstanding any law prescribing a lesser period BUT SUBJECT TO
43 SUBSECTION A OF THIS SECTION, the initiation of civil proceedings pursuant
44 to this section shall be commenced within three years from the date the

1 violation was discovered, or should have been discovered with reasonable
2 diligence, and ten years after the events giving rise to the cause of action,
3 whichever comes first.

4 G. The standard of proof in actions brought pursuant to this section
5 is the preponderance of evidence test.

6 H. A person who files an action under this section shall serve notice
7 and one copy of the pleading on the attorney general within thirty days after
8 the action is filed with the superior court. This requirement is
9 jurisdictional. The notice shall identify the action, the person and the
10 person's attorney. Service of the notice does not limit or otherwise affect
11 the right of the state to maintain an action under section 13-2314 or to
12 intervene in a pending action nor does it authorize the person to name this
13 state or the attorney general as a party to the action.

14 I. On timely application, the attorney general may intervene in any
15 civil action or proceeding brought under this section if the attorney general
16 certifies that in his opinion the action is of special public importance.
17 On intervention, the attorney general may assert any available claim and is
18 entitled to the same relief as if the attorney general has instituted a
19 separate action.

20 J. In addition to the state's right to intervene as a party in any
21 action under this section, the attorney general may appear as amicus curiae
22 in any proceeding in which a claim under this section has been asserted or
23 in which a court is interpreting section 13-2301, 13-2312, 13-2313,
24 13-2314.01, 13-2314.02 or 13-2315 or this section.

25 K. A civil action authorized by this section is remedial and not
26 punitive and does not limit and is not limited by any other previous or
27 subsequent civil or criminal action under this title or any other provision
28 of law. Civil remedies provided under this title are supplemental and not
29 mutually exclusive, except that a person may not recover, for an action
30 brought pursuant to this section, punitive damages or emotional injury
31 damages in the absence of bodily injury.

32 L. A natural person shall not be held liable in damages or for other
33 relief pursuant to this section based on the conduct of another unless the
34 fact finder finds by a preponderance of the evidence that the natural person
35 authorized, requested, commanded, ratified or recklessly tolerated the
36 unlawful conduct of the other. An enterprise shall not be held liable in
37 damages or for other relief pursuant to this section based on the conduct of
38 an agent, unless the fact finder finds by a preponderance of the evidence
39 that a director or high managerial agent performed, authorized, requested,
40 commanded, ratified or recklessly tolerated the unlawful conduct of the
41 agent. A person or enterprise shall not be held liable in damages or for
42 other relief pursuant to this section unless the fact finder makes
43 particularized findings sufficient to permit full and complete review of the
44 record, if any, of the conduct of the person. A NATURAL PERSON OR ENTERPRISE

1 SHALL NOT BE HELD LIABLE IN DAMAGES FOR RECKLESSLY TOLERATING THE UNLAWFUL
2 CONDUCT OF ANOTHER PERSON OR AGENT IF THE OTHER PERSON OR AGENT ENGAGED IN
3 UNLAWFUL CONDUCT PROSCRIBED BY SECTION 13-2301, SUBSECTION D, PARAGRAPH 4,
4 SUBDIVISION (p), (r), (s) OR (t) AND THE UNLAWFUL CONDUCT INVOLVED THE
5 PURCHASE OR SALE OF SECURITIES.

6 M. Notwithstanding subsection A of this section, a court shall not
7 award costs, including attorney fees, if the award would be unjust because
8 of special circumstances, including the relevant disparate economic position
9 of the parties or the disproportionate amount of the costs, including
10 attorney fees, to the nature of the damage or other relief obtained.

11 N. If the court determines that the filing of any pleading, motion or
12 other paper under this section was frivolous or that any civil action or
13 proceeding was brought or continued under this section in bad faith,
14 vexatiously, wantonly or for an improper or oppressive reason, it shall award
15 a proper sanction to deter this conduct in the future that may include the
16 costs of the civil action or proceeding, including the costs of investigation
17 and a reasonable attorney fee in the trial and appellate courts.

18 O. Notwithstanding any other law, a complaint, counterclaim, answer
19 or response filed by a person in connection with a civil action or proceeding
20 under this section shall be verified by at least one party or his attorney.
21 If the person is represented by an attorney, any pleading, motion or other
22 paper shall be signed by at least one attorney of record in his individual
23 name, and his address shall be stated.

24 P. The verification by a person or his attorney and the signature by
25 an attorney required by subsection O of this section constitutes a
26 certification by the person or attorney that he has carefully read the
27 pleading, motion or other paper and, based on a reasonable inquiry, believes
28 all of the following:

- 29 1. It is well grounded in fact.
30 2. It is warranted by existing law or there is a good faith argument
31 for the extension, modification or reversal of existing law.
32 3. It is not made for any bad faith, vexatious, wanton, improper or
33 oppressive reason, including to harass, to cause unnecessary delay, to impose
34 a needless increase in the cost of litigation or to force an unjust
35 settlement through the serious character of the averment.

36 If any pleading, motion or other paper is signed in violation of the
37 certification provisions of this subsection, the court, on its own motion or
38 on the motion of the other party and after a hearing and appropriate findings
39 of fact, shall impose on the person who verified it or the attorney who
40 signed it, or both, a proper sanction to deter this conduct in the future,
41 including the costs of the proceeding under subsection N of this section.

42 Q. If any pleading, motion or other paper includes an averment of
43 fraud or coercion, it shall state these circumstances with particularity with
44 respect to each defendant.

1 R. In any civil action or proceeding under this section in which the
2 pleading, motion or other paper does not allege a crime of violence as a
3 racketeering act:

4 1. The term "racketeer" shall not be used in referring to any person.

5 2. The terms used to refer to acts of racketeering or a pattern of
6 racketeering activity shall be "unlawful acts" or "a pattern of unlawful
7 activity".

8 S. In this section, unless the context otherwise requires:

9 1. "Acquire" means for a person to do any of the following:

10 (a) Possess.

11 (b) Act so as to exclude another person from using the person's
12 property except on his own terms.

13 (c) Bring about or receive the transfer of any interest in property,
14 whether to himself or to another person, or to secure performance of a
15 service.

16 2. "Gain" means any benefit, interest or property of any kind without
17 reduction for expenses of acquiring or maintaining it or incurred for any
18 other reason.

19 3. "Pattern of racketeering activity" means either:

20 (a) At least two acts of racketeering as defined in section 13-2301,
21 subsection D, paragraph 4, ~~subdivisions~~ SUBDIVISION (d), (e), (f), (g), (h),
22 (i), (j), (m), (o), (p), (q), (r), (s), (t), (x) or (z) that meet the
23 following requirements:

24 (i) ~~That~~ The last act of racketeering activity that is alleged as the
25 basis of the claim occurred within five years of a prior act of racketeering.

26 (ii) ~~That~~ The acts of racketeering that are alleged as the basis of
27 the claim were related to each other or to a common external organizing
28 principle, including the affairs of an enterprise. Acts of racketeering are
29 related if they have the same or similar purposes, results, participants,
30 victims or methods of commission or are otherwise interrelated by
31 distinguishing characteristics.

32 (iii) ~~That~~ The acts of racketeering that are alleged as the basis of
33 the claim were continuous or exhibited the threat of being continuous.

34 (b) A single act of racketeering as defined in section 13-2301,
35 subsection D, paragraph 4, ~~subdivisions~~ SUBDIVISION (a), (b), (c), (k), (l),
36 (n), (u), (v), (w), (y) or (aa).

37 4. "Proceeds" means any interest in property of any kind acquired
38 through or caused by an act or omission, or derived from the act or omission,
39 directly or indirectly, and any fruits of this interest, in whatever form.

40 Sec. 2. Section 44-1813, Arizona Revised Statutes, is amended to read:

41 44-1813. Employment of personnel

42 The director with the approval of the commission, may employ from time
43 to time examiners, investigators WHO ARE COMMISSIONED PEACE OFFICERS, ~~and~~
44 clerical employees AND OTHER OFFICERS AND EMPLOYEES necessary for the

1 administration of this chapter, and REGULATORY OFFICERS AND EMPLOYEES WHO ARE
2 MEMBERS OF THE STATE BAR OF ARIZONA WHO SHALL BE PAID AT THE SAME RATE AS THE
3 RATE ESTABLISHED BY THE DEPARTMENT OF ADMINISTRATION FOR ATTORNEYS, AND ~~they~~
4 WHO shall perform the duties the director requires.

5 Sec. 3. Section 44-1991, Arizona Revised Statutes, is amended to read:
6 44-1991. Fraud in purchase or sale of securities

7 A. It is a fraudulent practice and unlawful for a person, in
8 connection with a transaction or transactions within or from this state
9 involving an offer to sell or buy securities, or a sale or purchase of
10 securities, including securities exempted under section 44-1843 or 44-1843.01
11 and including transactions exempted under section 44-1844, directly or
12 indirectly to do any of the following:

13 1. Employ any device, scheme or artifice to defraud.

14 2. Make any untrue statement of material fact, or omit to state any
15 material fact necessary in order to make the statements made, in the light
16 of the circumstances under which they were made, not misleading.

17 3. Engage in any transaction, practice or course of business which
18 operates or would operate as a fraud or deceit.

19 B. IN A PRIVATE ACTION BROUGHT PURSUANT TO SUBSECTION A, PARAGRAPH 2
20 OF THIS SECTION OR SECTION 44-1992, IF THE PERSON WHO OFFERED OR SOLD THE
21 SECURITY PROVES THAT ANY PORTION OR ALL OF THE AMOUNT RECOVERABLE UNDER
22 SUBSECTION A, PARAGRAPH 2 OF THIS SECTION OR SECTION 44-1992 REPRESENTS AN
23 AMOUNT OTHER THAN THE DEPRECIATION IN VALUE OF THE SUBJECT SECURITY RESULTING
24 FROM THE PART OF THE PROSPECTUS OR ORAL COMMUNICATION, WITH RESPECT TO THE
25 LIABILITY OF THE PERSON IS ASSERTED, NOT BEING TRUE OR OMITTING TO STATE A
26 MATERIAL FACT REQUIRED TO BE STATED OR NECESSARY TO MAKE THE STATEMENT NOT
27 MISLEADING, THEN THE AMOUNT SHALL NOT BE RECOVERABLE. THIS SUBSECTION DOES
28 NOT APPLY TO ANY ACTIONS BASED ON ALLEGATIONS OF ACTIVITIES CONSTITUTING
29 DISHONEST OR UNETHICAL PRACTICES IN THE SECURITIES INDUSTRY.

30 Sec. 4. Title 44, chapter 12, article 13, Arizona Revised Statutes,
31 is amended by adding section 44-1996, to read:

32 44-1996. Prohibition of referral fees

33 A DEALER, SALESMAN, AGENT OR PERSON ASSOCIATED WITH A DEALER, SALESMAN
34 OR AGENT SHALL NOT DIRECTLY OR INDIRECTLY SOLICIT OR ACCEPT REMUNERATION FOR
35 ASSISTING AN ATTORNEY IN OBTAINING THE REPRESENTATION OF ANY PERSON IN ANY
36 PRIVATE ACTION ARISING UNDER THIS CHAPTER, THE SECURITIES ACT OF 1933 (15
37 UNITED STATES CODE SECTIONS 77a THROUGH 77b) OR THE SECURITIES EXCHANGE
38 ACT OF 1934 (15 UNITED STATES CODE SECTIONS 78a THROUGH 78i).

39 Sec. 5. Title 44, chapter 12, article 13, Arizona Revised Statutes,
40 is amended by adding sections 44-1997 through 44-2000, to read:

41 44-1997. False registration statement; liability

42 A. IF ANY PART OF THE REGISTRATION STATEMENT FILED UNDER ANY FEDERAL
43 OR ARIZONA SECURITIES LAWS RELATING TO SECURITIES OFFERED OR SOLD WITHIN OR
44 FROM THIS STATE CONTAINED, AT THE TIME THE PART BECAME EFFECTIVE, AN UNTRUE

1 STATEMENT OF A MATERIAL FACT OR OMITTED TO STATE A MATERIAL FACT REQUIRED TO
2 BE STATED OR NECESSARY TO MAKE THE STATEMENT NOT MISLEADING, ANY PERSON
3 ACQUIRING THE SECURITIES MAY IN ANY COURT OR ADMINISTRATIVE FORUM OF
4 COMPETENT JURISDICTION COMMENCE AN ACTION AGAINST ANY OF THE FOLLOWING
5 PERSONS UNLESS IT IS PROVED THAT AT THE TIME OF THE ACQUISITION THE PURCHASER
6 KNEW OF THE UNTRUTH OR OMISSION:

7 1. EVERY PERSON WHO SIGNED THE REGISTRATION STATEMENT.

8 2. EVERY PERSON WHO WAS A DIRECTOR OR PERSON PERFORMING SIMILAR
9 FUNCTIONS OF THE ISSUER OR PARTNER IN THE ISSUER AT THE TIME OF THE FILING
10 OF THE PART OF THE REGISTRATION STATEMENT.

11 3. EVERY PERSON WHO CONSENTS TO BE AND IS NAMED IN THE REGISTRATION
12 STATEMENT AS BEING OR ABOUT TO BECOME A DIRECTOR, PERSON PERFORMING SIMILAR
13 FUNCTIONS OR PARTNER.

14 4. EVERY ACCOUNTANT, ENGINEER OR APPRAISER OR ANY PERSON WHOSE
15 PROFESSION GIVES AUTHORITY TO A STATEMENT MADE BY THE PERSON WHO WITH THE
16 PERSON'S CONSENT HAS BEEN NAMED AS HAVING PREPARED OR CERTIFIED ANY PART OF
17 THE REGISTRATION STATEMENT OR AS HAVING PREPARED OR CERTIFIED ANY REPORT OR
18 VALUATION THAT IS USED IN CONNECTION WITH THE REGISTRATION STATEMENT, WITH
19 RESPECT TO THE STATEMENT IN THE REGISTRATION STATEMENT, REPORT OR VALUATION,
20 THAT PURPORTS TO HAVE BEEN PREPARED OR CERTIFIED BY THE PERSON.

21 5. EVERY UNDERWRITER WITH RESPECT TO THE SECURITY.

22 B. IF A PERSON ACQUIRES THE SECURITY AFTER THE ISSUER HAS MADE
23 GENERALLY AVAILABLE TO ITS SECURITY HOLDERS AN EARNINGS STATEMENT COVERING
24 A PERIOD OF AT LEAST TWELVE MONTHS BEGINNING AFTER THE EFFECTIVE DATE OF THE
25 REGISTRATION STATEMENT, THE RIGHT OF RECOVERY UNDER SUBSECTION A IS
26 CONDITIONED ON PROOF THAT THE PERSON ACQUIRED THE SECURITY RELYING ON THE
27 UNTRUE STATEMENT IN THE REGISTRATION STATEMENT OR RELYING ON THE REGISTRATION
28 STATEMENT AND NOT KNOWING OF THE OMISSION. RELIANCE MAY BE ESTABLISHED
29 WITHOUT PROOF THAT THE PERSON READ THE REGISTRATION STATEMENT.

30 C. NO PERSON OTHER THAN THE ISSUER IS LIABLE UNDER SUBSECTIONS A AND
31 B WHO PROVES ANY OF THE FOLLOWING:

32 1. BEFORE THE EFFECTIVE DATE OF THE PART OF THE REGISTRATION STATEMENT
33 FOR WHICH LIABILITY IS ASSERTED THE PERSON BOTH:

34 (a) HAD RESIGNED FROM OR HAD TAKEN STEPS PERMITTED BY LAW TO RESIGN
35 FROM, OR HAD CEASED OR REFUSED TO ACT IN EVERY OFFICE, CAPACITY OR
36 RELATIONSHIP IN WHICH THE PERSON WAS DESCRIBED IN THE REGISTRATION STATEMENT
37 AS ACTING OR AGREEING TO ACT.

38 (b) HAD ADVISED THE ISSUER AND EITHER THE COMMISSION OR THE SECURITIES
39 AND EXCHANGE COMMISSION IN WRITING THAT THE PERSON HAD TAKEN THE ACTION AND
40 THAT THE PERSON WOULD NOT BE RESPONSIBLE FOR THAT PART OF THE REGISTRATION
41 STATEMENT.

42 2. IF THAT PART OF THE REGISTRATION STATEMENT BECAME EFFECTIVE WITHOUT
43 THE PERSON'S KNOWLEDGE, UPON BECOMING AWARE OF THAT FACT THE PERSON FORTHWITH
44 ACTED AND ADVISED EITHER THE COMMISSION OR THE SECURITIES AND EXCHANGE

1 COMMISSION, IN ACCORDANCE WITH PARAGRAPH 1 OF THIS SUBSECTION AND GAVE
2 REASONABLE PUBLIC NOTICE THAT THE PART OF THE REGISTRATION STATEMENT HAD
3 BECOME EFFECTIVE WITHOUT THE PERSON'S KNOWLEDGE.

4 3. REGARDING ANY PART OF THE REGISTRATION STATEMENT:

5 (a) NOT PURPORTING TO BE MADE ON THE AUTHORITY OF AN EXPERT AND NOT
6 PURPORTING TO BE A COPY OF OR EXTRACT FROM A REPORT OR VALUATION OF AN
7 EXPERT, AND NOT PURPORTING TO BE MADE ON THE AUTHORITY OF A PUBLIC OFFICIAL
8 DOCUMENT OR STATEMENT, THE PERSON HAD AFTER REASONABLE INVESTIGATION
9 REASONABLE GROUNDS TO BELIEVE AND DID BELIEVE AT THE TIME THAT PART OF THE
10 REGISTRATION STATEMENT BECAME EFFECTIVE, THAT THE STATEMENTS IN THAT PART OF
11 THE REGISTRATION STATEMENT WERE TRUE AND THAT THERE WAS NO OMISSION TO STATE
12 A MATERIAL FACT REQUIRED TO BE STATED OR NECESSARY TO MAKE THE STATEMENTS NOT
13 MISLEADING.

14 (b) PURPORTING TO BE MADE UPON THE PERSON'S AUTHORITY AS AN EXPERT OR
15 PURPORTING TO BE A COPY OF OR EXTRACT FROM A REPORT OR VALUATION OF THE
16 PERSON AS AN EXPERT EITHER OF THE FOLLOWING:

17 (i) THE PERSON HAD AFTER REASONABLE INVESTIGATION REASONABLE GROUNDS
18 TO BELIEVE AND DID BELIEVE AT THE TIME THAT PART OF THE REGISTRATION
19 STATEMENT BECAME EFFECTIVE THAT THE STATEMENTS CONTAINED IN THAT PART OF THE
20 REGISTRATION STATEMENT WERE TRUE AND THAT THERE WAS NO OMISSION TO STATE A
21 MATERIAL FACT REQUIRED TO BE STATED OR NECESSARY TO MAKE THE STATEMENTS NOT
22 MISLEADING.

23 (ii) THAT PART OF THE REGISTRATION STATEMENT DID NOT FAIRLY REPRESENT
24 THE PERSON'S STATEMENT AS AN EXPERT OR WAS NOT A FAIR COPY OF OR EXTRACT FROM
25 THE PERSON'S REPORT OR VALUATION AS AN EXPERT.

26 (c) PURPORTING TO BE MADE ON THE AUTHORITY OF ANOTHER EXPERT OR
27 PURPORTING TO BE A COPY OF OR EXTRACT FROM A REPORT OR VALUATION OF ANOTHER
28 EXPERT, THE PERSON HAD NO REASONABLE GROUNDS TO BELIEVE AND DID NOT BELIEVE
29 AT THE TIME THAT PART OF THE REGISTRATION STATEMENT BECAME EFFECTIVE THAT THE
30 STATEMENTS IN THAT PART OF THE REGISTRATION STATEMENT WERE UNTRUE OR THAT
31 THERE WAS AN OMISSION TO STATE A MATERIAL FACT REQUIRED TO BE STATED OR
32 NECESSARY TO MAKE THE STATEMENTS NOT MISLEADING, OR THAT PART OF THE
33 REGISTRATION STATEMENT DID NOT FAIRLY REPRESENT THE STATEMENT OF THE EXPERT
34 OR WAS NOT A FAIR COPY OF OR EXTRACT FROM THE REPORT OR VALUATION OF THE
35 EXPERT.

36 (d) PURPORTING TO BE A STATEMENT MADE BY AN OFFICIAL OR PURPORTING TO
37 BE A COPY OF OR EXTRACT FROM A PUBLIC OFFICIAL DOCUMENT, THE PERSON HAD NO
38 REASONABLE GROUNDS TO BELIEVE AND DID NOT BELIEVE AT THE TIME THAT PART OF
39 THE REGISTRATION STATEMENT BECAME EFFECTIVE THAT THE STATEMENTS WERE UNTRUE
40 OR THAT THERE WAS AN OMISSION TO STATE A MATERIAL FACT REQUIRED TO BE STATED
41 OR NECESSARY TO MAKE THE STATEMENTS NOT MISLEADING, OR THAT PART OF THE
42 REGISTRATION STATEMENT DID NOT FAIRLY REPRESENT THE STATEMENT MADE BY THE
43 OFFICIAL OR WAS NOT A FAIR COPY OF OR EXTRACT FROM THE PUBLIC OFFICIAL
44 DOCUMENT.

1 D. IN DETERMINING FOR THE PURPOSES OF SUBSECTION C, PARAGRAPH 3 WHAT
2 CONSTITUTES REASONABLE INVESTIGATION AND REASONABLE GROUNDS FOR BELIEF, THE
3 STANDARD OF REASONABLENESS IS THE STANDARD REQUIRED OF A PRUDENT PERSON IN
4 THE MANAGEMENT OF THE PERSON'S OWN PROPERTY.

5 E. IF ANY PERSON BECOMES AN UNDERWRITER OF THE SECURITY AFTER THE PART
6 OF THE REGISTRATION STATEMENT WITH RESPECT TO WHICH THE PERSON'S LIABILITY
7 IS ASSERTED BECOMES EFFECTIVE, FOR THE PURPOSES OF SUBSECTION C, PARAGRAPH
8 3 THAT PART OF THE REGISTRATION STATEMENT SHALL BE CONSIDERED EFFECTIVE WITH
9 RESPECT TO THE PERSON AS OF THE DATE THE PERSON BECAME AN UNDERWRITER.

10 F. IF THE DEFENDANT PROVES THAT ANY PORTION OR ALL OF THE DAMAGES
11 REPRESENTS AN AMOUNT OTHER THAN THE DEPRECIATION IN VALUE OF THE SECURITY
12 RESULTING FROM THE STATEMENT DESCRIBED IN SUBSECTION A, THE PORTION OR ALL
13 OF THE DAMAGES ARE NOT RECOVERABLE. THE ACTION AUTHORIZED UNDER SUBSECTION
14 A OR B MAY BE TO RECOVER THE DAMAGES REPRESENTED BY THE DIFFERENCE BETWEEN
15 THE AMOUNT PAID FOR THE SECURITY, NOT TO EXCEED THE PRICE AT WHICH THE
16 SECURITY WAS OFFERED TO THE PUBLIC, AND ANY OF THE FOLLOWING:

17 1. THE VALUE OF THE SECURITY AS OF THE TIME THE ACTION WAS BROUGHT.

18 2. THE PRICE AT WHICH THE SECURITY WAS DISPOSED OF IN THE MARKET
19 BEFORE THE ACTION WAS BROUGHT.

20 3. THE PRICE AT WHICH THE SECURITY WAS DISPOSED OF AFTER THE ACTION
21 BUT BEFORE JUDGMENT IF THE DAMAGES ARE LESS THAN THEY WOULD BE IF DETERMINED
22 UNDER PARAGRAPH 1 OF THIS SUBSECTION.

23 G. UNLESS THE UNDERWRITER HAS KNOWINGLY RECEIVED DIRECTLY OR
24 INDIRECTLY FROM THE ISSUER FOR ACTING AS AN UNDERWRITER SOME BENEFIT IN WHICH
25 ALL OTHER UNDERWRITERS SIMILARLY SITUATED DID NOT SHARE IN PROPORTION TO
26 THEIR RESPECTIVE INTERESTS IN THE UNDERWRITING, THE UNDERWRITER IS NOT LIABLE
27 IN ANY ACTION OR AS A CONSEQUENCE OF AN ACTION BROUGHT UNDER SUBSECTION A FOR
28 DAMAGES GREATER THAN THE TOTAL PRICE AT WHICH THE SECURITIES UNDERWRITTEN BY
29 THE UNDERWRITER AND DISTRIBUTED TO THE PUBLIC WERE OFFERED TO THE PUBLIC.

30 H. IN ANY ACTION UNDER THIS SECTION THE COURT MAY REQUIRE AN
31 UNDERTAKING FOR THE PAYMENT OF THE COSTS OF THE ACTION, INCLUDING REASONABLE
32 ATTORNEYS FEES. IF JUDGMENT IS RENDERED AGAINST A PARTY ON THE MOTION OF THE
33 OTHER PARTY, THE COSTS MAY BE ASSESSED IN FAVOR OF THE PARTY WHETHER OR NOT
34 THE UNDERTAKING HAS BEEN REQUIRED IF THE COURT BELIEVES THE ACTION OR THE
35 DEFENSE TO HAVE BEEN WITHOUT MERIT, IN AN AMOUNT SUFFICIENT TO REIMBURSE THE
36 PARTY FOR THE REASONABLE EXPENSES INCURRED BY THE PARTY IN CONNECTION WITH
37 THE ACTION. THE COSTS AWARDED ARE TAXABLE IN THE MANNER USUALLY PROVIDED FOR
38 TAXING OF COSTS IN THE COURT IN WHICH THE ACTION WAS HEARD.

39 I. ANY OR ALL OF THE PERSONS SPECIFIED IN SUBSECTION A SHALL BE
40 JOINTLY AND SEVERALLY LIABLE. EVERY PERSON WHO BECOMES LIABLE FOR ANY
41 PAYMENT UNDER THIS SECTION MAY RECOVER CONTRIBUTION FROM ANY PERSON WHO, IF
42 SUED SEPARATELY, WOULD HAVE BEEN LIABLE FOR THE SAME PAYMENT, UNLESS THE
43 PERSON WHO HAS BECOME LIABLE ALSO IS GUILTY OF FRAUDULENT MISREPRESENTATION
44 UNDER FEDERAL SECURITIES LAWS AND THE OTHER PERSON IS NOT.

1 J. THE AMOUNT RECOVERABLE UNDER THIS SECTION SHALL NOT EXCEED THE
2 PRICE AT WHICH THE SECURITY WAS OFFERED TO THE PUBLIC.

3 44-1998. Offers and sales; liability

4 A. IN ANY CASE RELATING TO SECURITIES OFFERED OR SOLD WITHIN OR FROM
5 THIS STATE, ANY PERSON WHO OFFERS OR SELLS A SECURITY BY MEANS OF A
6 PROSPECTUS OR ORAL COMMUNICATION THAT INCLUDES AN UNTRUE STATEMENT OF A
7 MATERIAL FACT OR OMITTS TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE
8 THE STATEMENTS, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT
9 MISLEADING IS LIABLE TO THE PURCHASER OF THE SECURITY FROM THAT PERSON, AS
10 LONG AS THE PURCHASER DID NOT KNOW OF THE UNTRUTH OR OMISSION, AS PROVIDED
11 BY THIS SECTION. THE PURCHASER MAY BRING AN ACTION IN ANY COURT OR
12 ADMINISTRATIVE FORUM OF COMPETENT JURISDICTION TO RECOVER THE CONSIDERATION
13 PAID FOR THE SECURITY WITH INTEREST, MINUS THE AMOUNT OF ANY INCOME RECEIVED
14 FROM THE SECURITY, ON THE TENDER OF THE SECURITY, OR FOR DAMAGES IF THE
15 PURCHASER NO LONGER OWNS THE SECURITY. THE PERSON HAS THE BURDEN OF PROOF
16 THAT THE PERSON DID NOT KNOW AND IN THE EXERCISE OF REASONABLE CARE COULD NOT
17 HAVE KNOWN OF THE UNTRUTH OR OMISSION. IF THE PERSON MEETS THE BURDEN OF
18 PROOF, THE PERSON IS NOT LIABLE. THIS SUBSECTION APPLIES NOTWITHSTANDING
19 ANY EXEMPTION UNDER SECTION 77C OF THE SECURITIES ACT OF 1933 (15 UNITED
20 STATES CODE SECTIONS 77a THROUGH 77bbbb), EXCEPT FOR AN EXEMPTION UNDER
21 SUBSECTION A, PARAGRAPH 2 OF THAT SECTION, AND NOTWITHSTANDING ANY EXEMPTION
22 UNDER ARTICLE 4 OR 7 OF THIS CHAPTER, EXCEPT FOR SECTION 44-1843, SUBSECTION
23 A, PARAGRAPH 1.

24 B. IN AN ACTION UNDER SUBSECTION A OF THIS SECTION, IF THE PERSON WHO
25 OFFERED OR SOLD THE SECURITY PROVES THAT ANY PORTION OR ALL OF THE AMOUNT
26 RECOVERABLE UNDER SUBSECTION A OF THIS SECTION REPRESENTS AN AMOUNT OTHER
27 THAN THE DEPRECIATION IN VALUE OF THE SUBJECT SECURITY RESULTING FROM THE
28 ASSERTED UNTRUTH OR OMISSION THE PORTION OR AMOUNT IS NOT RECOVERABLE.

29 44-1999. Controlling persons; liability

30 EVERY PERSON WHO, BY OR THROUGH STOCK OWNERSHIP, AGENCY OR OTHERWISE
31 OR WHO PURSUANT TO OR IN CONNECTION WITH AN AGREEMENT OR UNDERSTANDING WITH
32 ONE OR MORE OTHER PERSONS BY OR THROUGH STOCK OWNERSHIP, AGENCY OR OTHERWISE
33 CONTROLS ANY PERSON LIABLE UNDER ARTICLE 13 OF THIS CHAPTER, OTHER THAN
34 SECTIONS 44-1991 OR 44-1992, SHALL BE LIABLE JOINTLY AND SEVERALLY WITH AND
35 TO THE SAME EXTENT AS THE CONTROLLED PERSON TO ANY PERSON TO WHOM THE
36 CONTROLLED PERSON IS LIABLE, UNLESS THE CONTROLLING PERSON HAD NO KNOWLEDGE
37 OF OR REASONABLE GROUNDS TO BELIEVE IN THE EXISTENCE OF THE FACTS BY REASON
38 OF WHICH THE LIABILITY OF THE CONTROLLED PERSON IS ALLEGED TO EXIST. EVERY
39 PERSON WHO, DIRECTLY OR INDIRECTLY, CONTROLS ANY PERSON LIABLE FOR A
40 VIOLATION OF SECTION 44-1991 OR 44-1992 SHALL BE LIABLE JOINTLY AND SEVERALLY
41 WITH AND TO THE SAME EXTENT AS THE CONTROLLED PERSON TO ANY PERSON TO WHOM
42 THE CONTROLLED PERSON IS LIABLE UNLESS THE CONTROLLING PERSON ACTED IN GOOD
43 FAITH AND DID NOT DIRECTLY OR INDIRECTLY INDUCE THE ACT UNDERLYING THE
44 ACTION.

1 44-2000. Contrary stipulations void

2 ANY CONDITION, STIPULATION OR PROVISION BINDING ANY PERSON ACQUIRING
3 ANY SECURITY TO WAIVE COMPLIANCE WITH ANY PROVISION OF THIS CHAPTER OR TITLE
4 44, CHAPTER 13 OR OF THE RULES OF THE COMMISSION IS VOID.

5 Sec. 6. Section 44-2003, Arizona Revised Statutes, is amended to read:

6 44-2003. Joint and several liability of offending sellers and
7 purchasers; proportionate liability; determination
8 of responsibility; uncollectible share; settlement
9 discharge; limitation on actions; definitions

10 A. SUBJECT TO THE PROVISIONS OF THIS SECTION, an action brought under
11 ~~sections~~ SECTION 44-2001 ~~or~~, 44-2002 OR 44-2032 may be brought against any
12 person, including any dealer, salesman or agent, who made, participated in
13 or induced the unlawful sale or purchase, and such persons shall be jointly
14 and severally liable to the purchaser or seller entitled to maintain such
15 action. NO PERSON SHALL BE DEEMED TO HAVE PARTICIPATED IN ANY SALE OR
16 PURCHASE SOLELY BY REASON OF HAVING ACTED IN THE ORDINARY COURSE OF THAT
17 PERSON'S PROFESSIONAL CAPACITY IN CONNECTION WITH THAT SALE OR PURCHASE.

18 B. ANY COVERED PERSON AGAINST WHOM A FINAL JUDGMENT IS ENTERED IN A
19 PRIVATE ACTION IS JOINTLY AND SEVERALLY LIABLE FOR DAMAGES ONLY IF THE TRIER
20 OF FACT DETERMINES THAT THE COVERED PERSON RECKLESSLY OR KNOWINGLY COMMITTED
21 A VIOLATION OF THIS CHAPTER.

22 C. A COVERED PERSON AGAINST WHOM A FINAL JUDGMENT IS ENTERED IN A
23 PRIVATE ACTION IS LIABLE SOLELY FOR THE PORTION OF THE JUDGMENT THAT
24 CORRESPONDS TO THE PERCENTAGE OF RESPONSIBILITY OF THE COVERED PERSON AS
25 PRESCRIBED IN SUBSECTION D OF THIS SECTION. IN ANY CASE IN WHICH A
26 CONTRACTUAL RELATIONSHIP PERMITS, A COVERED PERSON WHO PREVAILS IN ANY
27 PRIVATE ACTION MAY RECOVER THE ATTORNEY FEES AND COSTS OF THAT COVERED PERSON
28 FOR THE PRIVATE ACTION.

29 D. THE COURT IN A PRIVATE ACTION SHALL INSTRUCT THE JURY TO ANSWER
30 SPECIAL INTERROGATORIES, OR IF THERE IS NO JURY, MAKE FINDINGS, FOR EACH
31 COVERED PERSON AND ANY OTHER PERSON THE PARTIES CLAIM TO HAVE CAUSED OR
32 CONTRIBUTED TO THE LOSS INCURRED BY THE PLAINTIFF, INCLUDING ANY PERSON WHO
33 HAS ENTERED INTO A SETTLEMENT WITH THE PLAINTIFF OR PLAINTIFFS, CONCERNING
34 EACH OF THE FOLLOWING:

35 1. WHETHER THE PERSON COMMITTED A VIOLATION OF THIS CHAPTER.

36 2. THE PERCENTAGE OF RESPONSIBILITY OF THE PERSON, MEASURED AS A
37 PERCENTAGE OF THE TOTAL FAULT OF ALL PERSONS WHO CAUSED OR CONTRIBUTED TO THE
38 LOSS INCURRED BY THE PLAINTIFF.

39 3. WHETHER THE PERSON KNOWINGLY COMMITTED A VIOLATION OF THIS CHAPTER.

40 E. THE RESPONSES TO THE INTERROGATORIES OR FINDINGS UNDER SUBSECTION
41 D OF THIS SECTION SHALL SPECIFY THE TOTAL AMOUNT OF DAMAGES THAT THE
42 PLAINTIFF IS ENTITLED TO RECOVER AND THE PERCENTAGE OF RESPONSIBILITY OF EACH
43 COVERED PERSON FOUND TO HAVE CAUSED OR CONTRIBUTED TO THE LOSS INCURRED BY
44 THE PLAINTIFF OR PLAINTIFFS. IN DETERMINING THE PERCENTAGE OF RESPONSIBILITY

1 UNDER THIS SECTION, THE TRIER OF FACT SHALL CONSIDER BOTH THE NATURE AND
2 EXTENT OF:

3 1. THE CONDUCT OF EACH COVERED PERSON FOUND TO HAVE CAUSED OR
4 CONTRIBUTED TO THE LOSS INCURRED BY THE PLAINTIFF OR PLAINTIFFS.

5 2. THE CAUSAL RELATIONSHIP BETWEEN THE CONDUCT OF EACH COVERED PERSON
6 AND THE DAMAGES INCURRED BY THE PLAINTIFF OR PLAINTIFFS.

7 F. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, ON A MOTION MADE
8 WITHIN SIX MONTHS AFTER A FINAL JUDGMENT IS ENTERED IN ANY PRIVATE ACTION,
9 IF THE COURT DETERMINES THAT ALL OR PART OF THE SHARE OF THE JUDGMENT OF THE
10 COVERED PERSON IS NOT COLLECTIBLE AGAINST THAT COVERED PERSON AND IS ALSO NOT
11 COLLECTIBLE AGAINST A COVERED PERSON DESCRIBED IN SUBSECTION B OF THIS
12 SECTION, EACH COVERED PERSON DESCRIBED IN SUBSECTION C OF THIS SECTION IS
13 LIABLE FOR THE UNCOLLECTIBLE SHARE AS FOLLOWS:

14 1. EACH COVERED PERSON IS JOINTLY AND SEVERALLY LIABLE FOR THE
15 UNCOLLECTIBLE SHARE IF THE PLAINTIFF ESTABLISHES THAT THE PLAINTIFF IS AN
16 INDIVIDUAL WHOSE RECOVERABLE DAMAGES UNDER THE FINAL JUDGMENT ARE GREATER
17 THAN TEN PER CENT OF THE NET WORTH OF THE PLAINTIFF, AND THE PLAINTIFF'S NET
18 WORTH IS LESS THAN TWO HUNDRED THOUSAND DOLLARS, EXCLUDING THE VALUE OF THE
19 PLAINTIFF'S OWNED PRIMARY RESIDENCE.

20 2. WITH RESPECT TO ANY PLAINTIFF NOT DESCRIBED IN PARAGRAPH 1 OF THIS
21 SUBSECTION, EACH COVERED PERSON IS LIABLE FOR THE UNCOLLECTIBLE SHARE IN
22 PROPORTION TO THE PERCENTAGE OF RESPONSIBILITY OF THAT COVERED PERSON, EXCEPT
23 THAT THE TOTAL LIABILITY OF A COVERED PERSON UNDER THIS SUBSECTION MAY NOT
24 EXCEED FIFTY PER CENT OF THE PROPORTIONATE SHARE OF THAT COVERED PERSON, AS
25 DETERMINED UNDER SUBSECTION E OF THIS SECTION.

26 G. FOR PURPOSES OF SUBSECTION F OF THIS SECTION, NET WORTH IS
27 DETERMINED AS OF THE DATE IMMEDIATELY PRECEDING THE DATE OF THE PURCHASE OR
28 SALE BY THE PLAINTIFF OF THE SECURITY THAT IS THE SUBJECT OF THE ACTION AND
29 IS EQUAL TO THE FAIR MARKET VALUE OF ASSETS, MINUS LIABILITIES, INCLUDING THE
30 NET VALUE OF THE PLAINTIFF'S INVESTMENTS IN REAL AND PERSONAL PROPERTY AND
31 PERSONAL RESIDENCES.

32 H. THE TOTAL PAYMENTS REQUIRED PURSUANT TO SUBSECTION F OF THIS
33 SECTION SHALL NOT EXCEED THE AMOUNT OF THE UNCOLLECTIBLE SHARE. A COVERED
34 PERSON AGAINST WHOM JUDGMENT IS NOT COLLECTIBLE IS SUBJECT TO CONTRIBUTION
35 AND TO ANY CONTINUING LIABILITY TO THE PLAINTIFF ON THE JUDGMENT.

36 I. TO THE EXTENT THAT A COVERED PERSON IS REQUIRED TO MAKE AN
37 ADDITIONAL PAYMENT PURSUANT TO SUBSECTION F OF THIS SECTION, THE COVERED
38 PERSON MAY RECOVER CONTRIBUTION FROM ANY OF THE FOLLOWING OR ANY COMBINATION
39 OF THE FOLLOWING:

40 1. THE COVERED PERSON ORIGINALLY LIABLE TO MAKE THE PAYMENT.

41 2. ANY COVERED PERSON LIABLE JOINTLY AND SEVERALLY PURSUANT TO
42 SUBSECTION B OF THIS SECTION.

1 3. ANY COVERED PERSON WHO IS HELD PROPORTIONATELY LIABLE PURSUANT TO
2 THIS SECTION, WHO IS LIABLE TO MAKE THE SAME PAYMENT AND WHO HAS PAID LESS
3 THAN THE PERSON'S PROPORTIONATE SHARE OF THAT PAYMENT.

4 4. ANY OTHER PERSON RESPONSIBLE FOR THE CONDUCT GIVING RISE TO THE
5 PAYMENT THAT WOULD HAVE BEEN LIABLE TO MAKE THE SAME PAYMENT.

6 J. THE STANDARD FOR ALLOCATION OF DAMAGES UNDER SUBSECTIONS B, C AND
7 D OF THIS SECTION AND THE PROCEDURE FOR REALLOCATION OF UNCOLLECTIBLE SHARES
8 UNDER SUBSECTION F OF THIS SECTION SHALL NOT BE DISCLOSED TO MEMBERS OF THE
9 JURY.

10 K. IF A COVERED PERSON SETTLES ANY PRIVATE ACTION AT ANY TIME BEFORE
11 A FINAL VERDICT OR JUDGMENT, THE COURT SHALL ENTER AN ORDER DISCHARGING THE
12 COVERED PERSON FROM ALL CLAIMS FOR CONTRIBUTION BROUGHT BY OTHER PERSONS.
13 ON ENTRY OF THE SETTLEMENT BY THE COURT, THE COURT SHALL ENTER A BAR ORDER
14 CONSTITUTING THE FINAL DISCHARGE OF ALL OBLIGATIONS TO THE PLAINTIFF OF THE
15 SETTLING COVERED PERSON ARISING OUT OF THE ACTION. THE ORDER BARS ALL FUTURE
16 CLAIMS FOR CONTRIBUTION ARISING OUT OF THE ACTION BY:

17 1. ANY PERSON AGAINST THE SETTLING COVERED PERSON.

18 2. THE SETTLING COVERED PERSON AGAINST ANY PERSON, OTHER THAN A PERSON
19 WHOSE LIABILITY HAS BEEN EXTINGUISHED BY THE SETTLEMENT OF THE SETTLING
20 COVERED PERSON.

21 L. IF A COVERED PERSON ENTERS INTO A SETTLEMENT WITH THE PLAINTIFF
22 BEFORE A FINAL VERDICT OR JUDGMENT, THE VERDICT OR JUDGMENT SHALL BE REDUCED
23 BY THE GREATER OF EITHER:

24 1. THE AMOUNT THAT CORRESPONDS TO THE PERCENTAGE OF RESPONSIBILITY OF
25 THAT COVERED PERSON.

26 2. THE AMOUNT PAID TO THE PLAINTIFF BY THAT COVERED PERSON.

27 M. EXCEPT AS PROVIDED IN SUBSECTION K OF THIS SECTION, A COVERED
28 PERSON WHO BECOMES JOINTLY AND SEVERALLY LIABLE FOR DAMAGES IN ANY PRIVATE
29 ACTION MAY RECOVER CONTRIBUTION FROM ANY OTHER PERSON WHO, IF JOINED IN THE
30 ORIGINAL ACTION, WOULD HAVE BEEN LIABLE FOR THE SAME DAMAGES. A CLAIM FOR
31 CONTRIBUTION SHALL BE DETERMINED BASED ON THE PERCENTAGE OF RESPONSIBILITY
32 OF THE CLAIMANT AND OF EACH PERSON AGAINST WHOM A CLAIM FOR CONTRIBUTION IS
33 MADE.

34 N. IN ANY PRIVATE ACTION DETERMINING LIABILITY, AN ACTION FOR
35 CONTRIBUTION SHALL BE BROUGHT WITHIN SIX MONTHS AFTER THE ENTRY OF A FINAL,
36 NONAPPEALABLE JUDGMENT IN THE ACTION, EXCEPT THAT AN ACTION FOR CONTRIBUTION
37 BROUGHT BY A COVERED PERSON WHO WAS REQUIRED TO MAKE AN ADDITIONAL PAYMENT
38 PURSUANT TO SUBSECTION F OF THIS SECTION MAY BE BROUGHT WITHIN SIX MONTHS
39 AFTER THE DATE ON WHICH THE PAYMENT WAS MADE.

40 O. FOR PURPOSES OF THIS SECTION, RECKLESS CONDUCT BY A COVERED PERSON
41 DOES NOT CONSTITUTE A KNOWING VIOLATION OF THIS CHAPTER BY THE COVERED
42 PERSON.

P. FOR THE PURPOSES OF THIS SECTION:

1. "COVERED PERSON" MEANS A DEFENDANT IN ANY PRIVATE ACTION ARISING UNDER SECTIONS 44-1991 AND 44-1992 OR A DEFENDANT WHO IS AN OUTSIDE DIRECTOR IN A PRIVATE ACTION ARISING UNDER SECTION 44-1997.

2. "KNOWINGLY COMMITTED A VIOLATION OF THIS CHAPTER" MEANS EITHER:

(a) IN AN ACTION THAT IS BASED ON AN UNTRUE STATEMENT OF MATERIAL FACT OR OMISSION OF A MATERIAL FACT NECESSARY TO MAKE THE STATEMENT NOT MISLEADING, THE COVERED PERSON MAKES AN UNTRUE STATEMENT OF A MATERIAL FACT WITH ACTUAL KNOWLEDGE THAT THE REPRESENTATION IS FALSE OR OMITTS THE STATEMENT OF A FACT NECESSARY IN ORDER TO MAKE THE STATEMENT MADE NOT MISLEADING, WITH ACTUAL KNOWLEDGE THAT, AS A RESULT OF THE OMISSION, ONE OF THE MATERIAL REPRESENTATIONS OF THE COVERED PERSON IS FALSE AND OTHER PERSONS ARE LIKELY TO REASONABLY RELY ON THAT MISREPRESENTATION OR OMISSION.

(b) IN AN ACTION THAT IS BASED ON ANY CONDUCT THAT IS NOT DESCRIBED IN SUBDIVISION (a), THE COVERED PERSON ENGAGES IN CONDUCT WITH ACTUAL KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES THAT MAKE THE CONDUCT OF THAT COVERED PERSON A VIOLATION OF THIS CHAPTER.

Sec. 7. Section 44-2004, Arizona Revised Statutes, is amended to read:

44-2004. Limitation of civil actions

A. No civil action shall be maintained under this article to enforce any liability ~~founded upon~~ BASED ON a violation of section 44-1841 or 44-1842 unless brought within one year after ~~such~~ THE violation occurs.

B. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, no civil action shall be brought under this article to enforce any liability ~~founded upon~~ BASED ON a violation of article 13 unless brought within two years after discovery of the fraudulent practice ~~upon~~ ON which the liability is ~~founded~~ BASED, or after ~~such~~ THE discovery should have been made by the exercise of reasonable diligence.

C. NO CIVIL ACTION SHALL BE BROUGHT UNDER THIS ARTICLE TO ENFORCE ANY LIABILITY BASED ON A VIOLATION OF SECTION 44-1997 OR 44-1998 UNLESS BROUGHT WITHIN ONE YEAR AFTER THE DISCOVERY OF THE UNTRUE STATEMENT OR THE OMISSION OR AFTER THE DISCOVERY SHOULD HAVE BEEN MADE BY THE EXERCISE OF REASONABLE DILIGENCE. NO ACTION SHALL BE BROUGHT TO ENFORCE A LIABILITY CREATED UNDER SECTION 44-1997 MORE THAN THREE YEARS AFTER THE SECURITY WAS BONA FIDELY OFFERED TO THE PUBLIC OR UNDER SECTION 44-1998 MORE THAN THREE YEARS AFTER THE SALE.

Sec. 8. Section 44-2054, Arizona Revised Statutes, is amended to read:

44-2054. Capital markets account; loans; repayment; allocation; report

A. The commerce and economic development commission, on request of the director of the securities division of the corporation commission, shall make one or more loans, if it believes such loans are prudent, from the capital markets account to any corporation for the purpose of establishing an

1 exchange located in Arizona, subsequent expansion or improvement of the
2 exchange or funding any operating deficits. Monies borrowed from the
3 commerce and economic development commission may be used for the purpose of
4 developing an exchange, including acquiring necessary computer hardware and
5 software and telecommunications equipment, renting space, hiring staff,
6 obtaining registration of an exchange with the United States securities and
7 exchange commission, funding initial operating deficits, acquiring listings
8 and marketing the exchange's services and all other necessary or appropriate
9 purposes for creation and operation of a securities exchange. The commerce
10 and economic development commission may impose conditions and restrictions
11 on the loan as it deems necessary and in the public interest.

12 B. Revenues of an exchange receiving one or more loans under
13 subsection A of this section, after payment of all operating expenses, shall
14 be used to repay loans from the capital markets account. All loan repayments
15 and fees collected from section 44-1843, section 44-1861, subsections C and
16 E and section 44-1892, paragraph 3 shall be used by the commerce and economic
17 development commission for the purposes prescribed by section 41-1505.07,
18 except that each year on January 2, ~~two~~ FIVE hundred ~~fifty~~ thousand dollars
19 shall be transferred from the account to the securities regulatory and
20 enforcement fund established by section 44-2039 for the purpose of ENFORCING
21 THIS CHAPTER AND TITLE 44, CHAPTER 13 AND regulating the exchange and
22 operating the public reference rooms established by section 44-2055. The
23 director shall abstain from all votes of the commerce and economic
24 development commission relating to loans to a corporation for the purpose of
25 establishing a securities exchange.

26 C. Each year, on or before January 15, April 15, July 15 and October
27 15, the commerce and economic development commission shall file with the
28 governor, with copies to the director of the department of administration,
29 the president of the senate, the speaker of the house of representatives and
30 the chairman of the corporation commission, a full and complete account of
31 the receipts and disbursements from the capital markets account in the
32 previous quarter.

33 Sec. 9. Title 44, chapter 12, Arizona Revised Statutes, is amended by
34 adding articles 18 and 19, to read:

35 ARTICLE 18. PRIVATE SECURITIES LITIGATION

36 44-2081. Private securities class action litigation

37 A. THIS SECTION APPLIES IN EACH PRIVATE ACTION THAT ARISES UNDER THIS
38 CHAPTER AND THAT IS BROUGHT AS A PLAINTIFF CLASS ACTION PURSUANT TO THE
39 ARIZONA RULES OF CIVIL PROCEDURE OR ANY FEDERAL OR OTHER JURISDICTIONAL
40 COUNTERPART TO THE RULES.

41 B. EACH PLAINTIFF SEEKING TO SERVE AS A REPRESENTATIVE PARTY ON BEHALF
42 OF A CLASS SHALL PROVIDE A SWORN CERTIFICATION TO THE COURT THAT IS SIGNED
43 BY THE PLAINTIFF, FILED WITH THE COMPLAINT AND INCLUDES A STATEMENT THAT:

1 1. THE PLAINTIFF HAS REVIEWED THE COMPLAINT AND HAS AUTHORIZED ITS
2 FILING.

3 2. THE PLAINTIFF DID NOT PURCHASE THE SECURITY THAT IS THE SUBJECT OF
4 THE COMPLAINT AT THE DIRECTION OF THE PLAINTIFF'S COUNSEL OR IN ORDER TO
5 PARTICIPATE IN ANY PRIVATE ACTION ARISING UNDER THIS CHAPTER.

6 3. THE PLAINTIFF IS WILLING TO SERVE AS A REPRESENTATIVE PARTY ON
7 BEHALF OF A CLASS, INCLUDING PROVIDING TESTIMONY AT A DEPOSITION OR TRIAL.

8 4. SETS FORTH ALL OF THE PLAINTIFF'S TRANSACTIONS INVOLVING THE
9 SECURITY THAT IS THE SUBJECT OF THE COMPLAINT DURING THE CLASS PERIOD
10 SPECIFIED IN THE COMPLAINT.

11 5. IDENTIFIES ANY OTHER ACTION UNDER THIS CHAPTER, THE SECURITIES ACT
12 OF 1933 (15 UNITED STATES CODE SECTIONS 77a THROUGH 77b) OR THE SECURITIES
13 EXCHANGE ACT OF 1934 (15 UNITED STATES CODE SECTIONS 78a THROUGH 78i) FILED
14 WITHIN THREE YEARS BEFORE THE PLAINTIFF SIGNS THE CERTIFICATION IN WHICH THE
15 PLAINTIFF HAS SOUGHT TO SERVE AS A REPRESENTATIVE PARTY ON BEHALF OF A CLASS.

16 6. THE PLAINTIFF WILL NOT ACCEPT ANY PAYMENT FOR SERVING AS A
17 REPRESENTATIVE PARTY ON BEHALF OF A CLASS BEYOND THE PLAINTIFF'S PRO RATA
18 SHARE OF ANY RECOVERY, EXCEPT AS ORDERED OR APPROVED BY THE COURT IN
19 ACCORDANCE WITH SUBSECTION J.

20 C. THE CERTIFICATION FILED PURSUANT TO SUBSECTION B IS NOT A WAIVER
21 OF THE ATTORNEY CLIENT PRIVILEGE.

22 D. WITHIN TWENTY DAYS AFTER THE DATE ON WHICH THE COMPLAINT IS FILED,
23 THE PLAINTIFF OR PLAINTIFFS SHALL PUBLISH, IN A WIDELY CIRCULATED NATIONAL
24 BUSINESS-ORIENTED PUBLICATION OR WIRE SERVICE, A NOTICE ADVISING MEMBERS OF
25 THE PURPORTED PLAINTIFF CLASS OF THE PENDENCY OF THE ACTION, THE CLAIMS
26 ASSERTED AND THE PURPORTED CLASS PERIOD. THE NOTICE SHALL INCLUDE A
27 STATEMENT THAT, WITHIN SIXTY DAYS AFTER THE DATE ON WHICH THE NOTICE IS
28 PUBLISHED, ANY MEMBER OF THE PURPORTED CLASS MAY MOVE THE COURT TO SERVE AS
29 LEAD PLAINTIFF OF THE PURPORTED CLASS. IF MORE THAN ONE ACTION ON BEHALF OF
30 A CLASS ASSERTING SUBSTANTIALLY THE SAME CLAIM OR CLAIMS ARISING UNDER THIS
31 ARTICLE IS FILED, ONLY THE PLAINTIFF OR PLAINTIFFS IN THE FIRST FILED ACTION
32 ARE REQUIRED TO PUBLISH THE NOTICE. THE NOTICE IS IN ADDITION TO ANY NOTICE
33 REQUIRED PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE OR ANY FEDERAL OR
34 OTHER JURISDICTIONAL COUNTERPART TO THE RULES. NOTWITHSTANDING THIS
35 SUBSECTION, THE COURT MAY NARROW THE GEOGRAPHIC SCOPE OF THE PUBLICATION OF
36 THE NOTICE REQUIRED BY THIS SUBSECTION, IF THE COURT FINDS THAT SUBSTANTIALLY
37 ALL MEMBERS OF THE CLASS WOULD RECEIVE NOTICE.

38 E. WITHIN NINETY DAYS AFTER THE DATE ON WHICH A NOTICE IS PUBLISHED
39 UNDER SUBSECTION D THE COURT SHALL CONSIDER ANY MOTION MADE BY A PURPORTED
40 CLASS MEMBER IN RESPONSE TO THE NOTICE, INCLUDING ANY MOTION BY A CLASS
41 MEMBER WHO IS NOT INDIVIDUALLY NAMED AS A PLAINTIFF IN THE COMPLAINT OR
42 COMPLAINTS, AND SHALL APPOINT THE MOST ADEQUATE PLAINTIFF AS LEAD PLAINTIFF.
43 THE MOST ADEQUATE PLAINTIFF IS THAT MEMBER OR MEMBERS OF THE PURPORTED
44 PLAINTIFF CLASS THAT THE COURT DETERMINES TO BE MOST CAPABLE OF ADEQUATELY

1 REPRESENTING THE INTERESTS OF CLASS MEMBERS IN ACCORDANCE WITH THIS
2 SUBSECTION. SUBJECT TO SUBSECTION F, THE COURT SHALL ADOPT A PRESUMPTION
3 THAT THE MOST ADEQUATE PLAINTIFF IN ANY PRIVATE ACTION ARISING UNDER THIS
4 CHAPTER IS THE PERSON OR GROUP OF PERSONS THAT HAS EITHER FILED THE COMPLAINT
5 OR MADE A MOTION IN RESPONSE TO A NOTICE UNDER SUBSECTION D, IN THE
6 DETERMINATION OF THE COURT HAS THE LARGEST FINANCIAL INTEREST IN THE RELIEF
7 SOUGHT BY THE CLASS AND OTHERWISE SATISFIES THE REQUIREMENTS OF RULE 23 OF
8 THE ARIZONA RULES OF CIVIL PROCEDURE OR ANY FEDERAL OR OTHER JURISDICTIONAL
9 COUNTERPART TO THE RULES.

10 F. THE PRESUMPTION PRESCRIBED IN SUBSECTION E MAY BE REBUTTED ONLY ON
11 PROOF BY A MEMBER OF THE PURPORTED PLAINTIFF CLASS THAT THE PRESUMPTIVELY
12 MOST ADEQUATE PLAINTIFF WILL NOT FAIRLY AND ADEQUATELY PROTECT THE INTERESTS
13 OF THE CLASS OR IS SUBJECT TO UNIQUE DEFENSES THAT RENDER THAT PLAINTIFF
14 INCAPABLE OF ADEQUATELY REPRESENTING THE CLASS. A PLAINTIFF MAY CONDUCT
15 DISCOVERY RELATING TO WHETHER A MEMBER OR MEMBERS OF THE PURPORTED PLAINTIFF
16 CLASS ARE THE MOST ADEQUATE PLAINTIFF IF THE PLAINTIFF DEMONSTRATES A
17 REASONABLE BASIS FOR A FINDING THAT THE PRESUMPTIVELY MOST ADEQUATE PLAINTIFF
18 IS INCAPABLE OF ADEQUATELY REPRESENTING THE CLASS.

19 G. IF MORE THAN ONE ACTION ON BEHALF OF A CLASS ASSERTING
20 SUBSTANTIALLY THE SAME CLAIM OR CLAIMS ARISING UNDER THIS CHAPTER HAS BEEN
21 FILED, AND ANY PARTY HAS SOUGHT TO CONSOLIDATE THOSE ACTIONS FOR PRETRIAL
22 PURPOSES OR FOR TRIAL, THE COURT SHALL NOT MAKE THE DETERMINATION REQUIRED
23 BY SUBSECTION E UNTIL AFTER THE DECISION ON THE MOTION TO CONSOLIDATE IS
24 RENDERED. AS SOON AS PRACTICABLE AFTER THE DECISION IS RENDERED, THE COURT
25 SHALL APPOINT THE MOST ADEQUATE PLAINTIFF AS LEAD PLAINTIFF FOR THE
26 CONSOLIDATED ACTIONS IN ACCORDANCE WITH THIS SECTION.

27 H. SUBJECT TO THE APPROVAL OF THE COURT, THE MOST ADEQUATE PLAINTIFF
28 SHALL SELECT AND RETAIN COUNSEL TO REPRESENT THE CLASS.

29 I. EXCEPT AS THE COURT PERMITS AND CONSISTENT WITH THE PURPOSES OF
30 THIS SECTION, A PERSON MAY BE A LEAD PLAINTIFF, OR AN OFFICER, DIRECTOR OR
31 FIDUCIARY OF A LEAD PLAINTIFF, IN FIVE OR FEWER SECURITIES CLASS ACTIONS
32 DURING ANY THREE CONSECUTIVE YEARS BROUGHT AS PLAINTIFF CLASS ACTIONS
33 PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE OR ANY FEDERAL COUNTERPART
34 TO THE RULES.

35 J. THE SHARE OF ANY FINAL JUDGMENT OR OF ANY SETTLEMENT THAT IS
36 AWARDED TO A REPRESENTATIVE PARTY SERVING ON BEHALF OF A CLASS SHALL BE EQUAL
37 ON A PER SHARE BASIS TO THE PORTION OF THE FINAL JUDGMENT OR SETTLEMENT
38 AWARDED TO ALL OTHER MEMBERS OF THE CLASS. NOTHING IN THIS SUBSECTION LIMITS
39 THE AWARD OF REASONABLE COSTS AND EXPENSES, INCLUDING LOST WAGES, DIRECTLY
40 RELATING TO THE REPRESENTATION OF THE CLASS TO ANY REPRESENTATIVE PARTY
41 SERVING ON BEHALF OF A CLASS.

42 K. THE TERMS AND PROVISIONS OF ANY SETTLEMENT AGREEMENT OF A CLASS
43 ACTION SHALL NOT BE FILED UNDER SEAL, EXCEPT THAT ON A MOTION BY ANY PARTY
44 TO THE SETTLEMENT, THE COURT MAY ORDER FILING UNDER SEAL FOR THOSE PORTIONS

1 OF A SETTLEMENT AGREEMENT AS TO WHICH GOOD CAUSE IS SHOWN FOR FILING UNDER
2 SEAL. FOR PURPOSES OF THIS SUBSECTION, GOOD CAUSE EXISTS IF PUBLICATION OF
3 A TERM OR PROVISION OF A SETTLEMENT AGREEMENT WOULD CAUSE DIRECT AND
4 SUBSTANTIAL HARM TO ANY PARTY.

5 L. ATTORNEY FEES AND COSTS AWARDED BY THE COURT TO COUNSEL FOR THE
6 PLAINTIFF CLASS SHALL NOT EXCEED A REASONABLE PERCENTAGE OF THE AMOUNT OF ANY
7 DAMAGES AND PREJUDGMENT INTEREST ACTUALLY PAID TO THE CLASS.

8 M. ANY PROPOSED OR FINAL SETTLEMENT AGREEMENT THAT IS PUBLISHED OR
9 DISSEMINATED TO THE CLASS SHALL INCLUDE A COVER PAGE SUMMARIZING THE
10 INFORMATION CONTAINED IN THE SETTLEMENT AGREEMENT AND:

11 1. THE AMOUNT OF THE SETTLEMENT PROPOSED TO BE DISTRIBUTED TO THE
12 PARTIES TO THE ACTION, DETERMINED IN THE AGGREGATE AND ON AN AVERAGE PER
13 SHARE BASIS.

14 2. IF THE SETTLING PARTIES AGREE ON THE AVERAGE AMOUNT OF DAMAGES PER
15 SHARE THAT WOULD BE RECOVERABLE IF THE PLAINTIFF PREVAILED ON EACH CLAIM
16 ALLEGED UNDER THIS CHAPTER, A STATEMENT CONCERNING THE AVERAGE AMOUNT OF THE
17 POTENTIAL DAMAGES PER SHARE.

18 3. IF THE PARTIES DO NOT AGREE ON THE AVERAGE AMOUNT OF DAMAGES PER
19 SHARE THAT WOULD BE RECOVERABLE IF THE PLAINTIFF PREVAILED ON EACH CLAIM
20 ALLEGED UNDER THIS CHAPTER, A STATEMENT FROM EACH SETTLING PARTY CONCERNING
21 THE ISSUE OR ISSUES ON WHICH THE PARTIES DISAGREE.

22 4. IF ANY OF THE SETTLING PARTIES OR THEIR COUNSEL INTENDS TO APPLY
23 TO THE COURT FOR AN AWARD OF ATTORNEY FEES OR COSTS FROM ANY FUND ESTABLISHED
24 AS PART OF THE SETTLEMENT, A STATEMENT INDICATING WHICH PARTIES OR COUNSEL
25 INTEND TO MAKE THE APPLICATION, THE AMOUNT OF FEES AND COSTS THAT WILL BE
26 SOUGHT, INCLUDING THE AMOUNT OF THE FEES AND COSTS DETERMINED ON AN AVERAGE
27 PER SHARE BASIS, AND A BRIEF EXPLANATION SUPPORTING THE FEES AND COSTS
28 SOUGHT. THE COVER PAGE OF ANY NOTICE TO A PARTY OF ANY PROPOSED OR FINAL
29 SETTLEMENT AGREEMENT SHALL INCLUDE A CLEAR SUMMARY OF THE INFORMATION
30 PRESCRIBED BY THIS PARAGRAPH.

31 5. THE NAME, TELEPHONE NUMBER AND ADDRESS OF ONE OR MORE
32 REPRESENTATIVES OF COUNSEL FOR THE PLAINTIFF CLASS WHO WILL BE REASONABLY
33 AVAILABLE TO ANSWER QUESTIONS FROM CLASS MEMBERS CONCERNING ANY MATTER
34 CONTAINED IN ANY NOTICE OF SETTLEMENT PUBLISHED OR DISSEMINATED TO THE CLASS.

35 6. A BRIEF STATEMENT EXPLAINING THE REASONS WHY THE PARTIES ARE
36 PROPOSING THE SETTLEMENT.

37 7. OTHER INFORMATION REQUIRED BY THE COURT.

38 N. A STATEMENT MADE IN ACCORDANCE WITH SUBSECTION M, PARAGRAPH 2 OR
39 3 CONCERNING THE AMOUNT OF DAMAGES IS NOT ADMISSIBLE IN ANY FEDERAL OR STATE
40 JUDICIAL ACTION OR ADMINISTRATIVE PROCEEDING, OTHER THAN AN ACTION OR
41 PROCEEDING ARISING OUT OF THE STATEMENT.

42 O. IN ANY PRIVATE ACTION ARISING UNDER THIS CHAPTER THAT IS CERTIFIED
43 AS A CLASS ACTION PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE OR ANY
44 FEDERAL OR OTHER JURISDICTIONAL COUNTERPART TO THE RULES, THE COURT MAY

1 REQUIRE AN UNDERTAKING FROM THE ATTORNEYS FOR THE PLAINTIFF CLASS OR THE
2 PLAINTIFF CLASS, OR BOTH, OR FROM THE ATTORNEYS FOR THE DEFENDANT OR THE
3 DEFENDANT, OR BOTH, IN THOSE PROPORTIONS AND AT THOSE TIMES AS THE COURT
4 DETERMINES ARE JUST AND EQUITABLE, FOR THE PAYMENT OF FEES AND EXPENSES THAT
5 MAY BE AWARDED UNDER THIS SECTION.

6 P. IF A PLAINTIFF CLASS IS REPRESENTED BY AN ATTORNEY WHO DIRECTLY
7 OWNS OR OTHERWISE HAS A BENEFICIAL INTEREST IN THE SECURITIES THAT ARE THE
8 SUBJECT OF THE LITIGATION, THE COURT SHALL MAKE A DETERMINATION OF WHETHER
9 THE OWNERSHIP OR OTHER INTEREST CONSTITUTES A CONFLICT OF INTEREST SUFFICIENT
10 TO DISQUALIFY THE ATTORNEY FROM REPRESENTING THE PLAINTIFF CLASS.

11 44-2082. Requirements for securities fraud actions involving
12 misleading statements or omissions

13 A. IN ANY PRIVATE ACTION ARISING UNDER SECTION 44-1991 OR 44-1992 IN
14 WHICH THE PLAINTIFF ALLEGES THAT THE DEFENDANT MADE AN UNTRUE STATEMENT OF
15 A MATERIAL FACT OR OMITTED THE STATEMENT OF A MATERIAL FACT NECESSARY IN
16 ORDER TO MAKE THE STATEMENTS MADE, IN THE LIGHT OF THE CIRCUMSTANCES IN WHICH
17 THEY WERE MADE, NOT MISLEADING, THE COMPLAINT SHALL SPECIFY EACH STATEMENT
18 ALLEGED TO HAVE BEEN MISLEADING AND THE REASON OR REASONS WHY THE STATEMENT
19 IS MISLEADING AND, IF AN ALLEGATION REGARDING THE STATEMENT OR OMISSION IS
20 MADE ON INFORMATION AND BELIEF, THE COMPLAINT SHALL STATE WITH PARTICULARITY
21 ALL FACTS ON WHICH THAT BELIEF IS FORMED.

22 B. IN ANY PRIVATE ACTION ARISING UNDER SECTION 44-1991 OR 44-1992 IN
23 WHICH THE PLAINTIFF MAY RECOVER MONEY DAMAGES ONLY ON PROOF THAT THE
24 DEFENDANT ACTED WITH A PARTICULAR STATE OF MIND, FOR EACH ACT OR OMISSION
25 THAT ALLEGEDLY VIOLATES SECTION 44-1991 OR 44-1992, THE COMPLAINT SHALL STATE
26 WITH PARTICULARITY FACTS GIVING RISE TO A STRONG INFERENCE THAT THE DEFENDANT
27 ACTED WITH THE REQUIRED STATE OF MIND.

28 C. IN ANY PRIVATE ACTION ARISING UNDER SECTION 44-1991 OR 44-1992:

29 1. ON ANY DEFENDANT'S MOTION, THE COURT SHALL DISMISS THE COMPLAINT
30 IF THE REQUIREMENTS OF SUBSECTIONS A AND B OF THIS SECTION ARE NOT MET.

31 2. ALL DISCOVERY AND OTHER PROCEEDINGS SHALL BE STAYED DURING THE
32 PENDENCY OF ANY MOTION TO DISMISS PURSUANT TO RULE 12 OF THE ARIZONA RULES
33 OF CIVIL PROCEDURE, UNLESS THE COURT FINDS ON THE MOTION OF ANY PARTY THAT
34 PARTICULARIZED DISCOVERY IS NECESSARY TO PRESERVE EVIDENCE OR TO PREVENT
35 UNDUE PREJUDICE TO THAT PARTY.

36 D. DURING THE PENDENCY OF ANY STAY OF DISCOVERY PURSUANT TO SUBSECTION
37 C OF THIS SECTION, UNLESS ORDERED BY THE COURT, ANY PARTY TO THE ACTION WITH
38 ACTUAL NOTICE OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT SHALL TREAT ALL
39 DOCUMENTS, DATA COMPILATIONS, INCLUDING ELECTRONICALLY RECORDED OR STORED
40 DATA, AND TANGIBLE OBJECTS THAT ARE IN THE CUSTODY OR CONTROL OF THAT PERSON
41 AND THAT ARE RELEVANT TO THE ALLEGATIONS AS IF THEY WERE THE SUBJECT OF A
42 CONTINUING REQUEST FOR PRODUCTION OF DOCUMENTS FROM AN OPPOSING PARTY UNDER
43 THE ARIZONA RULES OF CIVIL PROCEDURE OR ANY APPLICABLE FEDERAL OR OTHER
44 JURISDICTIONAL COUNTERPART TO THE RULES. A PARTY AGGRIEVED BY THE WILFUL

1 FAILURE OF AN OPPOSING PARTY TO COMPLY WITH THIS SUBSECTION MAY APPLY TO THE
2 COURT FOR AN ORDER AWARDING APPROPRIATE SANCTIONS.

3 E. EXCEPT AS PROVIDED IN SECTION 44-1991, SUBSECTION B, INCLUDING
4 ACTIONS BASED ON ALLEGATIONS OF ACTIVITIES CONSTITUTING DISHONEST OR
5 UNETHICAL PRACTICES IN THE SECURITIES INDUSTRY, IN ANY PRIVATE ACTION ARISING
6 UNDER THIS CHAPTER, THE PLAINTIFF HAS THE BURDEN OF PROVING THAT THE ACT OR
7 OMISSION OF THE DEFENDANT ALLEGED TO VIOLATE THE SECTION UNDER WHICH THE
8 PRIVATE ACTION IS BROUGHT CAUSED THE LOSS FOR WHICH THE PLAINTIFF SEEKS TO
9 RECOVER DAMAGES.

10 44-2083. Sanctions for abusive litigation

11 A. IN ANY PRIVATE ACTION ARISING UNDER THIS CHAPTER, ON FINAL
12 ADJUDICATION OF THE ACTION, UNLESS THE PARTIES STIPULATE OTHERWISE, THE COURT
13 SHALL INCLUDE IN THE RECORD SPECIFIC FINDINGS REGARDING COMPLIANCE BY EACH
14 PARTY AND EACH ATTORNEY REPRESENTING ANY PARTY WITH EACH REQUIREMENT OF RULE
15 11(b) OF THE ARIZONA RULES OF CIVIL PROCEDURE OR ANY APPLICABLE FEDERAL OR
16 OTHER JURISDICTIONAL COUNTERPART TO THE RULES AS TO ANY COMPLAINT, RESPONSIVE
17 PLEADING OR DISPOSITIVE MOTION. IF THE FEDERAL OR OTHER JURISDICTIONAL RULES
18 OF CIVIL PROCEDURE DO NOT HAVE A COUNTERPART TO RULE 11(b) OF THE ARIZONA
19 RULES OF CIVIL PROCEDURE, RULE 11(b) OF THE ARIZONA RULES OF CIVIL PROCEDURE
20 APPLIES.

21 B. IF THE COURT MAKES A FINDING UNDER SUBSECTION A THAT A PARTY OR
22 ATTORNEY VIOLATED ANY REQUIREMENT OF RULE 11(b) OF THE ARIZONA RULES OF CIVIL
23 PROCEDURE OR ANY FEDERAL OR OTHER JURISDICTIONAL COUNTERPART TO THE RULES AS
24 TO ANY COMPLAINT, RESPONSIVE PLEADING OR DISPOSITIVE MOTION, THE COURT SHALL
25 IMPOSE SANCTIONS ON THAT PARTY OR ATTORNEY IN ACCORDANCE WITH RULE 11 OF THE
26 ARIZONA RULES OF CIVIL PROCEDURE OR ANY FEDERAL OR OTHER JURISDICTIONAL
27 COUNTERPART TO THE RULES. BEFORE MAKING A FINDING THAT ANY PARTY OR ATTORNEY
28 HAS VIOLATED THE APPLICABLE RULES, THE COURT SHALL GIVE THAT PARTY OR
29 ATTORNEY NOTICE AND AN OPPORTUNITY TO RESPOND.

30 C. SUBJECT TO SUBSECTIONS D AND E, FOR THE PURPOSES OF SUBSECTION B,
31 THE COURT SHALL ADOPT A PRESUMPTION THAT THE APPROPRIATE SANCTIONS FOR:

32 1. FAILURE OF ANY RESPONSIVE PLEADING OR DISPOSITIVE MOTION TO COMPLY
33 WITH ANY REQUIREMENT OF RULE 11(b) OF THE ARIZONA RULES OF CIVIL PROCEDURE
34 OR ANY APPLICABLE FEDERAL OR OTHER JURISDICTIONAL COUNTERPART TO THE RULES
35 IS AN AWARD TO THE OPPOSING PARTY OF REASONABLE ATTORNEY FEES AND OTHER
36 EXPENSES INCURRED AS A DIRECT RESULT OF THE VIOLATION.

37 2. SUBSTANTIAL FAILURE OF ANY COMPLAINT TO COMPLY WITH ANY REQUIREMENT
38 OF RULE 11(b) OF THE ARIZONA RULES OF CIVIL PROCEDURE OR ANY FEDERAL OR OTHER
39 JURISDICTIONAL COUNTERPART TO THE RULES IS AN AWARD TO THE OPPOSING PARTY OF
40 REASONABLE ATTORNEY FEES AND OTHER EXPENSES INCURRED IN THE ACTION.

41 D. THE PRESUMPTION PRESCRIBED IN SUBSECTION C MAY BE REBUTTED ONLY ON
42 PROOF BY THE PARTY OR ATTORNEY AGAINST WHOM SANCTIONS ARE TO BE IMPOSED THAT
43 EITHER OF THE FOLLOWING APPLIES:

1 1. THE AWARD OF ATTORNEY FEES AND OTHER EXPENSES WILL IMPOSE AN
2 UNREASONABLE BURDEN ON THAT PARTY OR ATTORNEY AND WOULD BE UNJUST, AND THE
3 FAILURE TO MAKE AN AWARD WOULD NOT IMPOSE A GREATER BURDEN ON THE PARTY IN
4 WHOSE FAVOR SANCTIONS ARE TO BE IMPOSED.

5 2. THE VIOLATION OF RULE 11(b) OF THE ARIZONA RULES OF CIVIL PROCEDURE
6 OR FEDERAL OR OTHER JURISDICTIONAL COUNTERPART TO THE RULES WAS DE MINIMIS.

7 E. IF THE PARTY OR ATTORNEY AGAINST WHOM SANCTIONS ARE TO BE IMPOSED
8 MEETS THE BURDEN PRESCRIBED BY SUBSECTION D, THE COURT SHALL AWARD THE
9 SANCTIONS THAT THE COURT DEEMS APPROPRIATE PURSUANT TO RULE 11 OF THE ARIZONA
10 RULES OF CIVIL PROCEDURE OR ANY APPLICABLE FEDERAL OR OTHER JURISDICTIONAL
11 COUNTERPART TO THE RULES.

12 44-2084. Right to written interrogatories

13 IN ANY PRIVATE ACTION ARISING UNDER THIS CHAPTER IN WHICH THE PLAINTIFF
14 MAY RECOVER MONEY DAMAGES, IF REQUESTED BY A DEFENDANT, THE COURT SHALL
15 SUBMIT TO THE JURY A WRITTEN INTERROGATORY ON THE ISSUE OF EACH DEFENDANT'S
16 STATE OF MIND AT THE TIME OF THE ALLEGED VIOLATION.

17 44-2085. Limitation on damages; definition

18 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, IN ANY PRIVATE
19 ACTION ARISING UNDER SECTION 44-1991 OR 44-1992 IN WHICH THE PLAINTIFF SEEKS
20 TO ESTABLISH DAMAGES BY REFERENCE TO THE MARKET PRICE OF A SECURITY, THE
21 AWARD OF DAMAGES TO THE PLAINTIFF SHALL NOT EXCEED THE DIFFERENCE BETWEEN THE
22 PURCHASE OR SALE PRICE PAID OR RECEIVED, AS APPROPRIATE, BY THE PLAINTIFF FOR
23 THE SECURITY AND THE MEAN TRADING PRICE OF THAT SECURITY DURING THE NINETY
24 DAYS BEGINNING ON THE DATE ON WHICH THE INFORMATION CORRECTING THE
25 MISSTATEMENT OR OMISSION THAT IS THE BASIS FOR THE ACTION IS DISSEMINATED TO
26 THE MARKET.

27 B. IN ANY PRIVATE ACTION ARISING UNDER SECTION 44-1991 OR 44-1992 IN
28 WHICH THE PLAINTIFF SEEKS TO ESTABLISH DAMAGES BY REFERENCE TO THE MARKET
29 PRICE OF A SECURITY, IF THE PLAINTIFF SELLS OR REPURCHASES THE SECURITY
30 BEFORE THE EXPIRATION OF THE NINETY DAY PERIOD PRESCRIBED IN SUBSECTION A OF
31 THIS SECTION, THE PLAINTIFF'S DAMAGES SHALL NOT EXCEED THE DIFFERENCE
32 BETWEEN THE PURCHASE OR SALE PRICE PAID OR RECEIVED BY THE PLAINTIFF FOR THE
33 SECURITY AND THE MEAN TRADING PRICE OF THE SECURITY DURING THE PERIOD
34 BEGINNING IMMEDIATELY AFTER DISSEMINATION OF INFORMATION CORRECTING THE
35 MISSTATEMENT OR OMISSION AND ENDING ON THE DATE ON WHICH THE PLAINTIFF SELLS
36 OR REPURCHASES THE SECURITY.

37 C. THIS SECTION SHALL NOT APPLY TO DAMAGES CAUSED BY A VIOLATION OF
38 SECTION 44-1841 OR 44-1842.

39 D. FOR PURPOSES OF THIS SECTION, "MEAN TRADING PRICE OF THE SECURITY"
40 MEANS AN AVERAGE OF THE DAILY TRADING PRICE OF THAT SECURITY, DETERMINED AS
41 OF THE CLOSE OF THE MARKET EACH DAY DURING THE RELEVANT PERIOD.

1 44-2086. Attorney fees paid from disgorgement monies;
2 prohibition

3 DISGORGED MONIES RESULTING FROM A JUDICIAL OR ADMINISTRATIVE ACTION
4 BROUGHT BY THE COMMISSION SHALL NOT BE DISTRIBUTED AS PAYMENT FOR ATTORNEY
5 FEES OR EXPENSES INCURRED BY PRIVATE PARTIES SEEKING DISTRIBUTION OF THE
6 DISGORGED MONIES, EXCEPT AS OTHERWISE ORDERED BY THE COURT ON A MOTION BY THE
7 COMMISSION OR, IN THE CASE OF AN ADMINISTRATIVE ACTION, AS OTHERWISE ORDERED
8 BY THE COMMISSION.

9 44-2087. Application of safe harbor for forward-looking
10 statements

11 A. THIS SECTION ONLY APPLIES TO A FORWARD-LOOKING STATEMENT MADE BY:

12 1. AT THE TIME THAT THE STATEMENT IS MADE, AN ISSUER THAT IS SUBJECT
13 TO THE REPORTING REQUIREMENTS OF SECTION 13(a) OR SECTION 15(d) OF THE
14 SECURITIES EXCHANGE ACT OF 1934 (15 UNITED STATES CODE SECTION 78m(a) OR
15 SECTION 78o(d)).

16 2. A PERSON ACTING ON BEHALF OF AN ISSUER DESCRIBED IN PARAGRAPH 1 OF
17 THIS SUBSECTION.

18 3. AN OUTSIDE REVIEWER WHO IS RETAINED BY AN ISSUER DESCRIBED IN
19 PARAGRAPH 1 OF THIS SUBSECTION AND WHO IS MAKING A STATEMENT ON BEHALF OF
20 THAT ISSUER.

21 4. AN UNDERWRITER OF AN ISSUER DESCRIBED IN PARAGRAPH 1 OF THIS
22 SUBSECTION WHO USES INFORMATION PROVIDED BY THE ISSUER OR INFORMATION DERIVED
23 FROM INFORMATION PROVIDED BY THE ISSUER.

24 B. EXCEPT IF SPECIFICALLY PROVIDED BY RULE OR ORDER OF THE COMMISSION,
25 THIS SECTION DOES NOT APPLY TO A FORWARD-LOOKING STATEMENT IF THE STATEMENT
26 IS:

27 1. MADE IN CONNECTION WITH THE ISSUER'S BUSINESS OR OPERATIONS AND IF
28 ANY OF THE FOLLOWING APPLIES TO THE ISSUER:

29 (a) AT ANY TIME DURING THE THREE CONSECUTIVE YEARS BEFORE THE DATE ON
30 WHICH THE STATEMENT WAS FIRST MADE, THE ISSUER WAS CONVICTED OF A FELONY OR
31 MISDEMEANOR PURSUANT TO SECTION 44-1961, SUBSECTION A, PARAGRAPH 8, OR
32 CLAUSES (I) THROUGH (IV) OF SECTION 15(b)(4)(B) OF THE SECURITIES EXCHANGE
33 ACT OF 1934 (15 UNITED STATES CODE SECTION 78o(b)(4)(B)), HAS BEEN FOUND TO
34 HAVE VIOLATED OR BEEN MADE SUBJECT TO AN ORDER, JUDGMENT OR DECREE UNDER
35 SECTION 44-1961, SUBSECTION A, PARAGRAPH 9, 10 OR 11, OR HAS BEEN MADE THE
36 SUBJECT OF A JUDICIAL OR ADMINISTRATIVE DECREE OR ORDER ARISING OUT OF A
37 GOVERNMENTAL ACTION THAT PROHIBITS FUTURE VIOLATIONS OF THE ANTIFRAUD
38 PROVISIONS OF THE FEDERAL, ARIZONA OR OTHER JURISDICTIONS' SECURITIES LAWS,
39 REQUIRES THAT THE ISSUER CEASE AND DESIST FROM VIOLATING THE ANTIFRAUD
40 PROVISIONS OF THE FEDERAL, ARIZONA OR OTHER JURISDICTIONS' SECURITIES LAWS
41 OR DETERMINES THAT THE ISSUER VIOLATED THE ANTIFRAUD PROVISIONS OF THE
42 FEDERAL, ARIZONA OR OTHER JURISDICTIONS' SECURITIES LAWS.

1 (b) THE ISSUER MAKES THE FORWARD-LOOKING STATEMENT IN CONNECTION WITH
2 AN OFFERING OF SECURITIES BY A BLANK CHECK COMPANY.

3 (c) THE ISSUER ISSUES PENNY STOCK.

4 (d) THE ISSUER MAKES THE FORWARD-LOOKING STATEMENT IN CONNECTION WITH
5 A ROLL UP TRANSACTION.

6 (e) THE ISSUER MAKES THE FORWARD-LOOKING STATEMENT IN CONNECTION WITH
7 A GOING PRIVATE TRANSACTION.

8 2. INCLUDED IN A FINANCIAL STATEMENT PREPARED IN ACCORDANCE WITH
9 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

10 3. CONTAINED IN A REGISTRATION STATEMENT OF OR ISSUED BY AN INVESTMENT
11 COMPANY.

12 4. MADE IN CONNECTION WITH A TENDER OFFER.

13 5. MADE IN CONNECTION WITH AN INITIAL PUBLIC OFFERING.

14 6. MADE IN CONNECTION WITH AN OFFERING BY OR RELATING TO THE
15 OPERATIONS OF A PARTNERSHIP, A LIMITED LIABILITY COMPANY OR A DIRECT
16 PARTICIPATION INVESTMENT PROGRAM.

17 7. MADE IN A DISCLOSURE OF BENEFICIAL OWNERSHIP IN A REPORT REQUIRED
18 TO BE FILED WITH THE UNITED STATES SECURITIES EXCHANGE COMMISSION PURSUANT
19 TO SECTION 13(d) OF THE SECURITIES EXCHANGE ACT OF 1934 (15 UNITED STATES
20 CODE SECTION 78m(d)).

21 C. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, IN ANY PRIVATE
22 ACTION THAT ARISES UNDER THIS CHAPTER AND THAT IS BASED ON AN UNTRUE
23 STATEMENT OF A MATERIAL FACT OR AN OMISSION OF A MATERIAL FACT NECESSARY TO
24 MAKE THE STATEMENT NOT MISLEADING, PURSUANT TO SUBSECTION A OF THIS SECTION,
25 A PERSON, ISSUER, OUTSIDE REVIEWER OR UNDERWRITER IS NOT LIABLE FOR ANY
26 WRITTEN OR ORAL FORWARD-LOOKING STATEMENT IF AND TO THE EXTENT THAT EITHER
27 OF THE FOLLOWING EXISTS:

28 1. THE FORWARD-LOOKING STATEMENT IS IDENTIFIED AS A FORWARD-LOOKING
29 STATEMENT AND IS ACCOMPANIED BY MEANINGFUL CAUTIONARY STATEMENTS IDENTIFYING
30 IMPORTANT FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM
31 THOSE IN THE FORWARD-LOOKING STATEMENT OR THE STATEMENT IS IMMATERIAL.

32 2. THE PLAINTIFF FAILS TO PROVE THAT THE FORWARD-LOOKING STATEMENT IF
33 MADE BY A NATURAL PERSON WAS MADE WITH ACTUAL KNOWLEDGE BY THAT PERSON THAT
34 THE STATEMENT WAS FALSE OR MISLEADING, OR IF MADE BY A BUSINESS ENTITY, WAS
35 MADE BY OR WITH THE APPROVAL OF AN EXECUTIVE OFFICER OF THAT ENTITY AND WAS
36 MADE OR APPROVED BY THAT OFFICER WITH ACTUAL KNOWLEDGE BY THAT OFFICER THAT
37 THE STATEMENT WAS FALSE OR MISLEADING.

38 D. IN THE CASE OF AN ORAL FORWARD-LOOKING STATEMENT MADE BY AN INSURER
39 THAT IS SUBJECT TO THE REPORTING REQUIREMENTS OF SECTION 13(a) OR SECTION
40 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934, (15 UNITED STATES CODE SECTION
41 78m(a) OR SECTION 78o(d)) OR BY A PERSON ACTING ON BEHALF OF THE ISSUER, THE
42 REQUIREMENT SET FORTH IN SUBSECTION C, PARAGRAPH 1 OF THIS SECTION IS
43 SATISFIED IF BOTH OF THE FOLLOWING ARE TRUE:

1 1. THE ORAL FORWARD-LOOKING STATEMENT IS ACCOMPANIED BY A CAUTIONARY
2 STATEMENT THAT THE ORAL STATEMENT IS A FORWARD-LOOKING STATEMENT AND THAT THE
3 ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE PROJECTED IN THE
4 FORWARD-LOOKING STATEMENT.

5 2. IF THE ORAL FORWARD-LOOKING STATEMENT IS ACCOMPANIED BY AN ORAL
6 STATEMENT THAT ADDITIONAL INFORMATION CONCERNING FACTORS THAT COULD CAUSE
7 ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE IN THE FORWARD-LOOKING
8 STATEMENT IS CONTAINED IN A READILY AVAILABLE WRITTEN DOCUMENT, THE ORAL
9 STATEMENT SHALL IDENTIFY THE DOCUMENT OR THE PORTION OF THE DOCUMENT THAT
10 CONTAINS THE ADDITIONAL INFORMATION ABOUT THOSE FACTORS RELATING TO THE
11 FORWARD-LOOKING STATEMENTS AND THE WRITTEN DOCUMENT SHALL CONTAIN A
12 CAUTIONARY STATEMENT THAT SATISFIES THE STANDARD ESTABLISHED IN SUBSECTION
13 C, PARAGRAPH 1 OF THIS SECTION.

14 E. ANY DOCUMENT THAT IS FILED WITH THE COMMISSION OR THE UNITED STATES
15 SECURITIES EXCHANGE COMMISSION OR THAT IS GENERALLY DISSEMINATED IS READILY
16 AVAILABLE FOR PURPOSES OF SUBSECTION D OF THIS SECTION.

17 F. THE EXEMPTION PROVIDED FOR IN SUBSECTION C OF THIS SECTION IS IN
18 ADDITION TO ANY EXEMPTION THAT THE COMMISSION MAY ESTABLISH BY RULE UNDER
19 SUBSECTION J OF THIS SECTION.

20 G. NOTHING IN THIS SECTION IMPOSES ON ANY PERSON A DUTY TO UPDATE A
21 FORWARD-LOOKING STATEMENT.

22 H. ON ANY MOTION TO DISMISS BASED ON SUBSECTION C OF THIS SECTION, THE
23 COURT SHALL CONSIDER ANY STATEMENT CITED IN THE COMPLAINT AND ANY CAUTIONARY
24 STATEMENT THAT IS NOT SUBJECT TO MATERIAL DISPUTE AND THAT IS CITED BY THE
25 DEFENDANT ACCOMPANYING THE FORWARD-LOOKING STATEMENT.

26 I. IN ANY PRIVATE ACTION ARISING UNDER THIS CHAPTER, THE COURT SHALL
27 STAY DISCOVERY, OTHER THAN DISCOVERY THAT IS SPECIFICALLY DIRECTED TO THE
28 APPLICABILITY OF THE EXEMPTION PROVIDED BY THIS SECTION, DURING THE PENDENCY
29 OF ANY MOTION BY A DEFENDANT FOR SUMMARY JUDGMENT THAT IS BASED ON THE
30 GROUNDS THAT THE STATEMENT OR OMISSION ON WHICH THE COMPLAINT IS BASED IS A
31 FORWARD-LOOKING STATEMENT WITHIN THE MEANING OF THIS SECTION AND THE
32 EXEMPTION PROVIDED BY THIS SECTION PRECLUDES A CLAIM FOR RELIEF.

33 J. IN ADDITION TO THE EXEMPTIONS PROVIDED BY THIS SECTION, THE
34 COMMISSION BY RULE MAY PROVIDE EXEMPTIONS FROM OR UNDER ANY PROVISION OF THIS
35 CHAPTER, INCLUDING LIABILITY THAT IS BASED ON A STATEMENT, PROJECTIONS OR
36 OTHER FORWARD-LOOKING INFORMATION, IF THE EXEMPTION IS CONSISTENT WITH THE
37 PUBLIC INTEREST AND THE PROTECTION OF INVESTORS, AS DETERMINED BY THE
38 COMMISSION.

39 K. NOTHING IN THIS SECTION LIMITS, EITHER EXPRESSLY OR BY IMPLICATION,
40 THE AUTHORITY OF THE COMMISSION TO EXERCISE SIMILAR AUTHORITY OR TO ADOPT
41 SIMILAR RULES FOR FORWARD-LOOKING STATEMENTS UNDER ANY OTHER STATUTE UNDER
42 WHICH THE COMMISSION EXERCISES RULE MAKING AUTHORITY.

1 L. IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

2 1. "FORWARD-LOOKING STATEMENT" MEANS ANY OF THE FOLLOWING:

3 (a) A STATEMENT CONTAINING A PROJECTION OF REVENUES, INCOME, INCOME
4 LOSS, EARNINGS, EARNINGS PER SHARE, LOSS PER SHARE, CAPITAL EXPENDITURES,
5 DIVIDENDS, CAPITAL STRUCTURE OR OTHER FINANCIAL ITEMS.

6 (b) A STATEMENT OF THE PLANS AND OBJECTIVES OF MANAGEMENT FOR FUTURE
7 OPERATIONS, INCLUDING PLANS OR OBJECTIVES RELATING TO THE PRODUCTS OR
8 SERVICES OF THE ISSUER.

9 (c) A STATEMENT OF FUTURE ECONOMIC PERFORMANCE, INCLUDING ANY
10 STATEMENT CONTAINED IN A DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION BY
11 THE MANAGEMENT OR IN THE RESULTS OF OPERATIONS INCLUDED PURSUANT TO THE RULES
12 OF THE COMMISSION OR THE RULES AND REGULATIONS OF THE UNITED STATES
13 SECURITIES EXCHANGE COMMISSION.

14 (d) ANY STATEMENT OF THE ASSUMPTIONS UNDERLYING OR RELATING TO ANY
15 STATEMENT DESCRIBED IN SUBDIVISION (a), (b) OR (c) OF THIS PARAGRAPH.

16 (e) ANY REPORT ISSUED BY AN OUTSIDE REVIEWER RETAINED BY AN ISSUER,
17 TO THE EXTENT THAT THE REPORT ASSESSES A FORWARD-LOOKING STATEMENT MADE BY
18 THE ISSUER.

19 (f) A STATEMENT CONTAINING A PROJECTION OR ESTIMATE OF OTHER ITEMS
20 SPECIFIED BY COMMISSION RULE.

21 2. "GOING PRIVATE TRANSACTION" HAS THE SAME MEANING PRESCRIBED IN THE
22 RULES AND REGULATIONS OF THE UNITED STATES SECURITIES EXCHANGE COMMISSION
23 ISSUED PURSUANT TO SECTION 13(e) OF THE SECURITIES EXCHANGE ACT OF 1934 (15
24 UNITED STATES CODE SECTION 78m(e)).

25 3. "INVESTMENT COMPANY" HAS THE SAME MEANING PRESCRIBED IN SECTION
26 3(a) OF THE INVESTMENT COMPANY ACT OF 1940 (CH. 686; 54 STAT. 789; 15 UNITED
27 STATES CODE SECTIONS 80a-1 TO 80a-64).

28 4. "PERSON ACTING ON BEHALF OF AN ISSUER" MEANS ANY OFFICER, DIRECTOR
29 OR EMPLOYEE OF THE ISSUER.

30 5. "TENDER OFFER" HAS THE SAME MEANING PRESCRIBED IN SECTION 14(d) OF
31 THE SECURITIES EXCHANGE ACT OF 1934 (15 UNITED STATES CODE SECTION 78n(d)).

32 6. THE FOLLOWING TERMS HAVE THE SAME MEANING PRESCRIBED IN THE RULES
33 OF THE COMMISSION:

34 (a) "DIRECT PARTICIPATION INVESTMENT PROGRAM".

35 (b) "EXECUTIVE OFFICER OF AN ENTITY".

36 (c) "INITIAL PUBLIC OFFERING".

37 (d) "LIMITED LIABILITY COMPANY".

38 (e) "PARTNERSHIP".

39 (f) "PENNY STOCK".

40 (g) "ROLL UP TRANSACTION".

ARTICLE 19. AUDITS

44-2121. Definition of illegal act

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, "ILLEGAL ACT" MEANS AN ACT OR OMISSION THAT VIOLATES ANY LAW OR ANY RULE HAVING THE FORCE OF LAW.

44-2122. Audit requirements

UNLESS EXEMPTED BY THE COMMISSION, AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT WHO AUDITS THE FINANCIAL STATEMENTS OF AN ISSUER IN AN AUDIT REQUIRED PURSUANT TO THIS CHAPTER SHALL INCLUDE, IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS AS MODIFIED OR SUPPLEMENTED BY THE COMMISSION:

1. PROCEDURES DESIGNED TO PROVIDE REASONABLE ASSURANCE OF DETECTING ILLEGAL ACTS THAT WOULD HAVE A DIRECT AND MATERIAL EFFECT ON THE DETERMINATION OF FINANCIAL STATEMENT AMOUNTS.

2. PROCEDURES DESIGNED TO IDENTIFY RELATED PARTY TRANSACTIONS THAT ARE MATERIAL TO THE FINANCIAL STATEMENTS OR OTHERWISE REQUIRE DISCLOSURE.

3. AN EVALUATION OF WHETHER THERE IS SUBSTANTIAL DOUBT ABOUT THE ABILITY OF THE ISSUER TO CONTINUE AS A GOING CONCERN DURING THE NEXT FISCAL YEAR.

44-2123. Audit discoveries; required responses

A. IN THE COURSE OF CONDUCTING AN AUDIT TO WHICH THIS ARTICLE APPLIES, IF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT DETECTS OR BECOMES AWARE OF INFORMATION INDICATING THAT AN ILLEGAL ACT, WHETHER OR NOT PERCEIVED TO HAVE A MATERIAL EFFECT ON THE ISSUER'S FINANCIAL STATEMENTS, HAS OR MAY HAVE OCCURRED, THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS, AS MODIFIED OR SUPPLEMENTED BY THE COMMISSION, SHALL:

1. DETERMINE WHETHER IT IS LIKELY THAT AN ILLEGAL ACT HAS OCCURRED AND, IF SO, SHALL DETERMINE AND CONSIDER THE POSSIBLE EFFECT OF THE ILLEGAL ACT ON THE FINANCIAL STATEMENTS OF THE ISSUER, INCLUDING ANY CONTINGENT MONETARY EFFECTS SUCH AS FINES, PENALTIES AND DAMAGES.

2. AS SOON AS PRACTICABLE, INFORM THE APPROPRIATE LEVEL OF THE ISSUER'S MANAGEMENT AND ENSURE THAT THE ISSUER'S AUDIT COMMITTEE OR BOARD OF DIRECTORS IN THE ABSENCE OF AN AUDIT COMMITTEE IS ADEQUATELY INFORMED ABOUT ANY ILLEGAL ACTS THAT HAVE BEEN DETECTED OR HAVE OTHERWISE COME TO THE ATTENTION OF THE CERTIFIED PUBLIC ACCOUNTANT IN THE COURSE OF THE AUDIT, UNLESS THE ILLEGAL ACT IS CLEARLY INCONSEQUENTIAL.

B. AFTER DETERMINING THAT THE AUDIT COMMITTEE OR BOARD OF DIRECTORS IS ADEQUATELY INFORMED PURSUANT TO SUBSECTION A, AS SOON AS PRACTICABLE, THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT SHALL REPORT THE ACCOUNTANT'S CONCLUSIONS TO THE BOARD OF DIRECTORS IF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT CONCLUDES THAT ALL OF THE FOLLOWING HAVE OCCURRED:

1. THE ILLEGAL ACT HAS A MATERIAL EFFECT ON THE FINANCIAL STATEMENTS OF THE ISSUER.

1 2. THE SENIOR MANAGEMENT HAS NOT TAKEN, AND THE BOARD OF DIRECTORS HAS
2 NOT CAUSED SENIOR MANAGEMENT TO TAKE, TIMELY AND APPROPRIATE REMEDIAL ACTIONS
3 WITH RESPECT TO THE ILLEGAL ACT.

4 3. THE FAILURE TO TAKE REMEDIAL ACTION IS REASONABLY EXPECTED TO
5 WARRANT DEPARTURE FROM A STANDARD REPORT OF THE AUDITOR, WHEN MADE, OR
6 WARRANT RESIGNATION FROM THE AUDIT ENGAGEMENT.

7 C. UNLESS EXEMPTED BY THE COMMISSION BY RULE OR ORDER, AN ISSUER WHOSE
8 BOARD OF DIRECTORS RECEIVES A REPORT PURSUANT TO SUBSECTION B SHALL INFORM
9 THE COMMISSION BY WRITTEN NOTICE WITHIN ONE BUSINESS DAY AFTER RECEIVING THE
10 REPORT AND SHALL FURNISH THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT MAKING
11 THE REPORT WITH A COPY OF THE WRITTEN NOTICE. IF THE INDEPENDENT CERTIFIED
12 PUBLIC ACCOUNTANT FAILS TO RECEIVE A COPY OF THE NOTICE WITHIN THE REQUIRED
13 PERIOD, THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN ONE BUSINESS DAY
14 AFTER THE FAILURE TO RECEIVE A COPY OF THE NOTICE, SHALL RESIGN FROM THE
15 ENGAGEMENT, GIVE THE COMMISSION A COPY OF THE ACCOUNTANT'S REPORT OR GIVE THE
16 COMMISSION THE DOCUMENTATION OF ANY ORAL REPORT.

17 D. IF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT RESIGNS FROM AN
18 ENGAGEMENT PURSUANT TO SUBSECTION C, THE INDEPENDENT CERTIFIED PUBLIC
19 ACCOUNTANT, WITHIN ONE BUSINESS DAY AFTER THE FAILURE TO RECEIVE A COPY OF
20 THE NOTICE, SHALL GIVE THE COMMISSION A COPY OF THE ACCOUNTANT'S REPORT OR
21 THE DOCUMENTATION OF ANY ORAL REPORT.

22 44-2124. Auditor liability limitation

23 NO INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT IS LIABLE IN A PRIVATE
24 ACTION FOR ANY FINDING, CONCLUSION OR STATEMENT EXPRESSED IN A REPORT MADE
25 PURSUANT TO SECTION 44-2123, SUBSECTION C OR D, INCLUDING ANY RULE ADOPTED
26 BY THE COMMISSION PURSUANT TO THAT SECTION.

27 44-2125. Civil penalties in cease and desist proceedings

28 AFTER NOTICE AND AN OPPORTUNITY FOR A HEARING IN A PROCEEDING
29 INSTITUTED PURSUANT TO ARTICLE 16 OF THIS CHAPTER, IF THE COMMISSION FINDS
30 THAT AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT HAS WILFULLY VIOLATED SECTION
31 44-2123, SUBSECTION C OR D, IN ADDITION TO ENTERING AN ORDER PURSUANT TO
32 ARTICLE 16 OF THIS CHAPTER, THE COMMISSION MAY IMPOSE A CIVIL PENALTY AGAINST
33 THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AND ANY OTHER PERSON THAT THE
34 COMMISSION FINDS WAS A CAUSE OF THE VIOLATION.

35 44-2126. Preservation of existing authority

36 NOTHING IN THIS ARTICLE LIMITS OR OTHERWISE AFFECTS THE AUTHORITY OF
37 THE COMMISSION UNDER THIS CHAPTER.

38 Sec. 10. Saving clause

39 This act does not affect or apply to any private action pursuant to
40 title 44, chapter 12, Arizona Revised Statutes, commenced and pending before
41 the effective date of this act.

1 Sec. 11. Applicability

2 A. Title 44, chapter 12, article 19, Arizona Revised Statutes, as
3 added by this act, applies to each annual report for any period beginning on
4 or after January 1, 1997.

5 B. Nothing in this act creates or ratifies any implied private right
6 of action, determines whether or in what circumstances aiding and abetting
7 liability exists under title 44, chapter 12, Arizona Revised Statutes, or
8 prevents the corporation commission by rule from restricting or regulating
9 private actions pursuant to title 44, chapter 12, Arizona Revised Statutes.

10 C. It is the intent of the legislature that in construing the
11 provisions of title 44, chapter 12, Arizona Revised Statutes, the courts may
12 use as a guide the interpretations given by the securities and exchange
13 commission and the federal or other courts in construing substantially
14 similar provisions in the federal securities laws of the United States.

15 D. Nothing in this act limits or abridges the power or authority of
16 the Arizona corporation commission or the Arizona attorney general.

17 Sec. 12. Severability

18 If a provision of this act or its application to any person or
19 circumstance is held invalid, the invalidity does not affect other provisions
20 or applications of the act that can be given effect without the invalid
21 provision or application, and to this end the provisions of this act are
22 severable.

APPROVED BY THE GOVERNOR APRIL 16, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 1996