

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

## CHAPTER 4. CORPORATION COMMISSION

## SECURITIES

Authority: A.R.S. §§ 44-1821 and 44-1845

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-4).*

*The Corporation Commission has determined that rules in this Chapter are exempt from the Attorney General certification provisions of the Arizona Administrative Procedure Act (A.R.S. § 41-1041) by a court order (State ex. rel. Corbin v. Arizona Corporation Commission, 174 Ariz. 216 848 P.2d 301 (App. 1992)). This exemption means that the rule was not certified by the Attorney General. Because this Chapter was filed under a rulemaking exemption, as determined by the Corporation Commission, other than a statutory exemption, the Chapter is printed on green paper.*

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*Former Article 2, consisting of Sections R14-4-201 through R14-4-212, repealed effective May 16, 1978.*

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## ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

**Preamble:** The following rules are hereby adopted by the Arizona Corporation Commission by the authority granted it of Chapter 12, Article 3, Section 44-1821, A.R.S. Such rules supersede all rules heretofore adopted, and from this date shall be generally applicable to the administration of the Securities Act, and the procedure and practice before the Commission, but the Commission may at any time abrogate the application of any particular rule in any specific instance where the Commission may deem it advisable for equitable administration of the law.

The definitions set forth in A.R.S. § 44-1801 shall apply to these rules in the same respect as they apply to the Security Act.

All applicants seeking to register securities by qualification, or who seek exemptions pursuant to A.R.S. §§ 44-1845 or 44-1846 or who seek registration as a dealer or salesman shall comply with the following rules.

**Severability:** If any provision of these rules be held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision and to this end the provisions of these rules are declared to be severable.

### Historical Note

Former Order S-0; Amended effective July 18, 1985 (Supp. 85-4).

### R14-4-101. Exempt Transactions -- Existing Stockholders and Employees

- A.** An offering of securities within or from Arizona that is exclusively to bona fide employees or existing security holders of the issuer or a subsidiary of the issuer, or if the issuer is a subsidiary, is exclusively to the bona fide employees or existing security holders of the issuer and/or its parent, is added to the class of transactions exempt under A.R.S. § 44-1844. An issuer relying on this Section shall comply with all of the following conditions:
1. The aggregate amount of all offerings made by an issuer under this exemption within or from Arizona shall not exceed \$500,000.
  2. The issuer shall pay no commission or remuneration of any kind, other than transfer agent's fees, directly or indirectly, to any person in connection with the distribution or sale of such securities.
  3. At least 10 business days before the offering is made, the issuer shall file with the Commission a verified statement of the details and purposes of the offering and the financial condition of the issuer. The issuer shall not make any material change in the details of the offering without the Commission's consent.
  4. The issuer shall obtain Commission approval of any subscription contract calling for deferred payments.
  5. An issuer that is not domiciled in Arizona or is not incorporated under the laws of this state shall file a consent to service (Uniform Form U-2) with the verified statement prescribed in subsection (A)(3) above.
- B.** This exemption shall not apply to an offering made in connection with or integrated with an offering otherwise subject to A.R.S. §§ 44-1841 and 44-1842. This Section is not available to any issuer for any transaction or any 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.

- C.** The same issuer may file successive notices under this Section until the total amount encompassed in such filings equals \$500,000.
- D.** The verified statement is not a prescribed form, but shall be executed by an authorized officer of the issuer whose signature shall be verified under oath and shall include all of the following:
1. The title "Notice of Intention to Sell Securities Under A.A.C. R14-4-101."
  2. In the caption, the issuer's full name, the issuer's type of organization, and the state in which the issuer was organized.
  3. The details and purposes of the offering, including but not limited to a description of the securities to be sold, the number of units and selling price per unit, the method of offering, and the allocation of proceeds
  4. A statement of financial condition prepared in accordance with R14-4-123.
  5. A recitation of the facts clearly indicating that all conditions affecting eligibility for this exemption exist.
  6. A statement that the issuer has taken appropriate action to authorize the issuance of securities.
  7. The issuer's principal business address and mailing address if different from the principal business address.
  8. Below the verification of signature, the following form for acknowledgment by the Commission:

"Receipt of the foregoing Notice of Intention to Sell Securities is acknowledged as of the date indicated. The Commission enters no objection to the offering described therein, and such offering may be commenced \_\_\_\_\_, 20\_\_\_\_.

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- E.** Filing of notice, exhibits, and fee.
1. The issuer shall file two originally executed copies of the verified statement, except that only one copy of the financial statement is required if such statement is attached to, rather than included in, the verified statement. The Commission shall acknowledge one copy of the verified statement and return it to the issuer as evidence of filing.
  2. The issuer shall file one copy of any subscription form or written material describing, or to be used in connection with, the offering.
  3. The issuer shall file a nonrefundable fee as prescribed by A.R.S. § 44-1861(G).
- F.** The Commission may deny or revoke this exemption to any issuer for the reasons listed in A.R.S. §§ 44-1921(1) through 44-1921(6). The Securities Division shall notify the issuer of such denial or revocation. Such notice shall be given by certified mail.
- G.** This exemption shall be effective for one year from the date the Director acknowledges the Notice of Intention to Sell Securities.

### Historical Note

Former Order S-1; Amended effective May 16, 1978 (Supp. 78-3). Amended subsection (E) effective August 4, 1982 (Supp. 82-4). Amended effective July 18, 1985 (Supp. 85-4). Amended by final rulemaking at 7 A.A.R. 729, effective January 17, 2001 (Supp. 01-1).

### R14-4-102. Exempt Transactions -- Restricted Public Offering

- A.** An offering of securities within or from Arizona made to not more than 10 persons is added to the class of transactions

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exempt under A.R.S. § 44-1844. An issuer relying on this Section shall comply with all of the following conditions.

1. The aggregate amount of all offerings made by an issuer under this exemption within or from Arizona shall not exceed \$100,000.
  2. The issuer shall pay no commission or remuneration of any kind, other than transfer agent's fees, directly or indirectly to any person in connection with the distribution or sale of such securities.
  3. At least 10 business days before the offering is made, the issuer shall file with the Commission a verified statement of the details and purposes of the offering and the financial condition of the issuer. The issuer shall not make any material change in the details of the offering without the Commission's consent.
  4. The issuer shall obtain Commission approval of any subscription contract calling for deferred payments.
  5. An issuer that is not domiciled in Arizona or is not incorporated under the laws of this state shall file a consent to service (Uniform Form U-2) with the verified statement prescribed in subsection (A)(3) above.
  6. The issuer and any person acting on its behalf shall reasonably believe prior to making any sale that the investment is suitable for the purchaser. For the limited purpose of this condition only, the investment is deemed suitable if it does not exceed 20% of the investor's net worth (excluding principal residence, furnishings therein, and personal automobiles).
- B.** This exemption shall not apply to an offering made in connection with or integrated with an offering otherwise subject to A.R.S. §§ 44-1841 and 44-1842. This Section is not available to any issuer for any transaction or any 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.
- C.** The same issuer may file successive notices under this Section until the total amount encompassed in such filings equals \$100,000.
- D.** The verified statement is not a prescribed form, but shall be executed by an authorized officer of the issuer whose signature shall be verified under oath and shall include all of the following:
1. The title "Notice of Intention to Sell Securities Under A.A.C. R14-4-102."
  2. In the caption the issuer's full name, the issuer's type of organization, and the state in which the issuer was organized.
  3. The details and purposes of the offering, including but not limited to a description of the securities to be sold, the number of units and selling price per unit, the method of offering, and the allocation of proceeds.
  4. A statement of financial condition prepared in accordance with R14-4-123.
  5. A recitation of the facts clearly indicating that all conditions affecting eligibility for exemption exist
  6. A statement that the issuer has taken appropriate action to authorize the issuance of securities.
  7. The issuer's principal business address and mailing address if different from the principal business address.
  8. Below the verification of signature, the following form for acknowledgment by the Commission:  
 "Receipt of the foregoing Notice of Intention to Sell Securities is acknowledged as of the date indicated. The Commission enters no objection to the offering described therein, and such offering may be commenced \_\_\_\_\_, 20\_\_\_\_.

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- \_\_\_\_\_”
- E.** Filing of notice, exhibits, and fee:
1. The issuer shall file two originally executed copies of the verified statement, except that only one copy of the financial statement is required if such statement is attached to, rather than included in, the instrument. The Commission shall acknowledge one copy of the verified statement and return it to the issuer as evidence of filing.
  2. The issuer shall file one copy of any subscription form or written material describing, or to be used in connection with, the offering.
  3. The issuer shall file a nonrefundable fee as prescribed by A.R.S. § 44-1861(G).
- F.** The Commission may deny or revoke this exemption to any issuer for the reasons listed in A.R.S. §§ 44-1921(1) through 44-1921(6). The Securities Division shall notify the issuer of such denial or revocation. Such notice shall be given by certified mail.
- G.** This exemption shall be effective for one year from the date the Director acknowledges the Notice of Intention to Sell Securities.

**Historical Note**

Former Order S-2; Amended effective May 16, 1978 (Supp. 78-3). Amended subsection (E) effective August 4, 1982 (Supp. 82-4). Amended effective July 18, 1985 (Supp. 85-4). Amended by final rulemaking at 7 A.A.R. 729, effective January 17, 2001 (Supp. 01-1).

**R14-4-103. Advertising and Sales Literature**

- A.** Any advertising, communication, prospectus or sales literature of any kind, published, exhibited, broadcast for radio or television, or used directly or indirectly in connection with the purchase or sale of any securities registered or subject to registration under A.R.S. §§ 44-1871 or 44-1891, shall be filed with the Commission at least three days prior to its proposed use.
- B.** No advertising, communication, prospectus, or sales literature of any kind shall contain:
1. Any untrue statement of material fact nor any omission to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
  2. Any statement or inference that the securities offered are without risk, that dividend returns are assured, or that failure or loss is not possible.
  3. Any comparison with alleged analogous situations, nor statistics or statements relating to the financial condition, growth or business success of other companies or the appreciation of or returns from the securities of other companies except that a statutory prospectus meeting the requirements of A.R.S. § 44-1894 may contain financial and business information concerning subsidiaries or affiliates and statistics or statements concerning an issuer's competitive position in its industry.
- C.** Any advertising, communication, prospectus, or sales literature of any kind shall contain:
1. The name of the issuer and of the person circulating or publishing the same.
  2. A statement showing the connection between the issuer or dealer and every person whose name is used or from whom quotations are made.
  3. A statement clearly indicating the source and authority of all reports, statements, or claims used in whole or in part

- or in any manner referred to therein relating to oil, gas or mineral occurrence, or production potentials of any kind.
4. Other than in a statutory prospectus meeting the requirements of A.R.S. § 44-1894, substantially the following legend: “THIS IS NEITHER AN OFFER TO SELL NOR A SOLICITATION OF AN OFFER TO BUY THE SECURITIES DESCRIBED HEREIN. THE OFFERING IS MADE ONLY BY THE PROSPECTUS.” If printed, the legend shall appear on the face of the advertisement, communication, prospectus, or sales literature in type as large as that used generally in the body thereof.
- D. The body of all printed advertisements, communications, prospectuses or sales literature shall be in Roman type at least as large as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other statistical or tabular data and the notes thereto may be in Roman type at least as large as 8-point modern type. All type shall be leaded at least 2 points.
  - E. No advertising, communication, prospectus or sales literature of any kind shall be published in the same issue of a newspaper, magazine or other periodical on the same page as or on a page opposite to, nor be broadcast from or on the same radio station or television channel, immediately before or immediately after a separate advertisement or communication of or concerning the issuer that is unrelated to the sale of its goods or services but is related to the financial condition, growth or business success of the issuer or other companies.
  - F. The full text of any report, statement or claim relating to oil, gas, or mineral occurrence, or production potentials, used in whole or in part or in any manner referred to in any advertising, communication, prospectus or sales literature of any kind, shall be filed with the Commission at least three days prior to its proposed use.
  - G. Oral statements made by salesmen or other persons in connection with the purchase or sale of a security registered or subject to registration under A.R.S. §§ 44-1871 or 44-1891, supplementing, interpreting or explaining any advertising, communication, prospectus or sales literature are subject to all applicable provisions of this rule and no person shall make any statement contrary to the provisions hereof.
  - H. No advertising, communication, prospectus, or sales literature not filed with the Commission shall be used, nor shall any advertising, communication, prospectus, or sales literature filed with the Commission be used after entry of an Order by the Commission prohibiting its use.
  - I. The provisions of subsections (A) through (H) of this rule shall not apply to advertising, communication, prospectus or sales literature of any kind, published, exhibited, or broadcast for radio or television, meeting the requirements of the Securities and Exchange Commission Rule 156 [17 CFR 230.156] relating to advertising and sales literature used in the sale of investment company shares registered pursuant to the Investment Company Act of 1940.

#### Historical Note

Former Order S-3; Amended effective August 4, 1982 (Supp. 82-4). Amended subsection (I) effective July 18, 1985 (Supp. 85-4).

#### R14-4-104. Registration Required of Dealers and Salesmen Otherwise Exempt under A.R.S. §§ 44-1843 and 44-1844

Notwithstanding A.R.S. §§ 44-1843 and 44-1844, a dealer or salesman shall register under A.R.S. Title 44, Chapter 12, Article 9 before engaging in transactions in any of the following:

1. Securities exempt from registration under A.R.S. § 44-1843(A)(1), except a dealer or salesman shall not be

required to register before engaging in transactions in securities issued or guaranteed by the United States.

2. Securities exempt from registration under A.R.S. § 44-1843(A)(7). However, a dealer or salesman shall not be required to register before engaging in transactions directed to existing securities holders, to employees of the issuer, or to employees of a wholly owned subsidiary of the issuer if the subsidiary was not created to avoid the registration provisions of the Securities Act, and in which either of the following apply:
  - a. The offering is made by the issuer.
  - b. The offering is made by a dealer or salesman acting without compensation, other than a reasonable standby charge authorized under the distribution agreement concerning any remaining balance of the offering not purchased or subscribed by existing securities holders or employees of the issuer or its wholly owned subsidiary.
3. Securities exempt from registration under A.R.S. § 44-1843(A)(9).
4. Securities transactions exempt from registration under A.R.S. § 44-1844(A)(1), R14-4-126(E), or R14-4-126(F) if the dealer or salesman is engaged principally and primarily in the business of making a series of private offerings. For the purposes of this Section, “series” means in excess of four private offerings within, from, or outside Arizona in any consecutive 12-month period.
5. Securities transactions exempt from registration under A.R.S. § 44-1844(A)(4) if the dealer or salesman receives compensation or engages or offers to engage in repeated or successive transactions of a similar character. “Repeated or successive transactions of similar character” include transactions that occur sufficiently close in time to reasonably indicate continuity or association, whether the transactions are made on behalf of one or more securities owners, and whether the securities are of the same or different issuers.
6. Securities transactions exempt from registration under A.R.S. § 44-1844(A)(11).
7. Securities transactions exempt from registration under A.R.S. § 44-1844(A)(18).

#### Historical Note

Former Order S-4; Amended effective August 20, 1976 (Supp. 76-4). Amended effective June 15, 1978. Amended as an emergency pursuant to A.R.S. § 41-1003, valid for only 90 days, to postpone effective date until July 17, 1978 (Supp. 78-3). Amended effective July 14, 1978 to postpone effective date until November 1, 1978 (Supp. 78-4). Amended paragraph (3) effective August 4, 1982 (Supp. 82-4). Amended effective July 18, 1985 (Supp. 85-4). Amended effective May 18, 1990 (Supp. 90-2). Citations to A.R.S. §§ 44-1843 and 44-1844 corrected to refer to subsection (A) (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 4498, effective November 7, 2000 (Supp. 00-4).

#### R14-4-105. Promotional Securities; Definitions

- A. Promotional securities, held by promoters of a promotional stage corporation that proposes to make a public offering of its securities pursuant to A.R.S. Title 44, Chapter 12, Article 7, except pursuant to A.R.S. § 44-1901, shall be subject to a restrictive sales agreement in accordance with the provisions of this Section.
- B. As used in this Section, the following terms have the meaning indicated.

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1. "Consideration" includes cash, services rendered, and tangible or intangible property.
  2. "Earnings per share" means fully diluted earnings computed in accordance with generally accepted accounting principles.
  3. "Promoters" means any person who meets any one of the following conditions. Promoter does not include an unaffiliated institutional investor or a person who receives either securities or proceeds solely as underwriting compensation and who is not a promoter under subsection (B)(3)(a), (c), (d), or (e).
    - a. Alone or in conjunction with one or more persons, directly or indirectly, founded, organized, or controls the issuer;
    - b. Directly or indirectly receives, as consideration for service and property rendered, 5% or more of any class of the issuer's equity securities or 5% or more of the proceeds from the sale of any class of the issuer's equity securities;
    - c. Is an officer, or director of the issuer;
    - d. Directly or indirectly, legally or beneficially owns 10% or more of the issuer's outstanding shares before or immediately following the public offering;
    - e. Directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a promoter as defined in subsections (B)(3)(a) through (d).
  4. "Promotional stage corporation" means a corporation that has no public market for its shares and has no significant earnings.
  5. "Promotional securities" means securities issued to a promoter, at any time during the three-year period prior to the proposed public offering date, that meet the conditions of subsection (C). Promotional securities shall be limited to common stock unless securities other than common stock were issued for the primary purpose of evading this Section.
  6. "Public market" means a public place of exchange where securities are bought and sold, directly or through intermediaries. Public market excludes "thin markets" that do not result in reliable prices. To determine if the securities trade in a public market, the Commission may consider the market history, the public trading volume, the spread between the bid and asked prices, the number of market makers, the public float, the pricing formula, the marketplace in which the securities trade, the length of time the securities have been traded in that marketplace, and other relevant factors.
  7. "Restrictive sales agreement" means an agreement between a promotional stage corporation and a promoter, for the benefit of the shareholders of the corporation, entered into prior to the proposed public offering of the promotional stage corporation's securities, subjecting the promotional securities to a sales restriction for up to three years following the proposed public offering and including the terms contained in subsection (H). As a condition of registration, the issuer shall submit the agreement to the Commission for review.
  8. "Significant earnings" means earnings per share, based upon the issuer's shares outstanding immediately before the proposed public offering, of at least one of the following. Such test shall not be deemed the exclusive test for the determination of "significant earnings."
    - a. 5% of the public offering price per common share for the prior fiscal year, or the period of the issuer's existence if less than one fiscal year;
    - b. 4% of the public offering price per common share for each of the prior two fiscal years; or
    - c. 3% of the public offering price per common share for each of the prior three fiscal years.
  9. "Unaffiliated institutional investor" means any unaffiliated bank; investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64 (1994), as amended; business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(48) (1994 & Supp. II 1996), incorporated by reference; small business investment company licensed by the U.S. Small Business Administration under Section 301 of the Small Business Investment Act of 1958, 15 U.S.C. 681 (1994), as amended; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3) (1994), incorporated by reference; insurance company; private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(22) (1994), incorporated by reference; or comparable business entity engaged as a substantial part of its business in the purchase and sale of securities and that owns less than 20% of the securities to be outstanding at the completion of the proposed public offering. Copies of documents incorporated by reference do not contain any later amendments or editions, are on file in the Office of the Secretary of State, and are available from the Securities Division of the Corporation Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
- C.** Securities that are issued to promoters for consideration valued at less than the following percentages of the proposed public offering price, in an amount that represents an ultimate right of participation in excess of 15% of the securities to be outstanding at the completion of the proposed public offering, shall be promotional securities. The value of consideration other than cash received by the issuer for shares shall be established to the Commission's satisfaction by appraisals, evidence of amounts paid by others for substantially similar services or property, evidence of a bona fide offer to purchase such services or property, evidence of significant services rendered or contractually required to be rendered to the issuer, which may take into account the relevant experience, special skills, and other qualifications of the person rendering the service, or any other evidence. The value of noncash consideration that cannot be established to the satisfaction of the Commission shall be 0.
1. For all securities issued to a promoter within one year prior to and including the date of the offering of securities to the public: 85%.
  2. For all securities issued to a promoter within two years but not less than one year prior to and including the date of the offering of securities to the public: 75%.
  3. For all securities issued to a promoter within three years but not less than two years prior to and including the date of the offering of securities to the public: 65%.
- D.** A summary of the sales restriction terms shall be included in the offering documents, and a legend evidencing the sales restriction shall appear on each certificate representing the shares subject to the restriction.
- E.** In the event that any of the following occurs during the term of the restrictive sales agreement, the promotional securities shall be released in accordance with subsection (G):
1. For 60 consecutive trading days commencing at least 90 days after the date of the offering of the securities to the

- public, the issuer's securities trade in a public market at a price of not less than 150% of the offering price per share.
2. For 90 consecutive trading days commencing at least 12 months after the date of the offering of the securities to the public, the issuer's securities trade in a public market at a price of not less than 110% of the offering price per share.
  3. For any fiscal years ending after the date of the offering of the securities to the public, the issuer has earnings per share of at least:
    - a. 5% of the public offering price per common share for that fiscal year;
    - b. 4% of the public offering price per common share for that fiscal year and for the prior fiscal year, calculated independently, whether or not such prior fiscal year ended after the date of the offering of the securities to the public; or
    - c. 3% of the public offering price per common share for that fiscal year and for each of the two prior fiscal years, calculated independently, whether or not such prior fiscal years ended after the date of the offering of the securities to the public.
  4. The securities become covered securities as that term is defined in subsection 18(b)(1)(A) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)(A) (Supp. II 1996)), incorporated by reference.
  5. A bona fide tender offer or an offer to merge or otherwise acquire the issuer's equity securities by an unaffiliated purchaser, pursuant to a vote by the majority of the shareholders and in accordance with the following:
    - a. If the transaction occurs within 24 months of the effective date of the offering registered with the Commission, all public shareholders of the issuer will receive cash in the amount of at least two times the public offering price per share of equity securities at the effective date of the tender offer, merger, or other acquisition, or securities-listed or to be listed, or qualified in all respects for listing, on the New York Stock Exchange, the American Stock Exchange, or the National Market System of the National Association of Securities Dealers Automated Quotations System—in value equal to at least two times the public offering price per share of equity securities at the effective date of the tender offer, merger, or other acquisition.
    - b. If the transaction occurs more than 24 months after the effective date of the offering registered with the Commission, all public shareholders of the issuer will receive cash in the amount of at least 1 1/2 times the public offering price per share of equity securities, or securities in value equal to at least 1 1/2 times the public offering price per share of equity securities.
  6. The securities are transferred by will or pursuant to the laws of descent and distribution or by court order. In all such cases, only the securities so transferred shall be released from the terms of the restrictive sales agreement.
- F.** If the promotional securities, or any part thereof, have not been released pursuant to subsections (E)(1) through (6), then at the end of the first 12-month period after the date of commencement of the restrictive sales agreement, over each of the next eight calendar quarters, 1/8 of the promotional shares shall be released from the restrictive sales agreement and the restrictive legend may be removed from the certificates representing such shares. There is no filing requirement in connection with the securities released under this subsection.
- G.** Promotional securities shall automatically be released from the restrictive sales agreement and the restrictive legend may be removed from the share certificates upon the filing with the Commission of any one of the following:
1. With respect to subsections (E)(1), (2), or (4), a written representation from the promoter indicating compliance with the applicable subsection;
  2. With respect to subsection (E)(3), a written representation from the promoter indicating compliance with such subsection accompanied by financial statements, prepared in accordance with generally accepted accounting principles and audited and reported upon by an independent certified public accountant, that indicate compliance with the subsection;
  3. With respect to subsection (E)(5), a written representation from the promoter indicating compliance with such subsection accompanied by any offering materials relating to the specified transaction; or
  4. With respect to subsection (E)(6), a certified copy of an order issued by a court of competent jurisdiction that orders the release or transfer of promotional securities, a certified copy of an instrument of distribution filed with a court of competent jurisdiction, or a written representation from the issuer stating that the securities were transferred pursuant to a will or the laws of descent and distribution.
- H.** The restrictive sales agreement shall include the following terms and conditions:
1. Except as otherwise provided in the agreement, the promotional securities shall not be transferred, sold, pledged, hypothecated, or encumbered nor shall the issuer recognize any attempted transfer, sale, pledge, hypothecation, or encumbrance for three years following the conclusion of the proposed offering;
  2. The number of promotional securities subject to the restriction;
  3. The identity of owners of the promotional securities;
  4. The terms of release under subsections (E), (F), and (G);
  5. Any profits realized by a promoter who sells promotional securities in violation of the restrictive sales agreement shall inure to and be recoverable by the issuer;
  6. Promotional securities may be transferred by gift to family members, not more remote than first cousins, or to trusts or similar instruments of which the promoter is the beneficiary for estate-planning purposes, provided the securities remain subject to the terms of the restrictive sales agreement;
  7. Promotional securities may be transferred by any method or transaction approved by a majority of the shareholders other than the promoters, provided the securities shall remain subject to the terms of the restrictive sales agreement;
  8. Holders of promotional securities shall continue to have all voting and other rights to which they are entitled by ownership of the promotional securities; and
  9. All certificates representing stock dividends from promotional securities and all securities resulting from stock splits from promotional securities shall be subject to the terms of the restrictive sales agreement.
- I.** A breach of the restrictive sales agreement by a promoter shall be deemed a violation of this Section by such promoter.

**Historical Note**

Former Order S-5; Former Section R14-4-105 repealed, new Section R14-4-105 adopted effective July 30, 1986

(Supp. 86-4). Amended by final rulemaking at 5 A.A.R. 1437, effective April 19, 1999 (Supp. 99-2).

**R14-4-106. Options, Warrants, and Rights to Purchase**

- A.** The grant of options, warrants and rights to purchase to officers, directors and other employees in the form of incentive stock options, warrants or rights to purchase in accordance with Sec. 422A of the Internal Revenue Code of 1954, as amended, will be considered justified.
- B.** The grant of options, warrants and rights to purchase to officers, directors and promoters not in accordance with Sec. 422A of the Internal Revenue Code of 1954, as amended, will be considered justified if all of the following conditions are met:
1. A certificate or instrument in evidence thereof is issued prior to the commencement of the proposed public offering.
  2. The number of shares covered thereby does not exceed 20% of the number of securities to be outstanding at the completion of the proposed public offering.
  3. The initial exercise price is reasonably related to the public offering price.
  4. They do not exceed 10 years in duration.
  5. The prospectus to be used in connection with the proposed public offering contains a full disclosure as to the terms and reasons for their grant.

**Historical Note**

Former Order S-6; Amended effective July 18, 1985 (Supp. 85-4).

**R14-4-107. Promoters Equity**

- A.** An amount equal to the following percentages of a proposed public offering shall, before new stock is offered to the public, be paid in or contributed in cash, or other tangibles by the organizers and promoters, except in unusual instances and the burden shall rest on the applicant to justify its exclusion from the following schedule:
- 10% of the first \$200,000.00
  - 5% of the second \$200,000.00
  - 1% of the balance
- B.** The value placed on any non-cash assets so paid in or contributed must be fully substantiated.

**Historical Note**

Former Order S-7

**R14-4-108. Sales Commission and Expenses**

- A.** No issuer shall incur a liability which must be paid by the issuer as a selling expense in connection with the sale of a public issuance greater than 15% of the amount of said issue actually sold to the public.
- B.** Selling expense shall include commissions, salaries, advertising and all other expense directly or indirectly incurred in connection with the sale of securities, excluding, however:
1. Attorneys' fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations;
  2. The cost of prospectuses, circulars and other documents required to comply with such laws and regulations;
  3. Other expenses incurred in connection with such qualification and compliance with such laws and regulations;
  4. Cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps; and
  5. Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, auditors, and of engineers, appraisers and other experts.

**Historical Note**

Former Order S-8.

**R14-4-109. Examination of Prospective Dealers and Salesmen**

- A.** Prior to the registration of a dealer or salesman the Commission may require that each applicant take a written examination at a time and place specified by the Commission to determine whether the business experience of the applicant is sufficient to justify the registration of the said applicant.
- B.** The provisions as stated above shall not apply to those dealers or salesmen whose names appear in the register of dealers and salesmen as of the date of the adoption of these rules.

**Historical Note**

Former Order S-9.

**R14-4-110. Installment Sales**

- A.** Marginal sales of securities will be permitted on an installment basis with approximately 50% paid down at the time of subscription and the balance payable within 10 months.
- B.** Subsection (A) will not apply:
1. To sales of partnership interests, or joint venture interests, the issuer having made other installment arrangements acceptable to the Director of Securities.
  2. To securities registered under the Investment Company Act of 1940.
  3. In other unusual instances and the burden shall rest on the applicant to justify its exclusion from said provision.

**Historical Note**

Former Order S-10. Subsection numbering corrected to conform to Secretary of State guidelines (Supp. 00-1).

**R14-4-111. Commissions to Officers and Directors**

No commission or sales fee will be allowed either directly or indirectly to officers, directors or promoters of an issuer, when such issuer is a dealer in its own securities, for sale of such securities, unless such officers, directors, or promoters receive no other salary or remuneration from such issuer and do not sell securities in more than one issue at the same time.

**Historical Note**

Former Order S-11.

**R14-4-112. Impoundment of Funds**

Funds held in a depository as a condition to registration shall be deposited in a national bank or a bank organized pursuant to an Act of Congress and supervised by an agency of the United States or by a state bank which is supervised and regulated by an agency of this state or of the United States. Funds so held may only be released by order of the Commission.

**Historical Note**

Former Order S-12.

**R14-4-113. Impound Dates -- Application to Extend**

A period of one year from the date of effective registration of securities by an issuer shall ordinarily be the maximum time allowed to such issuer to obtain the funds necessary to finance the proposed enterprise outlined in the issuer's prospectus. The request of any issuer seeking a longer period of time will be looked upon with disfavor.

**Historical Note**

Former Order S-13.

**R14-4-114. Recognized Manuals of Securities**

- A.** For purposes of A.R.S. § 44-1844(A)(11), each of the following publications is approved by the Commission as a recognized manual of securities.
1. Mergent's Industrial Manual.

2. Mergent's Municipal and Government Manual.
  3. Mergent's Transportation Manual.
  4. Mergent's Public Utility Manual.
  5. Mergent's Bank and Finance Manual.
  6. Standard & Poor's Corporation Records.
- B.** A "publication" for purposes of this Section includes electronic publication formats that are as readily available to the general public as the printed version, including CD-ROM and electronic dissemination over the Internet.

**Historical Note**

Former Order S-14; Amended effective May 16, 1978 (Supp. 78-3). Amended effective July 18, 1985 (Supp. 85-4). Amended paragraph (7) effective November 19, 1987 (Supp. 87-4). Citation to A.R.S. § 44-1844 corrected to refer to subsection (A) (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 5381, effective November 5, 2001 (Supp. 01-4).

**R14-4-115. Listing of National Securities Exchanges Registered under the Securities Exchange Act of 1934, As Used in A.R.S. § 44-1843(A)(7)**

Each of the following national exchanges is approved by the Commission as a recognized securities exchange within the meaning of that term as used in A.R.S. § 44-1843(A)(7):

1. New York Stock Exchange
2. American Stock Exchange
3. Midwest Stock Exchange
4. Pacific Coast Stock Exchange
5. Philadelphia Stock Exchange
6. Chicago Board Options Exchange

**Historical Note**

Former Order S-15; Amended effective August 20, 1976 (Supp. 76-4). Amended effective July 18, 1985 (Supp. 85-4). Citation to A.R.S. § 44-1843 corrected to refer to subsection (A) (Supp. 00-1).

**R14-4-116. NASAA Statements of Policy**

- A.** Unless otherwise provided in A.R.S. Title 44, Chapter 12, Article 7, transactions that fall within one or more of the following North American Securities Administrators Association (NASAA) statements of policy shall comply with the requirements of those statements of policy to qualify for registration or renewal under A.R.S. Title 44, Chapter 12, Article 7. This Section shall not apply to the registration of securities under A.R.S. § 44-1901.
1. Statement of policy regarding loans and other material affiliated transactions, amended November 18, 1997.
  2. Registration of asset-backed securities, adopted October 25, 1995; amended May 7, 2007.
  3. NASAA mortgage program guidelines, adopted September 10, 1996; amended May 7, 2007.
  4. Registration of commodity pool programs, adopted September 21, 1983, effective January 1, 1984; amended and adopted; May 7, 2007.
  5. Equipment programs, adopted November 20, 1986; amended April 22, 1988, and May 7, 2007.
  6. Registration of oil and gas programs, adopted September 22, 1976; amended October 12, 1977, October 31, 1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, October 24, 1991, and May 7, 2007.
  7. Statement of policy regarding real estate investment trusts, revised and adopted May 7, 2007.
  8. Real estate programs, last revised May 7, 2007.
  9. Statement of policy regarding unequal voting rights, adopted and effective October 24, 1991.

10. Omnibus Guidelines, adopted March 29, 1992; amended May 7, 2007.
11. Statement of policy regarding church extension fund securities, adopted April 17, 1994, entitled guidelines for general obligation financing by religious denominations; amended April 18, 2004.
12. Statement of policy regarding church bonds, adopted April 14, 2002.

- B.** The material listed in subsection (A) is incorporated by reference and on file with the Commission. The incorporated material does not contain later editions or amendments. The material is published in NASAA Reports by Commerce Clearing House, Inc., 4025 W. Peterson Ave., Chicago, IL 60646. Copies are available from NASAA, 750 First St., N.E., Suite 1140, Washington D.C. 20002, and the Commission.

**Historical Note**

Former Order S-16. Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 1902, effective May 3, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3043, effective August 17, 2003 (Supp. 03-2). Amended by final rulemaking at 11 A.A.R. 2025, effective July 4, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 3613 effective October 24, 2008; clerical error of published effective date at 14 A.A.R. 3613 (Supp. 08-3).

**R14-4-117. Requirement for Registration of a Debt Offering; Definitions**

- A.** As a condition of registration of debt securities under A.R.S. Title 44, Chapter 12, Article 7, except pursuant to § 44-1901, an issuer must demonstrate its ability to service its debt obligations as they become due, including the obligations under the debt securities to be offered.
- B.** An offering of investment grade debt securities that have been rated BBB or higher by Standard & Poor's or Fitch Investors Service, Inc., or Baa or higher by Moody's Investors Service will be considered to have complied with the requirements of this Section.
- C.** For purposes of this Section, the following definitions shall apply.
1. "Fixed charges" means the sum of interest expensed and capitalized; amortized premiums, discounts, and capitalized expenses related to indebtedness; an estimate of the interest within rental expense; and preference security dividend requirements of consolidated subsidiaries.
  2. "Earnings" is the amount resulting from subtracting the sum of the items in subsection (C)(2)(b) from the sum of the items in subsection (C)(2)(a).
    - a. Pretax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, fixed charges; amortization of capitalized interest, distributed income of equity investees, and the issuer's share of pretax losses of equity investees for which charges arising from guarantees are included in fixed charges.
    - b. Interest capitalized, preference security dividend requirements of consolidated subsidiaries, and the minority interest in pretax income of subsidiaries that have not incurred fixed charges.
  3. "Equity investees" means investments for which the issuer accounts by using the equity method of accounting.
  4. "Pro forma ratio" means a ratio that reflects the application of proceeds from the proposed offering to repay any outstanding debt or to retire other securities.



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- D.** The issuer's demonstration of its ability to service its debt obligations shall include all of the following.
1. Statement of the issuer's current cash flow prepared in conformity with generally accepted accounting principles and adjusted on a pro forma basis to reflect:
    - a. The elimination of interest and fees on debt or debt securities and of cash dividends on preferred stock that are to be retired with the proceeds of the offering.
    - b. The effect of any acquisitions or capital expenditures that were made by the issuer after its last fiscal year, or that are proposed or required for the current fiscal year, that materially affect the issuer's cash flow.
    - c. The effect of interest and fees on debt or debt securities or cash dividends paid after the issuer's last fiscal year.
    - d. The effect of any interest and fees on debt or debt securities and of cash dividends on preferred stock or common stock that were issued during the issuer's last fiscal year, but that were outstanding for only a portion of such fiscal year, as if such debt, debt securities, preferred stock, or common stock had been outstanding for entire fiscal year.
    - e. The effect of imputed or deferred charges of zero-coupon debt or debt securities for the issuer's last fiscal year and any additional charges on such debt or debt securities issued after the issuer's last fiscal year.
    - f. The effect of accrued dividends on preferred stock for the issuer's last fiscal year and any additional dividends on such preferred stock issued after the issuer's last fiscal year.
    - g. The effect of any other material changes to the issuer's future cash flow.
  2. Detailed explanation of the facts and assumptions underlying the pro forma statement of cash flow.
  3. A ratio of earnings to fixed charges for each of the last five fiscal years and the latest interim period.
    - a. If a ratio indicates less than one-to-one coverage, disclose the dollar amount of the deficiency.
    - b. If the proceeds from the proposed sale of securities will be used to repay any of the issuer's outstanding debt or to retire other securities and the change in the ratio would be 10 percent or greater, include a pro forma ratio. Use the net change in interest or dividends from the refinancing to calculate the pro forma ratio.
  4. A calculation using the amounts and captions used by the issuer to calculate the ratio of earnings to fixed charges.
  5. Copies of written agreements, contracts, or other instruments material to the issuer's ability to service its obligations under the debt securities to be offered.
  6. Detailed information regarding all guarantee obligations of or to the issuer in connection with any debt. Any financial statements provided to the Commission to satisfy this subsections shall be prepared in conformity with generally accepted accounting principles.
  7. Other material or information the issuer desires to include to support its demonstrations.
- E.** If the Commission deems it necessary for investor protection, the Commission may require that the issuer establish a sinking fund or redemption requirements.

**Historical Note**

Former Order S-17. Repealed effective December 21, 1995, under an exemption from the Attorney General

approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4). New Section adopted by final rulemaking at 7 A.A.R. 1308, effective March 1, 2001 (Supp. 01-1).

**R14-4-118. Statements Required in Prospectus**

- A.** This Section applies to securities subject to A.R.S. Title 44, Chapter 12, Articles 6 and 7.
- B.** The outside front cover page of every prospectus shall include, in a concise and conspicuous manner, a disclosure that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or determined if the prospectus is truthful or complete, and that any representation to the contrary is a criminal offense.
- C.** If any of the following apply to an issuer, the outside front cover page of the prospectus also shall include, in a concise and conspicuous manner, a disclosure regarding the speculative or high-risk nature of the securities:
1. The issuer has not been in the business described in the prospectus for at least three years.
  2. The issuer has not had net income in any of its last three fiscal years.
  3. The value of the security offered is materially dependent on the fulfillment or accomplishment of a future condition, promotion, or development instead of the issuer's present tangible assets or conditions.
  4. A significant portion of the issuer's assets are intangible assets that have not been assigned a value in an audited financial statement according to generally accepted accounting principles.
  5. The issuer intends to exchange a significant portion of the securities for intangible assets at a per-unit price that is substantially lower than the per-unit price offered in the prospectus.
  6. The securities are issued as part of any project or plan for the sale, development, or exploration of any interest in unimproved or undeveloped land or oil, gas, or other mineral right.
- D.** Issuers may comply with subsection (C) by using either of the following disclosures or other clear, plain language.
1. "These are speculative securities. You should purchase these securities only if you can afford a complete loss of your investment."
  2. "This investment involves a high degree of risk. You should purchase these securities only if you can afford a complete loss of your investment."

**Historical Note**

Former Order S-18. Amended by final rulemaking at 6 A.A.R. 1902, effective May 3, 2000 (Supp. 00-2).

**R14-4-119. Additional Registration Requirements for Preferred Stock**

- A.** This Section applies to a person proposing to register preferred stock under A.R.S. Title 44, Chapter 12, Article 7. This Section shall not apply to the registration of securities under A.R.S. § 44-1901.
- B.** As used in this Section, the terms "promoter" and "unaffiliated institutional investor" shall have the same meaning indicated in Section R14-4-105. As used in this Section, the following terms have the meaning indicated.
1. "Adjusted net earnings" means, after subtracting interest and dividends charges, the issuer's net earnings adjusted on a pro forma basis to reflect all of the following:
    - a. The elimination of any required charges for debt, debt securities, or preferred stock that are to be redeemed or retired from the proceeds derived from the public offering of preferred stock.

- b. The effect of any acquisitions or capital expenditures made by the issuer after its last fiscal year, or proposed or required to be made during the current fiscal year that materially affect the issuer's net earnings.
  - c. The effect of charges or dividends on debt, debt securities, or preferred stock issued after the issuer's last fiscal year.
  - d. The effect of any charges or dividends on debt, debt securities, or preferred stock issued during the issuer's last fiscal year, but outstanding for only a portion of the year. The effect of the charges or dividends shall be treated as if the debt, debt securities, or preferred stock had been outstanding for the entire last fiscal year.
  - e. The effect of any other material changes to an issuer's future net earnings.
2. "Net earnings" means the issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles.
- C.** The Commission may deny an application if the issuer's adjusted net earnings for the last fiscal year or its average adjusted net earnings for the last three fiscal years prior to the public offering were not sufficient to pay its fixed charges and preferred stock dividends, whether or not accrued, and to meet the redemption requirements, if applicable, of the preferred stock being offered.
- D.** As an alternative to subsection (C), the Commission may consider the issuer's "statement of cash flows," prepared in conformity with generally accepted accounting principles, if the statement demonstrates that the issuer has had positive "net cash provided by operating activities" for its last fiscal year. If the issuer will be redeeming or retiring debt securities using the proceeds from the public offering, the issuer shall make a pro forma adjustment for the elimination of the related interest charges, net of applicable income taxes. The Commission may require that the issuer submit a financial statement demonstrating an average positive "net cash provided by operating activities" for the last three fiscal years prior to the public offering. In either instance there must be sufficient cash to cover the preferred stock dividend whether or not declared.
- E.** Subsections (C) and (D) shall not apply to the registration of convertible preferred stock that is superior in right to payment of dividends, interest, and liquidation proceeds to any convertible debt and preferred stock that are legally or beneficially, directly or indirectly, owned by promoters. The issuer shall disclose the risks of failure to declare or pay dividends and the equity characteristics of the convertible preferred stock in the prospectus or offering document.

**Historical Note**

Former Order S-19; repealed effective July 30, 1986 (Supp. 86-4). New Section adopted by final rulemaking at 6 A.A.R. 1902, effective May 3, 2000 (Supp. 00-2).

**R14-4-120. Financial Statements**

**A. Qualification of accountants**

- 1. The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his residency or principal office.
- 2. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residency or principal office.

- 3. The Commission will not recognize any certified public accountant or public accountant as independent who is not in fact independent. An accountant will not be considered independent with respect to any person or any affiliate thereof in whom he has any financial interest direct or indirect or with whom he is or was during the period of the report connected as a promoter, underwriter, voting trustee, attorney, director, officer, or employee.
- B. Accountants -- report:**
- 1. The accountant's report shall be dated, shall have a conformed signature, shall indicate the city and state where issued, and shall identify without detailed enumeration the financial statements covered by the report.
  - 2. The accountant's report shall state whether the audit was made in accordance with generally accepted auditing standards and shall designate any auditing procedures generally recognized as normal or deemed necessary by the accountant under the circumstances of a particular case which have been omitted and the reasons for their omission.
  - 3. Any matters to which the accountant takes exception shall be thoroughly identified; the exception thereto specified and thoroughly stated, and to the extent practicable, the effect of such exception on the related financial statements given.
  - 4. If, with respect to the report of the financial statements, the principal accountant relies on a financial statement by another accountant, the report of such other accountant shall be filed as part of the applicant's financial statement.
- C. Opinion to be expressed. The accountant's report shall state clearly:**
- 1. The opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; and
  - 2. The opinion of the accountant as to the consistency of the application of the accounting principles, or, as to any changes in such principles which have a material effect on the financial statements.
- D. Consents.** If any accountant or other professional expert has prepared or audited any report or opinion for use in connection with an application for registration or an exemption for which a filing is required, such accountant or expert must file a copy of a signed consent in connection with such filing. The consent shall be dated within 90 days of the application or filing, unless the Securities Division waives this requirement for good cause shown.

**Historical Note**

Former Order S-20; Amended effective August 4, 1982 (Supp. 82-4).

**R14-4-121. Limitation on Activities of Securities Salesmen; Definitions**

- A.** As used in this Section, the following terms have the meaning indicated:
- 1. "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the person specified.
  - 2. "Registered salesman" means an individual registered to sell securities pursuant to A.R.S. Title 44, Chapter 12, Article 9.
- B.** A registered salesman shall not sell securities for more than one dealer in Arizona during the same time period unless one of the following applies:
- 1. The dealers for which the registered salesman sells securities are affiliates.

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2. The dealers have filed with the Commission a copy of a written agreement that the registered salesman may sell securities for each of the dealers, which is signed by all of the dealers.

**Historical Note**

Former Order S-21. Amended by final rulemaking at 9 A.A.R. 90, effective February 15, 2003 (Supp. 02-4).

**R14-4-122. Fingerprinting of Salesmen**

- A. Prior to the registration or renewal of registration of a salesman, pursuant to the provisions of the Securities Act, the Commission may require the applicant to be fingerprinted, at a time and place specified by the Commission, in order for the Commission to specifically check into the background of the applicant.
- B. Persons registered pursuant to the Arizona Securities Act continuously for the past five consecutive years preceding July 1, 1965 shall be exempt from this rule.

**Historical Note**

Former Order S-22; Amended subsection (A) effective July 18, 1985 (Supp. 85-4).

**R14-4-123. Financial Information Required by Applicants for Exemptions**

To a petition filed pursuant to A.R.S. § 44-1846, or as part of a Notice of Intention to Sell Securities pursuant to rule R14-4-101 or Rule R14-4-102, there shall be attached as an exhibit financial statements consisting of a balance sheet as of a date within 90 days of the petition and statements of operations, stockholders' equity and retained earnings, and changes in financial position for each of the preceding three years or for such lesser period as the issuer has been engaged in business. Such financial statements shall be prepared in accordance with generally accepted accounting principles and shall be:

1. Verified under oath, upon information and belief, by an officer, a general partner, a joint venturer, a trustee, or the sole proprietor of the issuer, whichever is appropriate depending upon its form of organization, by a statement which shall include the statements that:
  - a. The accompanying financial statements present fairly the issuer's financial position on the dates indicated and the results of the issuer's operations and changes in financial position for the periods indicated; and that
  - b. Such person has no knowledge of any material fact which would adversely affect the financial condition, results of operations and changes in financial position of such issuer as disclosed in such financial statements; or
2. Audited by an independent public or certified independent public accountant, in which case such statements need not be as of a date within 90 days of the petition but may be as of a date within one year of the petition, provided that such audited statements are accompanied by unaudited interim statements as of the date within 90 days of the date of the petition.

**Historical Note**

Former Order S-23; Amended effective July 18, 1985 (Supp. 85-4).

**R14-4-124. Net Worth Requirements for Registration by Description of Commodity Investment Contracts or Commodity Option Contracts**

- A. An applicant for registration by description of commodity investment contracts or commodity option contracts pursuant to A.R.S. § 44-1871, shall file a financial statement, prepared

within 90 days of the date of application, which indicates to the satisfaction of the Arizona Corporation Commission a net worth of not less than \$75,000.00. Any money, property or other thing of value utilized by the applicant in order to comply with the bonding requirements of A.R.S. § 44-1943, relating to registration as a Dealer in securities, shall be excluded from the computation of net worth.

- B. The net worth requirements prescribed herein shall be maintained throughout the period of registration by description and shall be considered a condition thereof.

**Historical Note**

Former General Order S-24 not in original publication, correction (Supp. 75-1).

**R14-4-125. Commodities Exchanges Recognized for Purposes of A.R.S. § 44-1844(A)(13)**

Commodities exchanges recognized by the Arizona Corporation Commission for purposes of the exemption prescribed by A.R.S. § 44-1844(A)(13), are as follows:

1. Domestic
  - a. Coffee, Sugar and Cocoa Exchange  
4 World Trade Center  
New York, NY 10048
  - b. Commodity Exchange Inc. CMX  
4 World Trade Center  
New York, NY 10048
  - c. New York Mercantile Exchange  
4 World Trade Center  
New York, NY 10048
  - d. Chicago Mercantile Exchange & International Money Market  
444 West Jackson Blvd.  
Chicago, IL 60606
  - e. Chicago Board of Trade  
141 W. Jackson Blvd.  
Chicago, IL 60604
  - f. MidAmerica Commodity Exchange  
175 West Jackson Blvd.  
Chicago, IL 60604
2. Foreign
  - a. The London Metals Exchange  
Plantation House, Fenchurch Street  
EC3 LONDON, ENGLAND
  - b. The United Terminal Sugar Market Association  
58 Mark Lane  
EC3R 7NE LONDON, ENGLAND
  - c. The London Cocoa Terminal  
58 Mark Lane  
EC3R 7NE LONDON, ENGLAND
  - d. The Coffee Terminal Market Association  
58 Mark Lane  
EC3R 7NE LONDON, ENGLAND

**Historical Note**

Former General Order S-25 not in original publication, correction, Amended effective June 3, 1975 (Supp. 75-1). Amended effective July 18, 1985 (Supp. 85-4). Citation to A.R.S. § 44-1844 corrected to refer to subsection (A) (Supp. 00-1).

**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 transac-

tions 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;
    - 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 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 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 one 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.

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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 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).
  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 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 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 one 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 first 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 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 two 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 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 six months before the start of a Section R14-4-126 offering or are made more than six 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 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 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 (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 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 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.
    - 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

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- 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 possesses 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 one copy of a notice on Form D at the following times:
    - a. No later than 15 calendar days after the first 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 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) 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 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 five 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 five 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 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 interpret-



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ing 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 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.
    - 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).
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.

**Historical Note**

Adopted as General Order S-26 effective July 25, 1975 (Supp. 75-1). Former Section R14-4-126 repealed, new Section R14-4-126 adopted effective December 28, 1982 (Supp. 82-6). Amended effective November 30, 1989 (Supp. 89-4). Amended effective June 9, 1995, under an exemption from the Attorney General certification requirements of the Arizona Administrative Procedure Act (Supp. 94-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 3913, effective September 28, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4498, effective November 7, 2000 (Supp. 00-4).

**R14-4-127. Guidelines for Securities Filings Under A.R.S. § 44-1846**

- A.** Petition for exemption. The issuer shall file a petition for exemption from registration under A.R.S. § 44-1846, which shall contain specific facts demonstrating why registration is not essential to the public interest or the protection of the investors. The petition shall indicate and explain in detail which one or more of the following reasons are relied upon for the exemption.
1. The special characteristics of the securities or transactions.
  2. The limited character and duration of the offering.
  3. The special characteristics or limited number of offerees or investors.
- B.** Offers, sales, exchanges, or distributions. No offer, sale, exchange, or distribution of the securities shall be made under A.R.S. § 44-1846 until the Commission has entered a written order granting the exemption.
- C.** Disclosure document. The issuer shall file a disclosure document with the petition for exemption in a form complying with the terms of this Section. The disclosure document shall contain all material facts relating to the proposed issue including but not limited to the investment objectives, a description of the type of person who could benefit from the investment, the applicable suitability standards under subsection (E), the legend required under subsection (H), and the information required for a prospectus under A.R.S. § 44-1894(A)(1) through (A)(5), (A)(7), and (A)(8). The issuer shall deliver and all offerees shall receive the disclosure document at least 72 hours prior to the sale of any securities.
- D.** Financial statement. The disclosure document shall include the financial statements required under R14-4-123.
- E.** Investor suitability standards. Petitions under this Section shall include minimum investor suitability standards for the persons to whom the securities will be offered. The standards may consist of one or more of the following criteria: minimum net worth, minimum income, and income tax bracket. Standards may be stated in the alternative. The Commission will review the standards and may approve or modify the standards based on such factors as, without limitation, liquidity, risk, transferability, specific tax shelter orientation of the investment, leverage, compensation of promoter, cash flow, conflict of interest, unproven nature of the product or mineral or oil reserves, lack of business history, management experience, and financial stability.
- F.** Final confidential report of the offering. The issuer shall make a final confidential report to the Commission within 30 calendar days after the conclusion of the offering. The final report shall be verified under oath by a company officer and shall include the following information:

1. The names and addresses of purchasers, the number of shares purchased, the date and amount paid.
  2. The occupations of the purchasers.
  3. An affidavit by the issuer that the purchasers have affirmed in writing that they meet the suitability standards set forth in the Order of Exemption.
- G.** Sales completion. Sales made under Orders of Exemption under A.R.S. § 44-1846 and this Section shall be completed within one year from the Commission's grant of the exemption. In the event sales are not completed, the issuer shall submit a new petition, which shall be treated as an original filing.
- H.** Legend on disclosure document. The outside front cover page of every disclosure document used in connection with the offer or sale of securities under A.R.S. § 44-1846 shall contain a prominent legend in plain and concise language stating that the securities are exempt from registration under A.R.S. § 44-1846, but that such exemption is not a finding by the Commission that the disclosure document is true or accurate or that the Commission has passed upon the merits or approved the securities.
- I.** Promotional securities and promoters' equity. The provisions of R14-4-105 and R14-4-107 shall be applied to this Section when the imposition of such restrictions is necessary because of the speculative nature of the offerings, as defined in R14-4-118(C).
- J.** Prohibition against advertising and sales commission. The issuer shall not advertise in connection with any offering made under this Section. The issuer shall not pay, directly or indirectly, any remuneration for sales under this Section, other than transfer agent's fees, to any salesman, underwriter, officer, director, or employee of the issuer or to any other person.
- K.** Limited number of purchasers. Under this Section, issuers may make sales to no more than 35 purchasers.
- L.** Integration with other offerings. The Commission shall grant exemptions under this Section only once in a six-month period to any corporation, limited liability company, subsidiary, affiliate, or partnership. An issuer shall not use this exemption if an offering was made under this Section by entities controlled by, controlling, or under common control with the issuer within the previous six months. An issuer may not use this exemption if the securities sold under this Section are part of the same program of financing as securities sold under another exemption or a registered offering by virtue of identity of the use of the proceeds, similarity in the method of offering, identity of purchasers, and similarity of security offered.
- M.** Impound account. The Commission may impound the proceeds of offerings under this Section under the same guidelines and conditions set forth in A.R.S. § 44-1878 and may release the proceeds from impound back to investors after notice and opportunity for hearing is afforded to the issuer.
- N.** Revocation, suspension, or denial of exemption. The Commission may issue an order denying a petition for exemption under A.R.S. § 44-1846 and this Section, or suspending or revoking an exemption previously issued by the Commission under A.R.S. § 44-1846 and this Section after notice and opportunity for hearing in accordance with A.R.S. § 44-1972, for any grounds set forth in A.R.S. § 44-1921 or for any violation of the Securities Act of Arizona or the rules, regulations, or orders of the Commission issued or promulgated thereunder.

**Historical Note**

Adopted effective November 6, 1979 (Supp. 79-6).  
Amended by final rulemaking at 7 A.A.R. 729, effective  
January 17, 2001 (Supp. 01-1).

**R14-4-128. Unsolicited Transactions**

A non-issuer transaction effected by or through a dealer registered under the provisions of Article 9 of the Securities Act pursuant to an unsolicited order or offer to buy shall be added to the class of transactions exempted by A.R.S. § 44-1844.

**Historical Note**

Adopted effective November 8, 1983 (Supp. 83-6).

**R14-4-129. Registration Procedures for Dealers and Salesmen**

- A.** Application for registration as a dealer or salesman may be made by means of the National Association of Securities Dealers/North American Securities Administrators Association Central Registration Depository System (CRD System) by applicants entitled to use such system.
- B.** A filing of Form BD or Form U-4 with the CRD System does not constitute an automatic registration in this state. Dealers or salesmen should not consider themselves registered until a notice of effective registration has been issued by the Commission.
- C.** The filing of documents and information with the CRD System is equivalent to filing with the Commission.

**Historical Note**

Adopted effective March 16, 1984 (Supp. 84-2).

**R14-4-130. Dishonest and Unethical Conduct**

- A.** For purposes of A.R.S. §§ 44-1961(A)(13) and 44-1962(10), dishonest or unethical practices in the securities industry shall include but not be limited to the following:
1. Unreasonable delay in the delivery of securities or funds to the extent that the dealer or salesman is in a position to control or direct the delivery of the securities or funds. The burden of proof of inability to deliver shall rest with the dealer or salesman.
  2. Representing that securities will be listed, or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotation (NASDAQ) system or other quotation system without reasonable basis in fact for the representation.
  3. Inducing trading in a customer's account which is excessive in size or frequency in view of the customer's financial resources, the character of the account, and other relevant factors.
  4. Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer. Such suitability shall be determined on the basis of information furnished by the customer after such inquiry as may be necessary under the circumstances, concerning the customer's investment objectives, financial situation and needs, and other information known by the person making the recommendation. Each registered dealer shall require and maintain information regarding its customers necessary to make such determination prior to engaging in any transaction based upon a recommendation by the firm or its registered salesman.
  5. Selling a security in violation of Section 15(g) of the Securities Exchange Act of 1934, 15 U.S.C.A. 78o(g) (West 1981 & Supp. 1991) ("Section 15(g)") which is incorporated herein by reference and is on file with the Office of the Secretary of State.
  6. Executing a transaction on behalf of a customer without authority to do so.
  7. Executing a transaction pursuant to general discretionary authority for the account of a customer without first obtaining general discretionary authority in writing from

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such customer. This provision shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

8. Acting on an agency basis for both the seller and the purchaser of a security (other than U.S. Savings Bonds or municipal securities) without disclosing that fact to both the seller and the purchaser on the confirmation.
  9. While acting on an agency basis for a customer in any transaction, charging the customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to a security at the time of the transaction, the expenses of executing the order and the value of any service rendered by reason of experience in and knowledge of the security and the market therefor.
  10. While acting on a principal basis for a customer in any transaction, charging an excessive markup or markdown, taking into consideration all relevant circumstances including market conditions with respect to a security at the time of the transaction, the expenses of executing the order and the value of any service rendered by reason of experience in and knowledge of the security and the market therefor.
  11. Entering into a transaction with a customer in a security at a price not reasonably related to the market price of the security.
  12. Extending credit to a customer in violation of 12 CFR 220.1 through 220.18 (1991) (hereinafter referred to as "Regulation T") which is incorporated herein by reference and is on file with the Office of the Secretary of State.
  13. Selling an equity security to, or purchasing an equity security from, a customer without disclosing on the confirmation that the dealer is acting as a market maker in that security. "Market maker" as used herein shall mean any specialist permitted to act as a dealer, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.
  14. Employing, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance.
  15. Borrowing of money or securities by a salesman from a customer, except when the customer is a relative of the salesman or a person in the business of lending funds.
  16. Making unauthorized use of securities or funds of a customer or converting customer securities or funds for personal benefit.
  17. While registered as a salesman, effecting securities transactions which have not been recorded on the records of the dealer with whom such salesman is registered at the time of the transaction.
  18. As a registered salesman, operating an account under a fictitious name with intent to deceive or for an illegal purpose.
  19. Engaging in a pattern of marking order tickets as unsolicited when the dealer or salesman directly or indirectly recommended the transaction or introduced the customer to the security.
  20. Using sales materials or conducting sales presentations in a deceptive or misleading fashion.
- B.** To the extent that Section 15(g) or Regulation T are amended, dealers and salesmen in compliance with such amended ver-

sions shall not be subject to enforcement action by the Commission for violation of provisions of subsection (A)(5) or (12) respectively hereof to the extent that the violation results solely from the dealer's or salesman's compliance with the amended version of Section 15(g) or Regulation T.

**Historical Note**

Adopted effective November 4, 1992 (Supp. 92-4). Typographical error in subsection R14-4-130(A)(5) corrected (Supp. 00-1).

**R14-4-131. Supervision of Salesmen**

For purposes of A.R.S. §§ 44-1961(A)(12) and 44-1962(A)(11), no person shall be deemed to have failed to reasonably supervise any other person if:

1. There have been established and maintained written procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person of the Arizona Securities Act, or of any rule or regulation adopted thereunder; and
2. Such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

**Historical Note**

Adopted effective November 4, 1992 (Supp. 92-4). Amended by final rulemaking at 8 A.A.R. 3655, effective July 31, 2002 (Supp. 02-3).

**R14-4-132. Books and Records of Dealers**

- A.** Unless otherwise provided by order of the Commission, each registered dealer shall make, maintain, and preserve books and records in compliance with U.S. Securities and Exchange Commission rules 17a-3 (17 CFR 240.17a-3 (2002)) and 17a-4 (17 CFR 240.17a-4 (2002)) as amended in Release No. 34-44992, 66 Fed. Reg. 55817 (2001); 15g (17 CFR 240.15g (2002)); and 15c2-11 (17 CFR 240.15c2-11 (2002)), all of which are incorporated by reference. Copies of the materials are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, from the Commission, and are on file with the Office of the Secretary of State.
- B.** To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the Commission for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

**Historical Note**

Adopted effective November 4, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1073, effective May 3, 2003 (Supp. 03-1). R14-4-132(A) reflects corrected SEC release number (Supp. 05-4).

**R14-4-133. Definition of Partners and Executive Officers**

For purposes of the definition of "salesman" contained in A.R.S. § 44-1801, the following definitions shall apply:

1. "Partner" means a general partner or any other partner with the equivalent rights, liabilities, and obligations of a general partner.
2. "Executive officer" means the president, any vice president in charge of a principal business unit or division, the secretary, the treasurer, the chief executive officer, the chief financial officer, the chief operating officer, or an

officer who performs a principal policy-making function for a principal business unit or division.

**Historical Note**

Adopted effective November 4, 1992 (Supp. 92-4).

Amended by final rulemaking at 7 A.A.R. 729, effective January 17, 2001 (Supp. 01-1).

**R14-4-134. Guidelines for Securities Filings Under A.R.S. § 44-1902**

- A.** Uniform Limited Offering Registration (“ULOR”). An issuer may register securities by qualification under A.R.S. § 44-1902 in an aggregate amount not exceeding \$5 million in any 12-month period as provided in this Section.
- B.** Form U-7 and the Issuer’s Manual. Any reference in this Section to Form U-7 means the Small Company Offering Registration Form as adopted by the North American Securities Administrators Association, Inc. Any reference to the Issuer’s Manual means the Small Company Offering Registration Issuer’s Manual, which contains the requirements and general instructions for use of the Form U-7, as adopted by the North American Securities Administrators Association, Inc. Copies of Form U-7 and the Issuer’s Manual are available from the Commission and from the North American Securities Administrators Association, Inc.
- C.** Qualification. To be eligible for registration under A.R.S. § 44-1902, the issuer shall comply with the following conditions:
1. The offering shall not be a blind pool offering as defined in A.R.S. § 44-1801.
  2. The issuer shall not be an investment company subject to the Investment Company Act of 1940.
  3. The issuer shall not be subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934.
  4. The issuer and offering must meet the qualifications for use set forth in the Issuer’s Manual.
  5. If the offering includes debt securities, the application for registration shall include information that demonstrates the ability of the issuer to service its debt.
- D.** Disclosure Document. The issuer shall apply for registration of securities by qualification under A.R.S. § 44-1902 by filing with the Commission Form U-7, with exhibits and such other documents as required by the Issuer’s Manual.
- E.** Financial Statements. The financial statements included in the application for registration shall be in the form provided in the Issuer’s Manual. All prospective financial information that is included in the Form U-7 must be prepared or reviewed by an independent accounting firm.
- F.** Registration Fee. An application for registration shall be accompanied by a nonrefundable fee as provided in A.R.S. § 44-1861.
- G.** Issuer-Dealer Registration. An application for registration of securities also shall constitute an application for registration under A.R.S. § 44-1941 of the issuer as a dealer who deals exclusively in securities of which the dealer is the issuer (“issuer-dealer”) if accompanied by a duly completed Form BD, a brief description of the proposed method of sale, and other information required by A.R.S. § 44-1941. No bond shall be required for purposes of such issuer-dealer application. The Commission or the Director may require submission of additional information as to the issuer’s previous history, record, or business experience as deemed necessary to determine whether the issuer should be registered as a dealer, as provided under A.R.S. § 44-1942. Appropriate examinations may be required.
- H.** Other Registration Requirements. The following applicable Sections shall apply to registration of securities by qualification under A.R.S. § 44-1902:
1. R14-4-103 (advertising and sales literature). The issuer shall not distribute advertising and sales materials prior to receipt of the Division’s notification that the issuer may use the materials.
  2. R14-4-105 (promotional securities). For purposes of this Section, R14-4-105(C) is revised as follows:
 

“Securities that are issued to promoters for consideration valued at less than the following percentages of the proposed public offering price, in an amount that represents an ultimate right of participation in excess of 60 percent of the securities to be outstanding at the completion of the proposed public offering, shall be promotional securities. The value of consideration other than cash received by the issuer for shares shall be established to the Commission’s satisfaction by appraisals, evidence of amounts paid by others for substantially similar services or property, evidence of a bona fide offer to purchase such services or property, evidence of significant services rendered or contractually required to be rendered to the issuer, which may take into account the relevant experience, special skills, and other qualifications of the person rendering the service, or any other evidence. The value of noncash consideration that cannot be established to the satisfaction of the Commission shall be zero.

    - “1. For all securities issued to a promoter within one year prior to and including the date of the offering of securities to the public: 85 percent.
    - “2. For all securities issued to a promoter within two years but not less than one year prior to and including the date of the offering of securities to the public: 75 percent.
    - “3. For all securities issued to a promoter within three years but not less than two years prior to and including the date of the offering of securities to the public: 65 percent.”
  3. R14-4-106 (options, warrants, and rights to purchase).
  4. R14-4-107 (promoters equity).
  5. R14-4-108 (sales commission and expenses). For purposes of this Section R14-4-108(A) is revised as follows:
 

“No issuer shall incur a liability that must be paid by the issuer as a selling expense in connection with the offering of greater than 20 percent of the amount of the offering actually sold to the public.”
  6. R14-4-110 (installment sales).
  7. R14-4-111 (commissions to officers and directors).
  8. R14-4-112 (impoundment of funds) and R14-4-113 (impound dates).
  9. R14-4-117 (debt offerings).
  10. R14-4-118 (statements required in prospectus).
  11. R14-4-119 (preferred stock).
- I.** Delivery Requirements. The issuer must deliver to each offeree a copy of any literature mandated by the Commission, along with a Form U-7 that has been declared effective by the Commission and any supplements. As long as any securities sold in the offering are outstanding, the issuer shall deliver to investors any reports required by Form U-7 or under the Securities Exchange Act of 1934, unless there are ten or fewer shareholders and all of such shareholders consent in writing to the cessation of such reporting.
- J.** Reporting. After registration under A.R.S. § 44-1902, the issuer shall cause the following reports to be delivered to the Commission. The Commission may specify the forms necessary to fulfill the reporting requirements stated below.

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1. Within ten business days after every 90-calendar-day period following the effective date of the registration and on completion of the offering, a report stating the number of purchasers and the dollar amount of securities sold.
  2. Within ten business days after every 90-calendar-day period following the effective date of the registration and on completion of the offering, a statement reflecting that the issuer has not made any changes in or amendments to the Form U-7 or sales and advertising materials provided to the Commission, other than any changes or amendments filed with and declared effective or cleared by the Division.
  3. Within ten business days after every six-month period following the effective date of the registration and at such time as the proceeds have been completely used, a report stating in reasonable detail the issuer's use of the offering proceeds.
  4. Within ten business days after delivery to investors, copies of any other reports, brochures, letters, or such similar documents furnished, through any medium, to investors.
1. Has been convicted of a misdemeanor or felony involving racketeering or a transaction in securities or of which fraud is an essential element.
  2. Has been convicted within the 10 years before any issuance of securities under this Section, or at any time thereafter, of a misdemeanor involving racketeering or a transaction in securities or of which fraud or dishonesty is an essential element.
  3. Is subject to an order, judgment, or decree of a court of competent jurisdiction entered within 10 years of the date of any issuance of securities under this Section enjoining or restraining it from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering, or consumer protection laws.
  4. 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 before any issuance of securities under this Section or at any time thereafter.
  5. Is subject to an order of an administrative tribunal, self-regulatory organization, or the Securities and Exchange Commission denying, suspending, or revoking membership or registration as a broker or dealer in securities or as an investment adviser or investment adviser representative for a period of six months or more.

**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3).  
Amended by final rulemaking at 7 A.A.R. 729, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 9 A.A.R. 91, effective February 15, 2003 (Supp. 02-4).

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

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

1. A prospectus or an offering circular, the standards of form or content which are prescribed by any provision of the Securities Act of 1933, or rules and regulations promulgated thereunder, and Form F-7, F-8, F-9, or F-10, whichever is applicable, shall be filed with the Commission; and
2. A nonrefundable exemption fee as provided in A.R.S. § 44-1861(G) shall be paid to the Commission.

**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3).  
Amended by final rulemaking at 13 A.A.R. 1805, effective June 30, 2007 (Supp. 07-2).

**R14-4-136. Exempt Offerings Pursuant to Compensatory Arrangements**

- A. Offers and sales of securities that satisfy the requirements and provisions of rule 701 promulgated under the Securities Act of 1933, 17 CFR 230.701 (1999), ("rule 701") and this Section shall be added to the class of transactions exempt under the provisions of A.R.S. § 44-1844. Rule 701 is incorporated by reference and on file with the Office of the Secretary of State. The incorporated material contains no later editions or amendments. Copies of rule 701 are available from the Commission and from the Superintendent of Document, Government Printing Office, Washington, D.C. 20402.
- B. Except as provided in subsection (C), an exemption pursuant to this Section is not available for the securities of an issuer if the issuer or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities:
  1. Has been convicted of a misdemeanor or felony involving racketeering or a transaction in securities or of which fraud is an essential element.
  2. Has been convicted within the 10 years before any issuance of securities under this Section, or at any time thereafter, of a misdemeanor involving racketeering or a transaction in securities or of which fraud or dishonesty is an essential element.
  3. Is subject to an order, judgment, or decree of a court of competent jurisdiction entered within 10 years of the date of any issuance of securities under this Section enjoining or restraining it from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering, or consumer protection laws.
  4. 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 before any issuance of securities under this Section or at any time thereafter.
  5. Is subject to an order of an administrative tribunal, self-regulatory organization, or the Securities and Exchange Commission denying, suspending, or revoking membership or registration as a broker or dealer in securities or as an investment adviser or investment adviser representative for a period of six months or more.

- C. A disqualification under subsection (B) ceases to exist if any one of the following occurs:
  1. The basis for the disqualification has been removed by the jurisdiction creating it.
  2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification.
  3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- D. This Section provides an exemption from the registration requirements of the Arizona Securities Act for securities issued in compensatory circumstances. The Section is not available to any issuer for any transaction that, while in technical compliance with this Section, is part of a plan or scheme to circumvent this purpose.

**Historical Note**

Adopted effective November 21, 1991 (Supp. 91-4).  
Amended effective June 27, 1994, under an exemption from the Attorney General certification requirements of the Arizona Administrative Procedure Act (Supp. 94-2).  
Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4665, effective November 22, 2000 (Supp. 00-4).

**R14-4-137. Exempt Transactions - Securities Issued Pursuant to Court or Governmental Order**

- A. An issuance of securities in exchange for bona fide claims or property interests within or from this state which is made pursuant to a final judgment or order, in either event no longer subject to appeal, of a federal or state court of competent jurisdiction or other governmental authority expressly authorized by law, and where the terms and conditions of such issuance are approved, shall be added to the class of transactions exempt under A.R.S. § 44-1844. An offering made pursuant to this exemption cannot be combined with an offering made pursuant to A.R.S. §§ 44-1843, 44-1843.01, and 44-1844.
- B. To qualify for exemption under this rule, the following conditions must be satisfied:
  1. The issuer shall file with the Commission one copy of a notice of the hearing upon the fairness of the terms of the

- issuance, no less than 10 calendar days prior to the hearing.
2. The hearing must be held after reasonable notice and opportunity to be heard is given to all interested parties.
  3. At the conclusion of the hearing, the court or other governmental authority must expressly find that the terms of the exchange are fair.
  4. The issuer shall file with the Commission one copy of the final signed order of the court or other governmental authority within 10 calendar days of the issuance of such order.
- C. 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.

#### Historical Note

Adopted effective December 20, 1991 (Supp. 91-4).

#### R14-4-138. Foreign Security Exemption

- A. The following transactions are added to the class of transactions exempt under A.R.S. § 44-1844. Pursuant to A.R.S. § 44-1848, no dealer or salesman as defined in A.R.S. § 44-1801 shall engage in the following transactions unless such dealer or salesman is registered under A.R.S. Title 44, Chapter 12, Article 9 or unless such transactions are exempt pursuant to A.R.S. § 44-1844(A)(4) and dealer registration is not required by R14-4-104:
1. A non-issuer transaction in an outstanding security (including an American Depository Receipt representing such a security), of an issuer domiciled in a foreign country with which the United States is at the time of the transaction maintaining diplomatic relations (including the sale by a dealer, including an underwriter no longer acting as an underwriter in respect to the securities involved, but not including securities constituting an unsold allotment to or subscription by the dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter), if the class of security has been outstanding in the hands of the public for not less than 90 days preceding the date of the transaction and if, at the time of the transaction, the conditions of subsections (a) and (b) hereof are met:
    - a. The exemption of subsection (A)(1) is not available unless one of the following requirements is met:
      - i. The most recent edition of Moody's International Manual or Standard & Poor's Corporation Records, or the periodic supplements to such publications (hereinafter referred to as the "Manual"), contains a description of the issuer's business or operations, the names of the issuer's officers and directors (or their corporate equivalents in the issuer's country of domicile), an audited balance sheet of the issuer as of a date within 18 months of the date of the transaction and audited profit and loss statements for each of the issuer's two fiscal years immediately preceding the date of such balance sheet (such statements to be prepared in accordance with U.S. or Foreign GAAP); or
      - ii. The issuer of the security has a class of securities subject to the reporting requirements of Section 13 of the Securities Exchange Act, 15 U.S.C.A. 78m (West 1981 & Supp. 1992) ("Section 13") or Section 15(d) of the Securities Exchange Act, 15 U.S.C.A. 78o(d) (West 1981) ("Section 15(d)") and is not delinquent in such reporting. Section 13 and Section 15(d) are incorporated herein by reference and on file with the Secretary of State; or
    - iii. The security is exempted from the provisions of Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C.A. 78l(g) (West 1981) by Section 12(g)(3) of that Act, 15 U.S.C.A. 78l(g)(3) (West 1981) and the issuer is in compliance with all of the conditions of Section 12g3-2(b)(1), 17 CFR 240.12g3-2(b)(1) (1992) which sections and rule are incorporated herein by reference and on file with the Secretary of State.
  - b. The exemption of subsection (A)(1) is not available unless all of the following requirements are met:
    - i. The issuer, including any predecessors, has been in continuous operation for at least the preceding five years, is a going concern actually engaged in business and is not in an organizational or developmental stage, and is not in bankruptcy or receivership; and
    - ii. The issuer has net tangible assets of at least U.S. \$25,000,000 as of the date of its most recent audited financial statement prepared in accordance with U.S. or Foreign GAAP. Such statement shall be dated as of a date within 18 months of the date of the transaction; and
    - iii. The issuer had an average net income after taxes of at least U.S. \$1,000,000 over its most recent two consecutive years of operation according to audited profit and loss statements of the issuer prepared in accordance with U.S. or Foreign GAAP for the issuer's two fiscal years immediately preceding the date of the financial statement referred to in subsection (A)(1)(b)(ii) hereof; and
    - iv. The issuer has a class of securities listed or traded on a stock exchange or automated quotation system organized under the laws of its country of domicile; and
    - v. For the issuer's securities in the United States, there are at least two market makers, who are registered broker-dealers under the Securities Exchange Act of 1934, or at least one market maker who is a registered broker-dealer under the Securities Exchange Act of 1934 and who has a net capital of at least \$25,000,000.
2. A non-issuer transaction in an outstanding security, other than a revenue obligation, which is issued or guaranteed by any foreign government with which the United States is at the time of sale maintaining diplomatic relations, or by a political subdivision of Canada or Mexico having the power of taxation, if the securities when offered for sale in this state are acknowledged by the foreign government or political subdivision as valid obligations, and none of the securities of the foreign government or political subdivision are in default either as to principal or interest.
- B. The Commission may by order revoke or suspend this exemption with respect to any securities or the use of the exemption by any dealer if it finds that the further sale in this state of the securities or by the dealer would work, or tend to work, a fraud or deceit on the purchaser. The Director may temporarily suspend this exemption with respect to any security or the use of the exemption by any dealer pursuant to the procedures for a temporary cease and desist order under R14-4-307.
- C. For purposes of this rule, the following definitions shall apply:

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1. “American Depository Receipt” is a negotiable certificate issued by a U.S. depository pursuant to an effective registration statement filed on Form F-6 with the Securities and Exchange Commission, representing the securities of a non-U.S. company, which securities are held in custody by a custodian in the company’s country of domicile; or a similar type of receipt or instrument issued in respect of a security which receipt or instrument has been approved for sale by order of the Commission.
2. “Issuer” of an American Depository Receipt shall be deemed to be the non-U.S. company that issued the securities represented by the American Depository Receipt.
3. “U.S. or Foreign GAAP” shall mean generally accepted accounting principles of the United States or of the foreign country in which the issuer is domiciled.

**Historical Note**

Adopted effective March 4, 1993 (Supp. 93-1).

**R14-4-139. Exempt Public Offerings for Qualified Purchasers; Definitions**

**A.** As used in this Section, the following terms have the meaning indicated:

1. “Qualified purchaser” means:
  - a. An “accredited investor” as defined in R14-4-126(B).
  - b. A corporation, partnership, or other entity whose equity owners each individually meets the requirements of subsections (A)(1)(a), (c), or (d).
  - c. With respect to the offer and sale of one class of voting common stock of an issuer or of preferred stock of an issuer entitling the holder to at least the same voting rights as the issuer’s one class of voting common stock, provided that the issuer has only one class of voting common stock outstanding upon consummation of the sale, a natural person who, either individually or jointly with the person’s spouse, has a minimum net worth in excess of \$250,000, excluding home, home furnishings, and automobiles, and had, during the immediately preceding tax year, gross income in excess of \$100,000 and reasonably expects gross income in excess of \$100,000 during the current tax year, or has a minimum net worth in excess of \$500,000, excluding home, home furnishings, and automobiles. The amount of each natural person’s investment shall not exceed 10% of the natural person’s net worth, excluding home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.
  - d. Any other purchaser designated as qualified by rule of the Commission.
2. “Securities Act” shall mean the Securities Act of Arizona.
3. “SEC” shall mean the United States Securities and Exchange Commission.

**B.** Offers and sales of securities made by an issuer in compliance with this Section are exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842. The exemption from A.R.S. § 44-1842 is available for offers or sales of an issuer made only by the issuer’s employees, officers, and directors who were not retained for the primary purpose of making offers or sales on behalf of the issuer. The exemption from A.R.S. § 44-1842 is not available for third parties or dealers.

**C.** This exemption is not available to a “blind pool offering” within the meaning of A.R.S. § 44-1801(1), an issuer whose business plan is to engage in a merger or acquisition with an

unidentified entity or person, or an issuer that is excluded from the exemption pursuant to subsection (R). The exemption is not available for any transaction or chain of transactions that, while in technical compliance with this Section, is part of a plan or scheme to circumvent the registration provisions of the Securities Act.

- D.** Offers and sales of securities shall be made only to qualified purchasers or to persons the issuer reasonably believes, after inquiry, to be qualified purchasers.
- E.** The issuer must reasonably believe, after inquiry, that each purchaser is purchasing the security for the purchaser’s own account and not with the view to, or for sale in connection with, a distribution of the security.
- F.** Securities acquired in a transaction under this Section 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.
- G.** The consideration received for securities sold in the same offering, whether pursuant to this Section or another exemption, shall not exceed \$5,000,000 in any 12-month period.
- H.** A general announcement of the proposed offering may be made by any means, but shall include only the following information, unless additional information is specifically permitted in writing by the Director:
  1. The name, address, and telephone number of the issuer;
  2. The name, a brief description, and price, if known, of any security to be issued;
  3. A brief description of the issuer’s business;
  4. The type, number, and aggregate amount of securities being offered;
  5. The name, address, and telephone number of the person to contact for additional information; and
  6. A statement that discloses all of the following terms and conditions:
    - a. Sales will only be made to qualified purchasers.
    - b. No money or other consideration is being solicited or will be accepted in connection with the general announcement.
    - c. The securities are not registered with or approved by any state securities agency or the SEC and are offered and sold pursuant to an exemption from registration.
    - d. The general announcement does not constitute an offer to sell, nor a solicitation of an offer to buy, the securities described in the announcement. Such an offer can be made only by means of a prospectus, offering memorandum, subscription document, or other offering documents pursuant to R14-4-139.
- I.** Dissemination of the general announcement described in subsection (H) to persons who are not qualified purchasers shall not disqualify the issuer from claiming the exemption under this Section.
- J.** In connection with an offer made under this Section, the issuer may provide information in addition to the general announcement under subsection (H), if such information:
  1. Is delivered through an electronic database that is restricted to persons who have been identified as qualified purchasers; or
  2. Is delivered after the issuer reasonably believes that the prospective purchaser is a qualified purchaser.
- K.** No telephone solicitation shall be permitted unless prior to placing the call the issuer reasonably believes, after inquiry, that the prospective purchaser to be solicited is a qualified purchaser.

- L. At least five business days before a sale of securities to, or a commitment to purchase securities is accepted from, a qualified purchaser, the issuer shall meet the disclosure requirements of R14-4-126(C)(2).
- M. The issuer shall place a conspicuous legend on the cover page of any offering document, which states that the securities have not been registered under the Securities Act, are offered only to qualified purchasers as defined in R14-4-139, and have not been approved by the SEC or the Commission. The issuer shall place a conspicuous legend on the cover page of any offering document and on any certificate representing the securities, which sets forth the restrictions on the transferability and sale of the securities.
- N. No later than 10 business days prior to the publication of a general announcement of the proposed offering or the initial offer of the securities, whichever occurs first, the issuer shall file with the Commission a notice briefly describing the business of the issuer and the terms of the transaction, a consent to service of process, a copy of the general announcement, and the fee required by A.R.S. § 44-1861(G). Upon request of the Commission, the issuer may be required to submit a prospectus, offering memorandum, subscription document, or other offering documents or materials used in connection with the offer or sale of securities.
- O. Failure to timely file the notice required in subsection (N) shall not, in and of itself, preclude reliance on the exemption afforded by this Section. If the Commission finds that such notice has not been timely filed with respect to more than one offering, the Commission may issue an order restricting the right to use exemptions under this Section.
- P. The Director may deny or revoke the availability of this exemption if the Director determines that there is a reasonable likelihood that the sale of the securities would work or tend to work a fraud or deceit upon the purchasers. In the event the Director makes such a determination, the issuer may request a hearing in accordance with the provisions of Article 11 of the Securities Act by notifying the Commission within 10 days after notice of the Director's determination described in this subsection.
- Q. No action or inaction on the part of the Commission or Director with respect to any offer or sale of securities undertaken pursuant to this Section shall be deemed to be a waiver of any provision of this Section nor shall it be deemed to be a confirmation of the availability of this Section or the approval of any offering.
- R. Disqualification
1. The exemption is not available to an issuer if it or any of its predecessors, affiliates, directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, or the underwriter:
    - a. Has been convicted within the 10 years preceding the filing of the notice required by this 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 any court of competent jurisdiction entered within five years of the date of filing of the notice required by this Section, temporarily, preliminarily, or permanently enjoining or restraining 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 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 has not filed all required reports during the 12 calendar months preceding the filing of the notice required by this Section; or
  - e. Is subject to an order of any state or federal agency denying or revoking registration or licensure as a broker or dealer in securities or as an investment adviser or investment adviser representative, 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.
2. The Commission, in the Commission's discretion, may waive any disqualification prescribed by this subsection.
3. A disqualification prescribed by this subsection 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.

#### Historical Note

Section adopted by exempt rulemaking at 6 A.A.R. 338, effective December 21, 1999 (Supp. 99-4).

#### R14-4-140. Accredited Investor Exemption

- A. As used in this Section, the following terms shall have the meaning indicated:
1. "Accredited investor" shall have the meaning provided in R14-4-126.
  2. "Form D" shall mean Form D of Regulation D (17 CFR 239.500) promulgated by the SEC under the Securities Act of 1933.
  3. "Rule 504" shall mean Rule 504 of Regulation D (17 CFR 230.504 (1999)) promulgated by the SEC under the Securities Act of 1933, which is incorporated by reference and is on file with the office of the Secretary of State. The incorporated material contains no later editions or amendments. Copies of rule 504 are available from the Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
  4. "Securities Act" shall mean the Arizona Securities Act, A.R.S. §§ 44-1801 through 44-2126.
  5. "SEC" shall mean the United States Securities and Exchange Commission.
- B. Offers and sales of securities by an issuer in compliance with Rule 504 shall be exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842, subject to the satisfaction of the provisions of this Section. The exemption from A.R.S. § 44-1842 is available for the issuer's employees, officers, and directors who make offers or sales on behalf of the issuer if they were not retained for the primary purpose of making such offers or sales. The exemption from A.R.S. § 44-1842 is not available for third parties or dealers.



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- C. This exemption is not available to a “blind pool offering” within the meaning of A.R.S. § 44-1801, an issuer that either has no specific business plan or purpose or whose business plan is to engage in a merger or acquisition with an unidentified entity or person, or an issuer that is excluded from the exemption pursuant to subsection (M).
- D. Offers of securities must specify that sales shall be made only to accredited investors. Sales of securities shall be made exclusively to accredited investors.
- E. The issuer shall reasonably believe, after inquiry, that each purchaser is buying the security for the purchaser’s own account and not with the view to distribute, or for sale in connection with a distribution of, the security. Any resale of a security sold in reliance on this Section within 12 months of the initial purchase from the issuer, except a resale to an accredited investor or pursuant to a registration statement effective under A.R.S. Title 44, Chapter 12, Article 7, shall be presumed to be with a view to distribution and not for investment. Securities issued under this Section may only be resold pursuant to registration or an exemption under the Securities Act.
- F. A general announcement of the proposed offering may be made by any means. The general announcement shall include only the following information.
1. The name, address, and telephone number of the issuer of the securities.
  2. The name, a brief description, and price, if known, of any security to be issued.
  3. A brief description of the issuer’s business.
  4. The type, number, and aggregate amount of securities being offered.
  5. The name, address, and telephone number of the person to contact for additional information.
  6. A statement that discloses all of the following terms and conditions:
    - a. Sales will only be made to accredited investors.
    - b. No money or other consideration is being solicited or will be accepted in connection with the general announcement.
    - c. The securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold under an exemption from registration.
- G. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.
- H. In connection with an offer made under this Section, the issuer may provide information in addition to the general announcement under subsection (F) if such information meets one of the two following conditions:
1. Is delivered through an electronic database that is restricted to persons who have been identified as accredited investors.
  2. Is delivered after the issuer reasonably believes, after inquiry, that the prospective purchaser is an accredited investor.
- I. No telephone solicitation shall be permitted unless prior to placing the call the issuer reasonably believes, after inquiry, that the prospective purchaser to be solicited is an accredited investor.
- J. The cover page of any offering documents, or any subscription documents if there are no other offering documents, shall include a conspicuous legend that states that:
1. The securities may be sold only to accredited investors for investment and not in connection with a distribution.
  2. Investors may not resell the securities unless the securities are first registered or qualify for an exemption from registration.
  3. The securities have not been approved or disapproved by the SEC or the Arizona Corporation Commission nor have they passed upon the merits of or otherwise approved the offering.
- K. A legend regarding resale restrictions shall be conspicuously set forth on the front of any certificate that represents a security issued or resold in accordance with this rule. Any certificate legend shall no longer be required on the termination of any resale restrictions in accordance with this Section or 12 months after the initial purchase from the issuer, whichever occurs first.
- L. The issuer shall file with the Commission a copy of Form D within 15 calendar days after the first sale within or from Arizona, a consent to service of process, a copy of the general announcement, and the fee set forth in A.R.S. § 44-1861(G).
- M. This exemption is not available to an issuer if it, or any of its predecessors, affiliates, directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, promoters, or any underwriter of the securities or any partner, director, or officer of such underwriter:
1. Has been convicted within the 10 years preceding the filing of the notice required by this 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.
  2. Is subject to an order, judgment, or decree of any court of competent jurisdiction entered within five years of the date of filing of the notice required by this Section, temporarily, preliminarily, or permanently enjoining or restraining any conduct or practice in connection with the sale or purchase of securities, or involving fraud, deceit, or racketeering.
  3. 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 Section, or at any time thereafter prior to the termination of the offering.
  4. Is subject to an order of any state or federal agency denying or revoking registration or licensure as a broker or dealer in securities or as an investment adviser or investment adviser representative, 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.
- N. Any disqualification caused by subsection (M) shall cease to exist if any of the following occurs:
1. The basis for the disqualification has been removed by the jurisdiction creating it.
  2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification.
  3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.

**Historical Note**

Adopted effective August 14, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4737, effective November 22, 2000 (Supp. 00-4).

**R14-4-141. Solicitation of Interest Prior to the Filing of the Registration Statement****A.** The following definitions shall apply to this Section:

1. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.
2. "SEC" means the United States Securities and Exchange Commission.
3. "Solicitation of Interest Form" means the document used to solicit indications of interest in a security, which must contain, in all material respects, the information set forth in subsection (J).

**B.** An offer, but not a sale, of a security made by an issuer, or on behalf of an issuer by a dealer registered under Article 9 of the Securities Act, for the sole purpose of soliciting an indication of interest in receiving a prospectus, or its equivalent, for such security is exempt from A.R.S. § 44-1841, and the issuer and its employees are exempt from A.R.S. § 44-1842, if all of the following conditions are satisfied:

1. The issuer is, or will be, a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada or one of the states of Mexico, and is not conducting or intending to conduct a blind pool offering as defined in A.R.S. § 44-1801.
2. The issuer intends to register the security in Arizona prior to sale or the securities will be sold under a valid exemption in Arizona.
3. Ten business days prior to the initial solicitation of interest under this Section, the issuer files with the Commission a Solicitation of Interest Form along with any other items to be used, directly or indirectly, to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice or advertisement to be published, and a nonrefundable fee as prescribed by A.R.S. § 44-1861(G).
4. Five business days prior to usage, the issuer files with the Commission any material amendments to the foregoing items or additional items to be used to conduct solicitations of interest, except for items provided to a particular offeree pursuant to a request by that offeree.
5. The issuer does not use any Solicitation of Interest Form, script, advertisement or other item to solicit indications of interest, which the Securities Division has notified the issuer not to distribute.
6. During the solicitation of interest period, the issuer, or the dealer on behalf of the issuer, does not solicit or accept money or a commitment to purchase securities.
7. Any published notice, published advertisement or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief general description of the issuer's business and products, and the first paragraph of the legend required in the Solicitation of Interest Form under subsection (J)(2)(g).
8. All communications with prospective investors made in reliance on this Section must cease after a registration statement is filed in Arizona.

**C.** The issuer, or the dealer on behalf of the issuer, may communicate with any offeree about the contemplated offering provided the offeree is supplied the most current Solicitation of Interest Form no later than five business days from the communication. The requirements of this subsection do not apply to issuer communications made solely in the form of scripted broadcasts, published notices or published advertisements.**D.** Unless the disqualification is waived or ceases to exist under subsection (E), the exemption of subsection (B) is not available if the issuer or any of its predecessors, affiliates, directors,

officers, general partners, or beneficial owners of 10% or more of any class of its equity securities:

1. Has been convicted of a felony of which fraud is an essential element, or which involves racketeering, or a transaction in securities, or an offense listed in A.R.S. § 13-2301(D)(4).
2. Has been convicted within 10 years of the date of the filing of the Solicitation of Interest Form of a misdemeanor of which fraud or dishonesty is an essential element, or involving racketeering, or a transaction in securities.
3. Is subject to an order, judgment, or decree of any court of competent jurisdiction entered within 10 years of the date of the filing of the Solicitation of Interest Form, which temporarily, preliminarily or permanently enjoins or restrains such person from engaging in, or continuing, any conduct or practice in connection with the sale or purchase of securities, or involving fraud, deceit, racketeering or consumer protection laws.
4. 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 of the date of the filing of the Solicitation of Interest Form.
5. Is subject to the reporting requirements of the Securities Exchange Act of 1934 and has not filed all required reports during the 12 calendar months before the filing of the Solicitation of Interest Form.
6. Is subject to an SEC order 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.

**E.** The Commission may, at its discretion, waive any disqualification caused by subsection (D). In addition, a disqualification under subsection (D) ceases to exist if:

1. The basis for the disqualification is removed by the jurisdiction creating it;
2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification; or
3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.

**F.** A failure to comply with all of the requirements of subsections (B) and (C) will not result in the loss of the exemption from A.R.S. §§ 44-1841 and 44-1842 for any offer to a particular individual or entity if the issuer shows all of the following:

1. The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;
2. The failure to comply was insignificant with respect to the offering as a whole; and
3. A good faith and reasonable attempt was made to comply with all applicable conditions of subsections (B) and (C).

**G.** Any issuer, or other person on behalf of an issuer, who solicits indications of interest under this Section, may not make offers or sales in reliance on A.R.S. § 44-1844(A)(1) or A.A.C. R14-4-126 until six months after the last communication with a prospective investor made pursuant to this Section.**H.** All offers and communications, including but not limited to, the Solicitation of Interest Form, made in reliance on this Section are subject to the anti-fraud provisions of the Securities Act.

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- I. The Director of Securities may revoke the availability of this exemption prior to any particular solicitation of interest with respect to a particular issuer or transaction if the Director of Securities determines that there is a reasonable likelihood that the solicitation of interest would tend to work a fraud or deceit upon the offerees. In the event the Director of Securities makes such a determination, the issuer of the solicitation of interest may request a hearing in accordance with the provisions of Article 11 of the Securities Act by notifying the Commission within 10 days after written notice of the Director's determination.
- J. The following sets forth the minimum information that must be included in a Solicitation of Interest Form. Additional information may be included. Except for the title, the required information may be presented graphically in any manner.
1. The title of the Solicitation of Interest Form must include the phrase: "SOLICITATION OF INTEREST."
  2. The Solicitation of Interest Form must include each of the following items:
    - a. Name of the issuer;
    - b. Street address of the issuer's principal office;
    - c. Issuer's telephone number;
    - d. Date and place of organization of the issuer;
    - e. Dollar amount of the proposed offering;
    - f. Name of the issuer's chief executive officer or equivalent;
    - g. The following legend, or a legend which is substantially equivalent in plain and concise language:  
 "THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.  
 NO SALES OF THE SECURITIES WILL BE MADE, OR COMMITMENT TO PURCHASE ACCEPTED, UNTIL THE DELIVERY OF A FINAL OFFERING CIRCULAR [PROSPECTUS] THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING. AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.  
 THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS. NEITHER THE FEDERAL NOR THE STATE AUTHORITIES HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT OR ANY OTHER DOCUMENT PRESENTED TO YOU IN CONNECTION WITH THIS OFFER. NO SALE MAY BE MADE UNTIL THE OFFERING CIRCULAR [PROSPECTUS] IS REGISTERED IN THIS STATE AND IS QUALIFIED OR REGISTERED BY THE SECURITIES AND EXCHANGE COMMISSION."
    - h. A statement indicating whether the issuer is in the development stage, is conducting operations, has never conducted operations, or other applicable description;
    - i. A general description of the issuer's business or proposed business including the products or goods that are, or will be, produced or services that are, or will be, rendered, how these products or services are, or will be, produced or rendered, and how and when the issuer intends to carry out its activities;
    - j. A general description of the purposes for which the issuer intends to use the proceeds of the proposed offering;
    - k. The following information for all executive officers and directors: name, title, office, street address, telephone number, employment history (employers, titles and dates of positions held during the past five years), and education if less than five years of business experience (degrees, schools and dates).

**Historical Note**

Adopted effective September 11, 1998 (Supp. 98-3).  
 Amended by final rulemaking at 7 A.A.R. 729, effective January 17, 2001 (Supp. 01-1).

**R14-4-142. Securities Offerings on the Internet**

- A. Scope of Section. This Section applies to any offer for sale of securities placed on the Internet, except for those offers for sale from Arizona. As used in this Section, the term "Internet" is to be construed liberally to include all proprietary or common carrier electronic systems, or similar media.
- B. An offer for sale of securities placed on the Internet by, or on behalf of, an issuer, involving securities that will not be sold in Arizona pursuant to the Internet offer, shall be exempt from the provisions of A.R.S. §§ 44-1841 and 44-3321, and the offeror of such securities shall be exempt from A.R.S. § 44-1842, provided that:
1. The Internet offer for sale prominently and conspicuously indicates on the cover page of any offering document and on any subscription agreement document (a) that the securities are not being offered to persons in Arizona, or (b) in which specific states, other than Arizona, the securities are being offered;
  2. The offer for sale is not otherwise specifically directed to any person in Arizona by, or on behalf of, the issuer; and
  3. No sales of the issuer's securities are made in Arizona as a direct or indirect result of the Internet offer for sale.
- C. Any issuer who places an offer for sale of securities on the Internet in accordance with this Section may subsequently offer and sell such securities to persons in Arizona pursuant to a valid exemption from registration, or by filing a registration statement pursuant to A.R.S. §§ 44-1871, 44-1891, 44-1901 or 44-1902, or by filing a notice pursuant to A.R.S. § 44-3321. Where a registration statement is required, the issuer shall not make a sale of such securities to a person in Arizona until 30 days after the filing of the registration statement or the effective date of the registration statement, whichever is later.

**Historical Note**

Adopted effective September 11, 1998 (Supp. 98-3).

**R14-4-143. General Dissemination of Information on the Internet**

- A. Dealers and salesmen who use the Internet to distribute information on products and services directed generally to anyone having access to the Internet shall not be deemed to be selling, purchasing, or offering to sell or buy any securities in Arizona for purposes of Article 4 of the Securities Act of Arizona based solely on that activity if the following conditions are observed:
1. The Internet communication includes a clear and prominent statement that the dealer or salesman may only sell, purchase, or offer to sell or buy any securities in Arizona if first compliant with or exempt from registration requirements.
  2. The dealer or salesman complies with the statement contained in the Internet communication under subsection (A)(1).

3. The Internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any sale, purchase, or offer to sell or buy in connection with prospective customers or clients in Arizona, the dealer or salesman is first compliant with or exempt from registration requirements.
  4. The Internet communication does not involve either effecting or attempting to effect transactions in securities, the rendering of investment advice for compensation, or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.
  5. In the case of a salesman:
    - a. The affiliation with a dealer is prominently disclosed in the Internet communication.
    - b. The dealer with whom the salesman is associated first authorizes the Internet communication.
    - c. The dealer with whom the salesman is associated retains responsibility for reviewing and approving the content of any Internet communication.
    - d. In distributing information through the Internet, the salesman acts within the scope of the authority granted by the dealer.
- B.** Compliance with this Section relieves the dealer or salesman from registration requirements only. The dealer or salesman is subject to Article 13 of the Securities Act of Arizona and related regulations.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 547, effective January 14, 2000 (Supp. 00-1).

#### **R14-4-144. Suitability Standards Pursuant to A.R.S. § 44-1845**

- A.** Any issuer applying for registration under A.R.S. Title 44, Chapter 12, Article 7, and engaging in a transaction of a type specified in A.R.S. § 44-1845(B)(1) may apply for a special registration. Pursuant to A.R.S. § 44-1845(C), the special registration will impose the suitability standards of subsections (B) or (C) on the transaction in lieu of the conditions and standards prescribed under A.R.S. §§ 44-1876, 44-1877, 44-1878, 44-1921(1), (3), and (4), and the rules under those Sections, except when the sale of securities works or would tend to work a fraud or deceit upon the investors.
- B.** For all offerings listed on the Nasdaq SmallCap<sup>SM</sup> Market, the dealer, or the issuer if engaging in the sale of its securities, must have a reasonable belief that the potential investor satisfies any of the following conditions:
  1. Minimum of \$100,000, or \$150,000 when combined with spouse, in gross income during the prior year and a reasonable expectation that the investor will have such income in the current year; or
  2. Minimum net worth of \$250,000, or \$300,000 when combined with spouse, exclusive of home, home furnishings and automobiles, with the investment not exceeding 10% of the net worth of the investor, together with spouse, if applicable.
- C.** For offerings not listed on the Nasdaq SmallCap<sup>SM</sup> Market, the dealer, or the issuer if engaging in the sale of its securities, must have a reasonable belief that the potential investor satisfies any of the following conditions:
  1. Minimum of \$150,000, or \$200,000 when combined with spouse, in gross income during the prior year and a reasonable expectation that the investor will have such income in the current year; or
  2. Minimum net worth of \$350,000, or \$400,000 when combined with spouse, exclusive of home, home furnishings and automobiles, with the investment not exceeding 10%

of the net worth of the investor, together with spouse, if applicable.

- D.** The suitability standards specified in this Section are not available for direct participation programs, including real estate programs, real estate investment trusts, commodity pools, oil and gas programs, equipment leasing programs, and other similar programs that let investors participate directly in the cash flow and tax benefits of the underlying investments.
- E.** The issuer, 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 any underwriter of the securities shall not fall within any of the disqualification provisions of A.R.S. § 44-1901(G)(1) though (6).
- F.** The Commission may, at its discretion, waive any disqualification caused by subsection (E).
- G.** Any disqualification caused by subsection (E) shall cease to exist if any of the following occurs:
  1. The basis for the disqualification has been removed by the jurisdiction creating it.
  2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification.
  3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- H.** Adherence to a suitability standard imposed in connection with an offering subject to this Section, by condition or otherwise, shall not relieve a dealer from compliance with R14-4-130(A)(4).
- I.** Any offering document used in connection with an offering in which suitability standards are imposed under this Section shall prominently and conspicuously include a description of the applicable suitability standards.

#### Historical Note

Adopted effective September 11, 1998 (Supp. 98-3).  
Amended by final rulemaking at 7 A.A.R. 729, effective January 17, 2001 (Supp. 01-1).

#### **R14-4-145. Exemption for Electronic Venture Capital Networks**

- A.** Definitions and terms. As used in this Section, the following terms shall have the meaning indicated:
  1. “Accredited Investor” shall have the meaning provided in R14-4-126.
  2. “Listed Company” shall mean a business that maintains a listing on the Network.
  3. “Net Earnings” shall mean the after-tax earnings of a company or issuer that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles.
  4. “Network” shall mean a computer matching or listing service or system that facilitates the matching of businesses in need of capital to investors by enhancing the flow of information between businesses and investors.
  5. “Affiliate” shall mean a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.
  6. “Operator” shall mean the person or entity that owns, operates, sponsors or conducts a Network and any employees. An Operator shall not include a dealer, an affiliate of a dealer, an investment adviser, or an affiliate of an investment adviser.
  7. “Securities Act” shall mean the Securities Act of Arizona, A.R.S. § 44-1801 et seq.

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- B.** No Network or Operator shall be required to register as a dealer or salesman pursuant to Article 9 of the Securities Act, nor shall a Network or Operator be required to be licensed or file a notice as an investment adviser or investment adviser representative pursuant to Article 4 of the Arizona Investment Management Act (A.R.S. Title 44, Chapter 13), provided that the Network or Operator complies with the following conditions:
1. The Network or Operator shall not provide advice about any particular opportunities or ventures or make recommendations concerning any Listed Company;
  2. The Network or Operator shall not receive compensation other than flat fees to cover administrative costs and such fees will not be made contingent upon the outcome or completion of any securities transaction resulting from a listing on the Network;
  3. The Network or Operator shall not participate in any negotiations between investors and any Listed Company;
  4. The Network or Operator shall not directly or indirectly assist any investor or Listed Company with any transaction;
  5. The Network or Operator shall not handle funds or securities involved in any transaction;
  6. The Network or Operator shall not hold themselves out as providing any securities-related services other than a listing or matching service;
  7. The Network or Operator shall list only companies that the Network or Operator reasonably believes do not fall within the disqualification provisions listed in subsection (C);
  8. The Network or Operator shall limit access to information on Listed Companies to only those persons or entities that the Network or Operator reasonably believes are Accredited Investors;
  9. Information contained on the Network shall not be organized or presented in a manner that suggests that the Network recommends the purchase, holding or sale of any security;
  10. Any information contained on the Network concerning any Listed Company will be readily available in documents from the Listed Company or its agents and, where required by law, will be filed with the appropriate state and federal authorities;
  11. A Listed Company shall have a specific business plan or purpose, but its plan or purpose shall not be to engage in a merger or acquisition with an unidentified company or companies, or other entity or person;
  12. Listed Company offerings may not exceed an aggregate of \$5,000,000 in any consecutive 12 month period;
  13. Operator or Network officials, participants, and employees with direct or indirect operating or supervisory control over Network operations will not participate as investors in any Listed Company unless such participation is in compliance with securities laws and such participation is disclosed on the Network.
- C.** This exemption is not available for any Network, Operator, or Listed Company if such entity or predecessor or any of its officers, directors, 10% stockholders, promoters or any selling agents of the securities to be offered, or any officer, director or partner of such selling agent:
1. Has filed a registration statement which is the subject of a registration stop order entered pursuant to any state's securities law within five years of the proposed offering;
  2. Has been convicted within five years of the proposed offering of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;
3. Is subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years of the proposed offering, or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years of the proposed offering;
  4. Is subject to any state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the proposed offer, purchase or sale of securities;
  5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restricting or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years of the proposed offering.
- D.** The Commission, at its discretion, may waive any disqualification caused by subsection (C).
- E.** Any disqualification caused by subsection (C) shall cease to exist if any of the following occurs:
1. The basis for the disqualification has been removed by the jurisdiction creating it;
  2. The jurisdiction in which the disqualifying event occurs issues a written waiver of the disqualification;
  3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- F.** The Commission may by order revoke or suspend this exemption if it finds that the operation of the Network or Operator would work or tend to work a fraud or deceit upon investors or potential investors.

**Historical Note**

Adopted effective September 11, 1998 (Supp. 98-3).

**R14-4-146. Processing of Initial and Renewal Applications for the Registration or Exemption of Securities Offerings**

- A.** For purposes of this Section, the term "application" includes all documents, information and fees prescribed by the Commission for the registration or exemption of securities under A.R.S. Title 44, Chapter 12, and any rules promulgated under those statutes.
- B.** Within 30 days after receipt of an initial or renewal application for the registration or exemption of securities, the Commission shall notify the applicant, in writing, that the application is complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 30 days after receipt by the Commission of information in satisfaction of all deficiencies.
- C.** An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.

- D.** Within 60 days after receipt of a complete application, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
1. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
  2. If the applicant requests a hearing, the applicant shall do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.
- E.** For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
1. When the Commission approves an application under subsection (D):
    - a. Administrative completeness review time-frame: 60 days;
    - b. Substantive review time-frame: 60 days;
    - c. Overall time-frame: 120 days.
  2. When the Commission initiates the denial process and no hearing is requested under subsection (D)(1):
    - a. Administrative completeness review time-frame: 60 days;
    - b. Substantive review time-frame: 130 days;
    - c. Overall time-frame: 190 days.
  3. When the Commission initiates the denial process and a hearing is requested under subsection (D)(2):
    - a. Administrative completeness review time-frame: 60 days;
    - b. Substantive review time-frame: 280 days;
    - c. Overall time-frame: 340 days.
- F.** If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request for the duration of the extension or continuance.
- G.** When the period of time prescribed in this Section is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When the period of time prescribed for a specific time-frame is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.
- H.** In lieu of the time-frames established by this Section, the Commission shall process applications for the registration or exemption of certain securities offerings within the time-frames set forth in Table A.
- Historical Note**  
Adopted effective September 17, 1998 (Supp. 98-3).
- R14-4-147. Processing of Applications for Dealer and Salesman Registration**
- A.** For purposes of this Section, the term "application" includes all documents, information and fees prescribed by the Commission under A.R.S. Title 44, Chapter 12, Articles 5 and 9 and any rules promulgated under those statutes.
- B.** The Commission shall provide notices of deficiency, completeness or approval, as required under this Section, either in writing or through the CRD system.
- C.** The following provisions apply to applications for dealer registration:
1. Within 21 days after receipt of an application for dealer registration, the Commission shall notify the applicant that the application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 21 days after receipt by the Commission of information in satisfaction of all deficiencies.
  2. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.
  3. Within 60 days after receipt by the Commission of a complete application and the approval of the application by both the National Association of Securities Dealers and the state of the dealer's principal place of business if other than Arizona, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
    - a. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
    - b. If the applicant requests a hearing, the applicant shall do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.
  4. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
    - a. When the Commission approves an application under subsection (C)(3):
      - i. Administrative completeness review time-frame: 42 days;
      - ii. Substantive review time-frame: 60 days;
      - iii. Overall time-frame: 102 days.
    - b. When the Commission initiates the denial process and no hearing is requested under subsection (C)(3)(a):
      - i. Administrative completeness review time-frame: 42 days;
      - ii. Substantive review time-frame: 130 days;
      - iii. Overall time-frame: 172 days.
    - c. When the Commission initiates the denial process and a hearing is requested under subsection (C)(3)(b):
      - i. Administrative completeness review time-frame: 42 days;
      - ii. Substantive review time-frame: 280 days;
      - iii. Overall time-frame: 322 days.
- D.** The following provisions apply to applications for salesman registration:
1. Within 30 days after receipt of an application for salesman registration, the Commission shall notify the applicant that the application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 30 days after receipt by the Commission of information in satisfaction of all deficiencies.
  2. An application will not be deemed complete until the Commission receives notice through the CRD system, or otherwise, that the applicant:
    - a. Has passed all of the required examinations;
    - b. Is not seeking dual registration; and

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- c. Is not under special review status by the National Association of Securities Dealers.
- 3. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.
- 4. Within 60 days after receipt of a complete application, and the approval of the application by both the National Association of Securities Dealers and the state of the salesman’s principal place of business if other than Arizona, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
  - a. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
  - b. If the applicant requests a hearing, the applicant shall do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant’s request is docketed with the Commission.
- 5. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
  - a. When the Commission approves an application under subsection (D)(4):
    - i. Administrative completeness review time-frame: 60 days;
    - ii. Substantive review time-frame: 60 days;
    - iii. Overall time-frame: 120 days.
  - b. When the Commission initiates the denial process and no hearing is requested under subsection (D)(4)(a):
    - i. Administrative completeness review time-frame: 60 days;
    - ii. Substantive review time-frame: 130 days;
    - iii. Overall time-frame: 190 days.
  - c. When the Commission initiates the denial process and a hearing is requested under subsection (D)(4)(b):
    - i. Administrative completeness review time-frame: 60 days;
    - ii. Substantive review time-frame: 280 days;
    - iii. Overall time-frame: 340 days.
- E. If an applicant under this Section requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request for the duration of the extension or continuance.
- F. When the period of time prescribed in this Section is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When the period of time prescribed for a specific time-frame is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.
- G. The Commission shall renew registrations under this Section upon receipt by the Commission of the registration fee, as required by A.R.S. § 44-1861.

**Historical Note**

Adopted effective September 17, 1998 (Supp. 98-3).

**Table A. Arizona Corporation Commission Securities Division - Time-frames**

Security Offering	Statutory or Administrative Code Reference	Administrative Completeness Review (in days)	Substantive Review (in days)	Overall Time-frame (in days)
Nonexempt government securities	A.R.S. § 44-1843.01	10	10	20
Exempt transactions – existing stockholders and/or employees	A.A.C. R14-4-101	5	5	10
Exempt transactions – restricted public offerings	A.A.C. R14-4-102	5	5	10

**Historical Note**

Adopted effective September 17, 1998 (Supp. 98-3).

**R14-4-148. Transactions Effected by Canadian Dealers and Salesmen**

- A. A transaction effected by or through a Canadian dealer or its salesmen is added to the class of transactions exempt under A.R.S. § 44-1844, provided the transaction is conducted in accordance with the terms of this Section.
- B. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office or branch of a dealer domiciled in the United States.
- C. The dealer and its salesmen may only effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:
  - 1. An individual from Canada who temporarily resides in or is temporarily present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the individual entered the United States; or
  - 2. An individual present in this state whose transactions are in a Canadian self-directed tax-advantaged retirement account of which the individual is the holder or contributor.
- D. To effect transactions under this Section, a dealer shall:
  - 1. Comply with the requirements of subsection (F).
  - 2. Be registered with or a member of a Canadian SRO, stock exchange, or the Bureau des Services Financiers and

- maintain that registration or membership in good standing.
3. Disclose to its clients in this state that the dealer and its salesmen are not subject to the full regulatory requirements of the Arizona Securities Act.
- E.** An exemption under this Section shall not be available to a dealer or salesman if the dealer or salesman:
1. Has been convicted within ten years of the date of filing of the notice under this Section of a felony or misdemeanor of which fraud is an essential element, or a felony or misdemeanor involving the purchase or sale of securities or arising out of the conduct of the business as a dealer or salesman.
  2. Is subject to an order, judgment, or decree issued by a court of competent jurisdiction, SRO, or administrative tribunal entered within 10 years preceding the filing of the notice under this Section enjoining or restraining the dealer or salesman from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering or consumer protection laws.
- F.** Prior to a dealer or salesman effecting a transaction under this Section, a dealer shall file with the Division a notice that contains the following:
1. A copy of the last registration or renewal application filed in the jurisdiction in which the dealer has its principal office, with all amendments since that filing.
  2. A consent to service of process pursuant to A.R.S. § 44-1862.
  3. The fee required under A.R.S. § 44-1861(G).
  4. Written evidence that the dealer's membership in a Canadian SRO, stock exchange, or the Bureau des Services Financiers is in good standing.
  5. For each salesman effecting transactions in Arizona, the dealer shall file
    - a. A copy of the last registration or renewal application filed in the jurisdiction in which the salesman is registered and resident, with all amendments since that filing.
    - b. A consent to service of process.
    - c. Written evidence that the salesman is registered and in good standing in the jurisdiction from which he or she is effecting a transaction into this state.
- G.** A notice filed under this Section is effective on the date received by the Commission and expires on December 31.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5871, effective December 6, 2001 (Supp. 01-4).

**R14-4-149. Exemption from Registration for Offers Made in Connection with a Pending Application**

- A.** If all of the following apply, offers made in accordance with the requirements under U.S. Securities and Exchange Commission rule 134, 17 CFR 230.134 (2006), rule 255, 17 CFR 230.255 (2005), or rule 430, 17 CFR 230.430 (2005), which are incorporated by reference and contain no later editions or amendments, shall be added to the class of transactions exempt under A.R.S. § 44-1844.
1. The issuer has applied for registration of the securities to which the offers relate under the Securities Act of 1933, or the securities are exempt from registration under that act.
  2. The issuer has filed with the Commission an application for registration of the securities to which the offers relate, or the issuer has filed a notice under A.R.S. § 44-1843.01(B).

3. The issuer, or any of its predecessors, affiliates, directors, officers, general partners, or individuals holding a similar position of leadership, or beneficial owners of 10 percent or more of any class of its equity securities do not fall within any of the disqualification provisions of A.R.S. § 44-1901(G)(1) through (6).
  4. The issuer is not applying for registration under A.R.S. § 44-1902.
  5. The offering is not of a blind pool as defined in A.R.S. § 44-1801(1).
  6. The offering is not of speculative or high risk securities as defined by R14-4-118(C).
  7. No part of the purchase price is received until the securities are registered in Arizona, or the exemption under A.R.S. § 44-1843.01(B) is effective.
  8. An indication of interest in response to an offer made under this Section involves no obligation or commitment of any kind.
- B.** Copies of the incorporated material are available from the Commission and the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402. Copies are also available at <http://www.gpoaccess.gov/cfr/index.html>.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 363, effective March 8, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 2512, effective August 19, 2006 (Supp. 06-2).

**ARTICLE 2. REPEALED**

*Former Article 2, consisting of Sections R14-4-201 through R14-4-212, repealed effective May 16, 1978.*

**ARTICLE 3. RULES OF PROCEDURE FOR INVESTIGATIONS, EXAMINATIONS, AND ADMINISTRATIVE PROCEEDINGS**

**R14-4-301. Scope**

This Article applies to investigations, examinations, and administrative proceedings under the Securities Act and the IM Act. When not in conflict with this Article, the provisions of A.A.C. R14-3-101 through R14-3-113 apply.

**Historical Note**

Adopted effective October 31, 1979 (Supp. 79-5).  
Amended effective November 19, 1987 (Supp. 87-4).  
Amended effective December 21, 1995, under an exemption from the Attorney General approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4).  
Amended by final rulemaking at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-3). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-4).

**R14-4-302. Article 3 Definitions**

The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 and the following definitions apply to this Article 3.

1. "Formal interview" means the examination under oath of an individual compelled or requested to testify as part of an investigation or examination.
2. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.
3. "Respondent" means any person against whom the Division files a complaint, notice, petition, or order.



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4. “Securities Act” means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.

**Historical Note**

Adopted effective October 31, 1979 (Supp. 79-5).  
Amended effective November 19, 1987 (Supp. 87-4).  
Amended effective December 21, 1995, under an exemption from the Attorney General approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4).  
Amended by final rulemaking at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-3). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-4).

**R14-4-303. Service**

- A.** Documents required to be served in an administrative proceeding. All pleadings, motions, appearances, orders, and similar papers filed in the record shall be served upon the Division and each respondent to the administrative proceeding by the filing party. Service shall be made by a person at least 18 years of age.
- B.** Service on the Division. Service upon the Division may be made by mailing a copy to the Division addressed to the attorney of record for the Division or by delivering a copy to the Division addressed to the attorney of record for the Division.
- C.** Service on a respondent represented by an attorney. Whenever service is required or permitted to be made upon a respondent represented by an attorney, the service shall be made by mailing a copy to the last known business or mailing address of the attorney or by any method authorized under subsections (D) and (E).
- D.** Service upon individuals. Service upon an individual may be made by any of the following:
1. By personal service.
  2. By leaving a copy at the individual’s dwelling, or usual place of abode, with an individual of suitable age and discretion residing therein.
  3. By leaving a copy at the individual’s usual place of business or employment with an employee, express or implied agent, supervisor, owner, officer, partner, or other similar individual of suitable age and discretion.
  4. By leaving a copy with an agent authorized by express or implied appointment or by law to receive service of process for the individual upon whom service is being made.
  5. By mailing a copy to the last known dwelling, usual place of abode, business address, or mailing address. Subpoenas, notices, and temporary cease-and-desist orders served by mail shall be sent, return receipt requested, by certified mail, express mail, registered mail, or commercial courier or delivery service. The signed return receipt shall constitute proof of service, but shall not be the exclusive method of proving service.
- E.** Service upon a corporation or other entity. Service upon a corporation, partnership, trust, limited liability company, association, sole proprietorship, or any other entity, may be made by any of the following:
1. By leaving a copy with an employee, of suitable age and discretion, at any place of business of the corporation, partnership, trust, limited liability company, association, sole proprietorship, or other entity.
  2. By leaving a copy with any officer or director of a corporation, managing or general partner of a partnership, trustee of a trust, member of a member-managed limited liability company or manager of a manager-managed limited liability company, or any representative of an association or other entity.
  3. By leaving a copy with any agent authorized by express or implied appointment or by law to receive service of process for the entity upon whom service is being made.
  4. By mailing a copy to the last known business or mailing address. Subpoenas, notices, and temporary cease-and-desist orders served by mail shall be sent, return receipt requested, by certified mail, express mail, registered mail, or commercial courier or delivery service. The signed return receipt shall constitute proof of service, but shall not be the exclusive method of proving service.
- F.** Service in a foreign country. When serving a subpoena, notice, or temporary cease-and-desist order in a foreign country, service shall be by any internationally agreed means. If service is not accomplished within 120 calendar days from the date service was undertaken under the internationally agreed means or if no internationally agreed means of service has been established or the international agreement does not prohibit the use of other means of service, then service of any document may be made by any of the following:
1. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction.
  2. As directed by the foreign authority in response to a letter of request.
  3. By any of the following if not prohibited by the law of the foreign country:
    - a. Any method of service authorized by subsections (D) or (E).
    - b. Diplomatic or consular officers when authorized by the United States Department of State.
    - c. By any other lawful method that is reasonably calculated to give notice as directed by the Commission.
- G.** When service is complete. Service by mail is complete upon mailing. All other service is complete upon delivery.
- H.** Service by Publication.
1. The Division may serve a person by publication under either of the following circumstances:
    - a. The Division does not know the current address or residence of a person to be served.
    - b. The person has avoided service and service by publication is the best means practicable under the circumstances for providing notice of the administrative proceedings.
  2. Service by publication shall be made as follows:
    - a. The Division shall publish a statement regarding the administrative proceedings at least once a week for four successive weeks in a newspaper published in Maricopa county. If the person’s last known residence or place of business was in a different county in Arizona or another state, the Division shall also simultaneously publish the statement in a newspaper published in the different county. If no newspaper is published in the person’s last known county of residence or place of business, then the publications shall be made in a newspaper published in an adjoining county.
    - b. The published statement shall include the following information:
      - i. The name of the person.
      - ii. The statutes or rules that the Division alleges the person has violated or is violating.
      - iii. The location and the manner in which the person may obtain a copy of the notice or temporary cease-and-desist order being served.

- iv. The requirement and deadline for filing a request for hearing and the ability of the Commission to enter a default order if the person fails to timely request a hearing.
- 3. The service shall be complete 30 days after the first publication.

**Historical Note**

Adopted effective October 31, 1979 (Supp. 79-5). Amended effective December 21, 1995, under an exemption from the Attorney General approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-3). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-4).

**R14-4-304. Rights of Witnesses; Formal Interview; Procedures**

- A. Any person required or requested to appear as a witness at a formal interview may be represented by a lawyer. The lawyer's role during the formal interview shall be limited to the following activities:
  - 1. Giving legal advice to the witness before, during, and after the formal interview.
  - 2. Questioning the witness briefly at the conclusion of the formal interview for the purpose of clarifying any testimony the witness has given.
  - 3. Making summary notes during the formal interview solely for the use of the witness and the lawyer.
- B. Notwithstanding subsection (A), the following lawyers may not represent witnesses at a formal interview:
  - 1. Any lawyer who has represented another witness who has testified at a formal interview in the examination or investigation.
  - 2. Any lawyer who has represented another person who is a subject of the examination or investigation.
  - 3. Any lawyer who may be a material witness in the examination or investigation.
  - 4. Any lawyer who is a subject of the examination or investigation.
- C. The Director may permit a lawyer to represent a witness in those situations described in subsections (B)(1) through (B)(4) upon a showing that such representation should be permitted in the interest of justice and will not obstruct the examination or investigation. If a lawyer is not permitted to represent a witness under subsection (B), that lawyer's partners or associates of the lawyer's law firm are also precluded from representing the witness.
- D. All formal interviews may be recorded by the Division either mechanically or by a shorthand reporter employed by the Division. No other recording of the formal interview will be permitted, except summary note taking by the attendees.
- E. In addition to the persons identified in subsections (A), (C), and (D), the following individuals may attend a formal interview:
  - 1. Individuals employed by the Commission or the office of the attorney general.
  - 2. Members of law enforcement or other state, federal, or self-regulatory agencies authorized by the Division.
  - 3. Translators authorized by the Division.
- F. The Division may exclude from a formal interview any person previously permitted to attend the formal interview, including a lawyer, whose conduct is dilatory, obstructionist, or con-

macious. In addition, the members of the staff of the Division conducting the formal interview may report the conduct to the Director for appropriate action. The Director may thereupon take such further action as circumstances may warrant, including, but not limited to, exclusion from further participation in the examination or investigation.

- G. A person who has submitted documentary evidence or testimony in connection with a formal interview shall be entitled, upon written request, and upon proper identification, to inspect the witness' own testimony on a date to be set by the Director. The Director may delay the inspection of the record until the conclusion of the examination or investigation if the Director determines that earlier inspection may obstruct or delay the examination or investigation.
- H. In connection with an examination or investigation, the Director may delegate authority to members of the staff to administer oaths and affirmations, sign subpoenas, take evidence, and receive books, papers, contracts, agreements or other documents, records, or information, whether filed or kept in original or copied form or electronically stored or recorded.
- I. During a formal interview, a witness shall not knowingly make any untrue statements of material fact or omit to state any material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

**Historical Note**

Adopted effective October 31, 1979 (Supp. 79-5). Amended subsections (A), (B) and (C) effective November 19, 1987 (Supp. 87-4). Amended effective December 21, 1995, under an exemption from the Attorney General approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4). Former Section R14-4-304 repealed; new Section R14-4-304 renumbered from R14-4-305 and amended by final rulemaking at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-3). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-4).

**R14-4-305. Answers**

- A. Within 30 calendar days after the date of service of a notice of an opportunity for a hearing, a respondent who has requested a hearing shall file in the record and serve on the Division an answer to the notice.
- B. The answer shall contain the following:
  - 1. An admission or denial of each allegation in the notice.
  - 2. The original signature of the respondent or the respondent's attorney.
- C. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation.
- D. An allegation not denied shall be considered admitted.
- E. When a respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder.
- F. The respondent waives any affirmative defense not raised in the answer.
- G. The officer presiding over the hearing may grant relief from the requirements of this Section for good cause shown.
- H. The notice of an opportunity for a hearing shall state the requirements with which the person served must comply under this rule.

## Corporation Commission – Securities

**Historical Note**

Adopted effective October 31, 1979 (Supp. 79-5). Amended effective December 21, 1995, under an exemption from the Attorney General approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4). Former Section R14-4-305 renumbered to R14-4-304; new Section R14-4-305 made by final rulemaking at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-3). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-4).

**R14-4-306. Notices Regarding Hearings**

- A. The Commission may issue a notice of an opportunity for a hearing or a notice of a hearing to determine whether to issue a cease-and-desist order, order of rescission, restitution, or penalties, or other order authorized pursuant to the provisions of the Securities Act or the IM Act.
- B. A notice of an opportunity for a hearing and a notice of a hearing shall be served by any method permitted in R14-4-303. A notice of an opportunity for a hearing shall set forth that the respondent will be afforded a hearing upon request to docket control of the Commission if the request is made in writing within ten days after receipt of the notice by the respondent.
- C. When a respondent requests a hearing pursuant to a notice of an opportunity for a hearing in accordance with the provisions of this rule, the Commission shall set a date, time, and place for the hearing and shall forthwith notify the respondent. The date set for the hearing shall be within 60 days, but not earlier than 20 days, after the written request for hearing has been made, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission.

**Historical Note**

Adopted effective November 19, 1987 (Supp. 87-4). Amended effective February 7, 1992 (Supp. 92-1). Amended effective December 21, 1995, under an exemption from the Attorney General approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4). Amended by final rulemaking at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-3). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-4).

**R14-4-307. Temporary Orders**

- A. When the Commission determines that the public welfare requires immediate action, the Commission may issue a temporary cease-and-desist order, which will be in effect for 180 days or until vacated, modified, or made permanent in accordance with this rule, whichever comes first. The Commission may delegate this authority to the Director.
- B. Temporary cease-and-desist orders shall be served pursuant to the provisions of R14-4-303.
- C. The temporary cease-and-desist order shall set forth that the respondent will be afforded a hearing upon request to docket control of the Commission if the request is filed in writing within 20 days of service of the temporary cease-and-desist order. If a request for a hearing is not filed within 20 days, the Commission may, by written findings of fact and conclusions of law, vacate, modify, or make permanent the temporary cease-and-desist order.
- D. When a respondent requests a hearing in accordance with the provisions of this rule, the Commission shall set a date, time,

and place for the hearing and shall forthwith notify the respondent. The date set for the hearing shall be within 30 days, but not earlier than ten days, after the written request for hearing has been filed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. The Commission may, after such hearing, by written findings of fact and conclusions of law, vacate, modify, or make permanent the temporary cease-and-desist order.

- E. The effective date stated in subsection (A) shall be tolled from the date a hearing is requested until a decision is entered, unless otherwise ordered by the Commission.

**Historical Note**

Adopted effective November 19, 1987 (Supp. 87-4). Amended effective December 21, 1995, under an exemption from the Attorney General approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4). Amended by final rulemaking at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-3). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-4).

**R14-4-308. Rescission and Restitution**

- A. When a person or persons have violated the Securities Act or the IM Act, or any rule or order of the Commission, the Commission may require the person or persons to make rescission and/or restitution as provided herein.
- B. If a rescission offer is ordered by the Commission,
  1. The respondent shall submit the following materials to the Division and, upon approval from the Director, distribute the materials to the purchasers:
    - a. A written offer to repurchase stating in reasonable detail the facts out of which liability arose and, in the event of a violation of A.R.S. §§ 44-1991, 44-1992, or 44-3241, the correct, true, or omitted facts. An offer to repurchase the security shall include an offer of:
      - i. Cash equal to the fair market value of the consideration paid, determined as of the date such payment was originally paid by the buyer; together with
      - ii. Interest at a rate pursuant to A.R.S. § 44-1201 for the period from the date of the purchase payment to the date of repayment; less
      - iii. The amount of any principal, interest, or other distributions received on the security for the period from the date of purchase payment to the date of repayment.
    - b. The offer to repurchase shall be accompanied by a prospectus and other documents making full written disclosure about the financial and business condition of the issuer and the financial and business risks associated with the retention of the securities.
    - c. The offer to repurchase shall state that such offer may be accepted by the purchaser at any time within a specified period of not less than 30 days after the date of receipt thereof.
  2. The offer and any other materials required to be presented to the purchaser shall be made within a period specified by the Commission.
  3. Financial statements prepared in accordance with R14-4-120, A.R.S. § 44-3159, or other documents relating to the business of the respondent as requested by the Director or the Commission, shall be provided to the Director. If a

- respondent demonstrates that it cannot obtain audited financial statements without unreasonable effort or expense, then the respondent shall provide to the Director a notarized statement of financial condition. The financial statements or documentation shall demonstrate that the person or persons funding the rescission offer has or have adequate funds to pay the amount ordered pursuant to subsection (B)(1)(a) to all purchasers of the securities who are eligible to accept the rescission offer. The seller, issuer, or other third party may fund the rescission offer.
4. The Commission may order that funds be deposited in escrow.
  5. When the rescission offer has been completed and the appropriate funds paid, the person funding the rescission offer shall verify to the Director that the rescission offer was made in accordance with this rule. The verification may be performed by an independent third party, such as an accountant or escrow agent, by providing the pertinent records documenting the rescission offer to the Director. All of the following information must be included:
    - a. Names, addresses, and telephone numbers of all securities holders of the issuer who had a right to receive the rescission offer, the amount and purchase dates of securities held by such securities holders, and the amount of principal, interest, or other distributions on all securities held by such securities holders.
    - b. Names, addresses, and telephone numbers of all securities holders of the issuer who did not receive the rescission offer and the reason why they did not receive the rescission offer, the amount and purchase dates of securities held by such securities holders, and the amount of principal, interest, or other distributions on all securities held by such securities holders.
    - c. Verification of receipt of the rescission offer by all securities holders who had a right to and did receive the rescission offer.
    - d. A list of securities holders who accepted the rescission offer and those who did not accept.
    - e. Verification of payment of principal and interest ordered to be paid to all such securities holders who accepted the rescission offer.
  6. Based on the circumstances of the respondent and the purchasers, if necessary or appropriate to the public interest and consistent with the protection of the investors, the Commission may prescribe by order alternative rescission offer terms, including:
    - a. The offer of other identified assets in lieu of cash if the respondent lacks sufficient cash to offer the amount required under subsection (B)(1)(a).
    - b. The offer of a specified lesser amount than the amount required under subsection (B)(1)(a) if the respondent lacks sufficient assets to offer the amount required under subsection (B)(1)(a).
    - c. The inclusion in the repurchase offer of information material to an understanding of the issuer, in addition to that required by subsection (B)(1)(b), if such information would be required if the securities were being registered.
    - d. A shorter period of time during which the offer to repurchase may be accepted.
    - e. Waiver of specified information required by subsection (B)(5) if the Commission determines that producing such information will be unduly burdensome.
- C. If restitution is ordered by the Commission,
1. The amount payable as damages to each purchaser shall include:
    - a. Cash equal to the fair market value of the consideration paid, determined as of the date such payment was originally paid by the buyer; together with
    - b. Interest at a rate pursuant to A.R.S. § 44-1201 for the period from the date of the purchase payment to the date of repayment; less
    - c. The amount of any principal, interest, or other distributions received on the security for the period from the date of purchase payment to the date of repayment.
  2. Financial statements prepared in accordance with R14-4-120, A.R.S. § 44-3159, or other documents relating to the business of the respondent as requested by the Director or the Commission, shall be provided to the Director. If a respondent demonstrates that it cannot obtain audited financial statements without unreasonable effort or expense, then the respondent shall provide to the Director a notarized statement of financial condition. The financial statements or documentation shall demonstrate that the person paying restitution has adequate funds to pay all purchasers the amount computed in subsection (C)(1).
  3. The Commission may order that funds be deposited in escrow.
  4. The Commission may order the respondent to provide the following information to the Division:
    - a. Names, addresses, and telephone numbers of all securities purchasers who had a right to receive restitution under the Commission's order; amount and purchase dates of securities purchased by such purchasers; fair market value of any non-cash consideration received by respondent from each purchaser of such securities; and any payment of principal, interest, or any other distribution on such security.
    - b. Verification of payment of principal and interest ordered to be paid to all such purchasers.
  5. Based on the circumstances of the respondent and the purchasers, if necessary or appropriate to the public interest and consistent with the protection of the investors, the Commission may prescribe by order alternative restitution terms, including:
    - a. The payment of other identified assets in lieu of cash if the respondent lacks sufficient cash to pay the amount required under subsection (C)(1).
    - b. The payment of a specified lesser amount than required under subsection (C)(1) if the respondent lacks sufficient assets to meet the subsection (C)(1) requirement.

#### Historical Note

Adopted effective November 19, 1987 (Supp. 87-4). Amended effective December 21, 1995, under an exemption from the Attorney General approval requirements of the Arizona Administrative Procedure Act (Supp. 95-4). Amended by final rulemaking at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-3). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 8 A.A.R. 3729, effective August 6, 2002 (Supp. 02-4).