

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

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

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

6 A.A.R. 3169, August 25, 2000

2. Section Affected

R4-4-148

Rulemaking Action

New Section

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 44-1821, and 44-1845

Implementing statutes: A.R.S. §§ 44-1844, 44-1941, and 44-1945

Constitutional authority: Arizona Constitution Article XV § 4, 6, and 13

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

Name: Sharleen A. Day
Associate General Counsel

Address: Arizona Corporation Commission
Securities Division
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996

Telephone: (602) 542-4242

Fax: (602) 594-7421

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The Arizona Corporation Commission (Commission) proposes to add new Section R14-4-148 in order to: (i) provide for an exemption for transactions effected by Canadian dealers and their salesmen in certain Canadian accounts; (ii) detail the requirements for the grant and maintenance of the exemption; (iii) enumerate the application and renewal requirements for the exemption; and (iv) detail the extent of the activity permitted in Arizona under the exemption. A brief description of the Section covered by this rulemaking follows:

To effect transactions under this Section, the Canadian dealers must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office of, branch of, or a natural person associated with a dealer domiciled in the United States.

The Canadian 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 (i) a person from Canada who temporarily resides in or is present in Arizona and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States, or (ii) a person who resides in or is temporarily present in Arizona and whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

To effect transactions under this Section, a dealer shall (i) be a member of a Canadian SRO, stock exchange or Bureau des Service Financiers, and (ii) maintain in good standing provincial or territorial registration and membership in a

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Canadian SRO, stock exchange or Bureau des Service Financiers. Salesmen may effect transactions under this section to the same extent as their dealer provided they are registered and in good standing in the jurisdiction from which they are effecting transactions, has not been convicted of a felony or misdemeanor of which fraud is an essential element, or is currently enjoined from engaging in any conduct in connection with the purchase and sale of securities.

Prior to effecting transactions under this Section, a dealer must file (i) a copy of its last registration or renewal application filed in the jurisdiction in which the dealer has its principal office, (ii) a consent to service of process; (iii) the fee required under A.R.S. § 44-1861(G); (iv) written evidence that the dealer's membership in the Canadian SRO, stock exchange, or the Bureau des Services Financiers is in good standing; and (v) a copy of each salesman's registration or renewal application filed in the jurisdiction in which the salesman is registered and resident, and a consent to service of process for each salesman.

Each notice filed under this Section shall be effective on the date received by the Commission and expire on December 31.

6. An explanation of the substantial change which resulted in this supplemental notice:

The Commission files this supplemental notice to propose an exemption under rule 148 for certain transactions effected by Canadian dealers and their salesmen instead of proposing a limited registration under proposed Article 2 - rules 201 through 209. During the public comment period following the publication of the Notice of Proposed Rulemaking, the Commission received extensive documentation concerning the oversight provided by the Canadian self regulatory organizations, stock exchanges, territorial and provincial authorities. The Commission considers the oversight provided by these entities to be sufficient to ensure investor protection without the added burden of requiring Canadian dealers and their salesmen to register in Arizona.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The economic, small business, and consumer impact statement for Section R14-4-148 ("rule 148") analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. With the adoption of proposed rule 148, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The estimated additional cost to the office of the attorney general is minimal. The benefits provided by proposed rule 148 are nonquantifiable. Proposed rule 148 should benefit the Commission's relations with the regulated public because the grant of an exemption will permit Canadian dealers and salesmen to manage and transact business in the accounts of their clients while those clients are in Arizona. The public will benefit from the continuation of certain standards for dealers and salesmen and will benefit from the convenience of effecting transactions in their accounts while in Arizona. The Commission anticipates that the proposed rulemaking will not significantly increase monitoring, record keeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are only marginally increased.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Sharleen A. Day
Associate General Counsel

Address: Arizona Corporation Commission
Securities Division
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996

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10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: April 25, 2001

Time: 9:30 a.m.

Location: Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, Arizona 85007

Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will take final action at an open meeting with respect to the making of the proposed rule.

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

None

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

None

13. The full text of the rule follows:

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

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE SECURITIES ACT

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

ARTICLE 2. CANADIAN DEALERS AND SALESMEN

~~R14-4-201. Limited Registration of Canadian Dealers and Salesmen~~

~~R14-4-202. Requirements for Limited Dealer and Salesman Registration~~

~~R14-4-203. Dealer Application for Limited Registration; Filing Requirements~~

~~R14-4-204. Salesman Application for Limited Registration; Filing Requirements~~

~~R14-4-205. Transfer of Salesman Limited Registration; Duty of Dealer to Inform of Salesman Termination; Suspension of Salesman Limited Registration~~

~~R14-4-206. Permitted Dealer and Salesman Activity~~

~~R14-4-207. Reporting and Disclosure Requirements~~

~~R14-4-208. Renewal of Dealer and Salesman Limited Registration~~

~~R14-4-209. Denial, Revocation, and Suspension of Limited Registration~~

ARTICLE 1. IN GENERAL RELATING TO THE SECURITIES ACT

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 of, branch of, or a natural person associated with 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:

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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.

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

R14-4-201. Limited Registration of Canadian Dealers and Salesmen

- A.** ~~A dealer that meets all of the following criteria may be granted a limited registration under this Article:~~
1. ~~The dealer is domiciled in Canada.~~
 2. ~~The dealer has no office or other physical presence in the United States.~~
 3. ~~The dealer is not an office of, branch of, or a natural person associated with a dealer domiciled in the United States.~~
- B.** ~~Salesmen representing dealers registered under this Article also may be granted a limited registration under this Article.~~

R14-4-202. Requirements for Limited Dealer and Salesman Registration

- A.** ~~To register and maintain registration under this Article, a dealer shall:~~
1. ~~Be a member of a Canadian SRO or stock exchange.~~
 2. ~~Maintain in good standing provincial or territorial registration and membership in a Canadian SRO or stock exchange.~~
- B.** ~~To register and maintain registration under this Article, a salesman shall:~~
1. ~~Be registered in good standing in the jurisdiction from which the salesman is effecting transactions in Arizona.~~
 2. ~~Maintain his or her provincial or territorial registration in good standing.~~
 3. ~~Not have been convicted within ten years of the date of filing of the application under this Article 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 of the applicant as a dealer or salesman.~~
 4. ~~Not currently be subject to an order, judgment, or decree of a competent administrative or judicial jurisdiction enjoining or restraining the salesman from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities involving fraud, deceit, racketeering, or consumer protection laws.~~

R14-4-203. Dealer Application for Limited Registration; Filing Requirements

- A.** ~~Application for limited dealer registration may be made by any person that qualifies for limited registration under this Article. An application for limited registration shall be signed by the applicant and verified under oath.~~
- B.** ~~An application for limited registration shall be filed with the Commission, and shall contain all of the following:~~
1. ~~An application in the form required by the jurisdiction in which the dealer has its principal office.~~
 2. ~~A consent to service of process.~~
 3. ~~The fees required under A.R.S. § 44-1861(A)(1).~~
 4. ~~Written evidence of the dealer's provincial or territorial registration.~~
 5. ~~Written evidence that the dealer's membership in a Canadian SRO or stock exchange is in good standing.~~
- C.** ~~A limited dealer registration granted under this Article shall be effective upon written notification by the Division.~~

R14-4-204. Salesman Application for Limited Registration; Filing Requirements

- A.** ~~Application for limited salesman registration may be made by any individual representing a dealer registered or applying for registration under this Article. An application for limited registration shall be signed by the applicant and verified under oath.~~

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- B.** An application for limited registration shall be filed with the Commission, and shall contain all of the following:
 - 1. An application in the form required by the jurisdiction in which the dealer has its principal office.
 - 2. A consent to service of process.
 - 3. The fees required under A.R.S. § 44-1861(A)(2).
 - 4. Written evidence of the salesman's provincial or territorial registration.
- C.** A limited salesman registration granted under this Article shall be effective upon written notification by the Division.

~~R14-4-205: Transfer of Salesman Limited Registration; Duty of Dealer to Inform of Salesman Termination; Suspension of Salesman Limited Registration~~

- ~~A.~~** A salesman may transfer the salesman's limited registration to any dealer registered under this Article by filing with the Commission the information and fees required for registration under this Article. Upon receipt of written notice of the transfer, the Commission will temporarily transfer any limited salesman registration for a period of thirty days pending receipt of the required fees and documentation.
- ~~B.~~** A dealer registered under this Article must immediately inform the Commission of the termination of the employment of any associated salesman registered under this Article.
- ~~C.~~** The limited registration of the salesman shall automatically be suspended from the time of termination of the salesman's employment until the salesman is again employed by a dealer registered under this Article and the Commission is so notified by the dealer.

~~R14-4-206: Permitted Dealer and Salesman Activity~~

- ~~A.~~** A dealer registered under this Article may sell or purchase or offer to sell or buy securities with or for any of the following:
 - 1. A natural person domiciled in Canada who is temporarily residing in Arizona and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States.
 - 2. A natural person who is residing in Arizona and whose transactions are in a self-directed tax-advantaged retirement plan in Canada of which the person is the holder or contributor.
- ~~B.~~** A salesman who is affiliated with a dealer registered under this Article and who is registered under this Article may effect transactions in securities in Arizona to the extent permitted the dealer.
- ~~C.~~** A dealer or salesman registered under this Article may only effect transactions in Arizona as permitted under this Article with or through any of the following:
 - 1. The issuers of the securities involved in the transactions.
 - 2. Dealers registered under this Article or under A.R.S. Title 44, Chapter 12.
 - 3. Banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.

~~R14-4-207: Reporting and Disclosure Requirements~~

- To maintain its limited registration under this Article, a dealer shall do all of the following:
- 1. Upon request, provide the Commission with its books and records relating to its business in Arizona as a dealer.
 - 2. Immediately inform the Commission of any action taken against it or any of its salesmen registered under this Article by any competent jurisdiction.
 - 3. Disclose to its clients in Arizona that the dealer and its salesmen have been granted only a limited registration and are not subject to the full regulatory requirements of A.R.S. Title 44, Chapter 12.

~~R14-4-208: Renewal of Dealer and Salesman Limited Registration~~

- ~~A.~~** Application for renewal under this Article may be made by filing a copy of the most recent renewal application, if any, filed in the jurisdiction in which the dealer has its principal office. If no such renewal application is required by that jurisdiction, application for renewal may be made by filing an updated form of the application previously filed with the Commission under this Article.
- ~~B.~~** Limited registrations under this Article expire on December 31 unless applications for renewal are received by the Commission prior to the end of business on December 31.
- ~~C.~~** Fees required under A.R.S. § 44-1861 shall accompany the application for renewal.

~~R14-4-209: Denial, Revocation, and Suspension of Limited Registration~~

- ~~A.~~** A Canadian dealer or salesman in compliance with this Article is exempt from A.R.S. Title 44, Chapter 12, Article 9, A.R.S. §§ 44-1961 and 44-1962, A.A.C. R14-4-109, R14-4-122, R14-4-129, R14-4-130, R14-4-131, and R14-4-132.
- ~~B.~~** The limited registration of a dealer or salesman registered under this Article may be denied, revoked, or suspended for a violation of any applicable provision of either A.R.S. Title 44, Chapter 12, or of A.A.C. Title 14, Chapter 4, Articles 1 or 2.