BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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COMMISSIONERS

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE PROPOSED RULEMAKING TO AMEND RULE 116 LISTING NASAA STATEMENTS OF POLICY AS REGISTRATION STANDARDS.

DOCKET NO. RS-00000A-04-0649

DECISION NO. 67679

OPINION AND ORDER

DATE OF HEARING: January 6, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Ms. Cheryl Farson and Ms. Sharleen Day, Staff Attorneys, on behalf of the Securities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On September 27, 2004, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") forwarded a proposal recommending that the Commission amend A.A.C. R14-4-116 ("Rule 116").[1]

On October 8, 2004, the Notice of Rulemaking Docket Opening was published in the Arizona Administrative Register ("Register").

On October 20, 2004, the Commission issued Decision No. 67356, which directed the Hearing Division to schedule a hearing on the Division's proposed amendment to Rule 116 for the purpose of taking public comment.

On November 1, 2004, by Procedural Order, a public comment hearing was scheduled for January 6, 2005.

On November 26, 2004, the Notice of Proposed Rulemaking was published in the Register.

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[1] Rule 116 identifies the North American Securities Administrators Association ("NASAA") Statements of Policy used by the Division as its standard of review in certain securities registration. The Division requires issuers registering specified securities to comply with terms of these policy statements.

On January 6, 2005, a public comment hearing on Rule 116 was held before a duly authorized Administrative Law Judge at the Commission's offices in Phoenix, Arizona. Prior to the publication of the Notice of Rulemaking Docket Opening, in response to the Division's informal request for comments, a single comment letter from an attorney in support of the proposed amendment to Rule 116 was received by the Division. There were neither any formal comment letters received nor any members of the public who appeared to make public comment on Rule 116 at the hearing following the Notice of Proposed Rulemaking.

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Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. Rule 116 identifies that the NASAA Statements of Policy used by the Division as its standard of review for applications for registration of specified types of securities transactions. In connection with what are commonly referred to as "church extension funds", Rule 116 currently incorporates and the Division has applied the Guidelines for General Obligation Financing by Religious Denominations ("Guidelines"), adopted by NASAA in April 1994. NASAA has amended the Guidelines and renamed them the Statement of Policy Regarding Church Extension Fund Securities. The Division proposes the amendment to Rule 116 to reflect the revised name and to incorporate the amended NASAA Statement of Policy.[2]

2. On September 27, 2004, the Division forwarded to the Commission a proposal recommending that the Commission amend Rule 116.

3. On October 8, 2004, pursuant to law, the Notice of Rulemaking Docket Opening was published in the Register.

4. On October 20, 2004, the Commission issued Decision No. 67356, which directed that a hearing be scheduled regarding Rule 116 for the purpose of taking public comment.

5. On November 1, 2004, by Procedural Order, the Commission scheduled a public

[2] Prior to proposing the amendment of the NASAA guidelines, a NASAA project group solicited comments from all the state security regulatory agencies and the industry trade association, the Denominational Investment and Loan Association. On April 18, 2004, NASAA adopted the project group's recommended amendment.

comment hearing on January 6, 2005.

6. On November 26, 2004, the Notice of Proposed Rulemaking was published in the Register.

7. On January 6, 2005, the public comment hearing was held as scheduled. No members of the public appeared to make comment on the proposed amendment of Rule 116. No formal written comments concerning the amendment of Rule 116 were filed with the Commission after the publication of the Notice of Proposed Rulemaking.

8. The Division proposes the amendment to Rule 116 to incorporate the NASAA amended Statement of Policy, to enhance investor protection, to reflect current industry practices, and to enhance uniformity among the states with respect to the standard of review applied to applications for registration of debt securities issued by a church extension fund.

9. The amended Statement of Policy imposes enhanced financial standards, increases requirements for disclosure information relevant to the industry, including the identification of risks specific to the industry that must be disclosed, and modernizes accounting terminology and standards for nonprofit entities.

10. The Division believes that the amendment to Rule 116 is in the public interest and is reasonably necessary to carry out the provisions of the Arizona Securities Act.

11. Rule 116 is set forth in Appendix A, attached hereto and incorporated by reference.

12. The Economic, Small Business and Consumer Impact Statement is set forth in Appendix B, attached hereto and incorporated by reference.

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. § 44-1821 and the Arizona Constitution, Article XV, §§ 4, 6 and 13, the Commission has jurisdiction to amend Rule 116.

2. Notice of the hearing was given in the manner prescribed by law.

3. The proposed amendment to Rule 116 is in the public interest and is reasonably necessary to carry out the provisions of the Arizona Securities Act.

4. The amendment to Rule 116 as set forth in Appendix A should be adopted.

5. The Economic, Small Business and Consumer Impact Statement as set forth in

Appendix B should be adopted.

ORDER

IT IS THEREFORE ORDERED that A.A.C. R14-4-116, as set forth in Appendix A, and the Economic, Small Business and Consumer Impact Statement, as set forth in Appendix B, are hereby adopted.

IT IS FURTHER ORDERED that the Commission's Securities Division shall submit the amended Rule A.A.C. R14-4-116, as set forth in Appendix A, and the Economic, Small Business and Consumer Impact Statement, as set forth in Exhibit B, to the Attorney General's office for approval.

IT IS FURTHER ORDERED that the Commission's Securities Division is authorized to make non-substantive changes to the adopted rule, A.A.C. R14-4-116, and to the adopted Economic, Small Business and Consumer Impact Statement in response to comments received from the Attorney General's office during the approval process under A.R.S. § 41-1044 unless, after notification of those changes, the Commission requires otherwise.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN | COMMISSIONER | COMMISSIONER

COMMISSIONER | COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 9th day of March, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

SERVICE LIST FOR: RULEMAKING TO AMEND RULE 116

DOCKET NO.: RS-00000A-04-0649

Matt Neubert
Securities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
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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.
3. NASAA mortgage program guidelines, adopted September 10, 1996.
4. Registration of commodity pool programs, adopted ~~on~~ September 21, 1983, effective January 1, 1984; amended and adopted August 30, 1990.
5. Equipment programs, adopted ~~on~~ November 20, 1986, effective January 1, 1987; amended April 22, 1988, and October 24, 1991.
6. Registration of oil and gas programs, adopted ~~on~~ September 22, 1976; amended October 12, 1977, October 31, 1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, and October 24, 1991.
7. Statement of policy regarding real estate investment trusts, revised and adopted ~~on~~ September 29, 1993.
8. Real estate programs, last revised September 29, 1993.
9. Statement of policy regarding unequal voting rights, adopted and effective October 24, 1991.

10. Omnibus Guidelines, adopted ~~on~~ March 29, 1992.

11. ~~Guidelines for general obligation financing by religious denominations,~~ 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 ~~statements of policy~~ material listed in subsection (A) ~~are~~ is incorporated by reference and on file with the Commission ~~and the Office of the Secretary of State~~. The incorporated ~~statements of policy do~~ material does not contain later editions or amendments. The ~~statements of policy are~~ material is published in *NASAA Reports* by Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646. Copies are ~~also~~ available from NASAA, 10 G Street, N.E., Suite 710, Washington D.C. 20002, ~~and at the Office of the Secretary of State~~ and the Commission.

Arizona Corporation Commission, Securities Division
Chapter 4, Corporation Commission—Securities
Article 1. In General Relating to the Arizona Securities Act

Economic, Small Business, and Consumer Impact Statement

A. Economic, small business, and consumer impact summary.

1. Proposed rulemaking.

The Arizona Corporation Commission (the "Commission") proposes the amendment of A.A.C. Section R14-4-116 ("rule 116").

2. Summary of information included in this economic, small business, and consumer impact statement.

The economic, small business, and consumer impact statement for rule 116 analyzes the costs, savings, and benefits that accrue to the Commission, the regulated public, and the general public. With the adoption of rule 116, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The benefits provided by rule 116 are not quantifiable. Rule 116 should benefit the Commission's relations with the regulated public because of specified standards for registration and increased uniformity with other state registration standards. The public should benefit from the compliance with uniform standards by church extension funds offering securities to the public. The Commission anticipates that the rulemaking will not significantly increase monitoring, record keeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are not increased or are only marginally increased and such increase does not equal or exceed the reduction in burdens.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in this statement.

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B. Economic, small business, and consumer impact statement

The Arizona Corporation Commission (the "Commission") has not conducted any study and is not aware of any study that measures the cost of implementation or compliance with the proposed rule amendment. The time and dollar expenditures necessary to obtain such data are prohibitive. Adequate data, therefore, is not reasonably available to provide quantitative responses to the items required under A.R.S. § 41-1055(B).

1. Proposed rulemaking.

The Commission proposes amending A.A.C. R14-4-116 ("rule 116") in order to: (i) provide greater specificity for nonprofit church extension funds regarding registration requirements for debt securities, (ii) provide greater protection for the investing public, and (iii) provide greater uniformity with other state laws.

Rule 116 identifies the North American Securities Administrators Association ("NASAA") Statements of Policy applied by the Securities Division to specified applications for registration of securities transactions. On April 18, 2004, NASAA amended its Statement of Policy Regarding Church Extension Fund Securities, formerly named "Guidelines for General Obligation Financing by Religious Denominations." The Commission proposes to amend rule 116 to reflect the revised name and to incorporate the amended Statement of Policy.

The NASAA Statement of Policy Regarding Church Extension Fund Securities is the standard of review for the registration of debt securities issued by a church extension fund, the proceeds of which primarily finance or refinance the purchase, construction, or improvement of church property and/or buildings or related capital expenditures or the operational needs of various affiliated churches and related religious organizations of a denomination.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

Those affected by rule 116 include the Commission, nonprofit church extension funds seeking to issue debt securities to the public, and the investing public.

Cost bearers.

The costs of compliance with rule 116 will be borne directly by the nonprofit church extension funds seeking to issue debt securities to the public. The costs of enforcement of rule 116 will be borne by the Commission. The costs of implementation of the proposed rulemaking will be borne by the Commission.

The costs of compliance and enforcement remain substantially the same as under the criteria by which registration of debt securities are reviewed under A.R.S. §§ 44-1891 and 44-1921. The costs of implementation are minimal. 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 not increased or are only marginally increased and such increase does not equal or exceed the reduction in burdens.

Beneficiaries.

Both church extension funds and their offerees will benefit from the uniform, consistent, and transparent imposition of certain standards on registered offerings of debt securities.

3. Cost/benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The benefits of the rulemaking outweigh the probable costs. The implementation costs to the Commission are minimal because the systems, forms, etc., implemented in connection with the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921 will not vary materially. The costs to the Commission to enforce the proposed amendment to the rule remain substantially the same as the costs incurred in connection with the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921. The Commission will benefit from the amendment of rule 116, which will (i) provide greater specificity to the nonprofit church extension funds regarding registration requirements for debt securities, (ii) provide greater protection for the investing public, and (iii) provide greater uniformity with other state laws.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

None.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The benefits of the proposed rulemaking outweigh the probable costs. The Commission anticipates that the costs of compliance by regulated persons will be substantially the same as those incurred under the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921. The nonprofit church extension funds seeking to issue debt securities to the public will be required to provide specific disclosure of material matter, make certain financial demonstrations, and submit supporting documentation. These requirements should not result in an increase in registration costs to regulated persons as they must already submit similar demonstrations and documents to the Commission for registration. The Commission does not anticipate any effect on the revenues or payroll expenditures of regulated persons.

The nonprofit church extension funds should benefit from the amendment of rule 116, which will (i) provide greater specificity for nonprofit church extension funds regarding registration requirements for debt securities, (ii) provide greater protection for the investing public, and (iii) provide greater uniformity with other state laws.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

The Commission anticipates no impact of the rulemaking on public and private employment.

5. Statement of the probable impact of the proposed rulemaking on small businesses.

a. An identification of the small businesses subject to the proposed rulemaking.

All nonprofit church extension funds seeking to register debt securities for sale to the public are subject to the proposed rulemaking. The Commission anticipates that nonprofit church extension funds seeking to register debt securities for sale to the public may include small local church extension funds as well as larger regional or national church extension funds. These organizations are not typically considered to be businesses.

b. The administrative and other costs required for compliance with the proposed rulemaking.

The cost of compliance with rule 116 will not differ from those costs associated with registration under the criteria by which registration of debt securities are otherwise reviewed under A.R.S. §§ 44-1891 and 44-1921. Associated costs may even decrease slightly due to increased uniformity with the laws of other states.

c. A description of the methods that the agency may use to reduce the impact on small businesses.

Rule 116 will be imposed only on those nonprofit church extension funds seeking to register debt securities for sale to the public, which may include small organizations. Such regulation is deemed necessary and appropriate to provide investor protection under the Securities Act. While these organizations are not typically considered to be

businesses, the proposed rulemaking incorporates as much uniformity as possible in the interest of reducing the impact of compliance, as described above.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Nonregulated persons and consumers will bear no direct cost as a result of the proposed rulemaking package. Persons seeking to purchase debt securities that have been registered for sale to the public will benefit from a continued standard of investor protection by ensuring appropriate disclosures are made and that such issuers have the means to service the debt they intend to issue.

6. Statement of the probable effect on state revenues.

The Commission anticipates that the effect on state revenues of the proposed rulemaking will be minimal because the proposed rulemaking has no impact on the registration fee structure contained in the Securities Act. The Commission does not anticipate that the amendment to rule 116 will have a direct impact on any decision to register in Arizona debt securities by a church extension fund.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The goal of the proposed rulemaking is to effectuate the least intrusive and costly method of regulation of debt securities offered by nonprofit church extension funds required to achieve the statutorily mandated level of public protection.