

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;

SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION--SECURITIES

PREAMBLE

1. Sections Affected Rulemaking Action
A.A.C. R14-4-117 new section

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

Authorizing statute: A.R.S. § 44-1821

Implementing statute: A.R.S. §§ 44-1891 and 44-1902

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

3. The effective dates of the rules (if different from the date the rules are filed with the Office):

The rules are effective as of the date filed with the office of the secretary of state.

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

5 A.A.R. 4536, December 3, 1999, Notice of Rulemaking Docket Opening

6 A.A.R. 1794, May 19, 2000, Notice of Proposed Rulemaking

5. 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 W. Washington, Third Floor

Phoenix, AZ 85007-2996
Phone: (602) 542-4242
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6. An explanation of the rules, including the agency's reasons for initiating the rules:

The Arizona Corporation Commission (Commission) made Section R14-4-117 (rule 117) to specify review standards for issuers seeking to register debt securities under A.R.S. § 44-1891.

Rule 117 specifies the manner in which an issuer seeking to register debt securities must demonstrate an ability to service the debt it intends to issue. The standards in this rule are patterned after the North American Securities Administrator's Association statement of policy for debt securities and item 503 of federal regulation S-K. The Commission has patterned the demonstration of ability to service debt and the associated documentation requirements after these industry sources in the interest of uniformity.

Rule 117 requires that an issuer seeking to register debt securities demonstrate the ability to service its debt obligations as they come due. Rule 117 specifies the manner in which an issuer must calculate its cash flow, earnings, and the ratio of earnings to fixed charges used in the demonstration of ability to service debt.

Rule 117 requires issuers to provide the Commission with a statement of the issuer's current cash flow, prepared in conformity with generally accepted accounting principles. Issuers must also provide documentation of any underlying assumptions the issuer used in pro forma calculations. Issuers must provide the Commission with a ratio of earnings to fixed charges for the issuer's last five fiscal years as well as the actual calculations used to calculate the ratio of earnings to fixed

charges. Issuers must provide the Commission with documentation of any agreements, contracts, or other instruments material to its demonstration of ability to service its debt obligations.

An issuer offering 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 is presumed to have complied with the demonstrations required by rule 117.

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

Not applicable.

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

The economic, small business, and consumer impact statement for rule 117 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 the proposed rule, 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 rule 117 are nonquantifiable. Rule 117 should benefit the Commission's relations with the regulated public because of specified registration standards and increased uniformity with federal laws. The public will benefit from the continuation of certain standards for registered offerings. 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.

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

Not applicable.

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

The Commission did not receive written comments to the rule.

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

None.

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

Not applicable.

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

Not applicable.

14. The full text of the rule follows:

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

CHAPTER 4. CORPORATION COMMISSION--SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

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

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 (b) from the sum of the items in subsection (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.

- 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% 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 subsection shall be prepared in conformity with generally accepted accounting principles.

7. Other material or information the issuer desires to include to support its demonstration.

E. If the Commission deems it necessary for investor protection, the Commission may require that the issuer establish a sinking fund or redemption requirements.