

statute

JAMES MATTHEWS
EXECUTIVE SECRETARY



MARCIA WEEKS
CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

DALE H. MORGAN
COMMISSIONER

ARIZONA CORPORATION COMMISSION

July 1, 1993

Joseph J. Kornblum, Esq.
Dewey Ballentine
1301 Avenue of the Americas
New York, New York 10019-6092

RE: Request for an Interpretative Opinion
Rule R14-4-104

Dear Mr. Kornblum:

It generally is the policy of the Securities Division not to issue interpretative opinions as opposed to fact specific no-action letters. However, in view of the significance of certain of your questions, we are providing the following interpretations.

With regard to the first question of your letter, we interpret the second sentence of Rule R14-4-104(A)(1) to exempt from dealer and salesmen registration requirements offerings made to securities holders or employees only when the types of securities involved are identical to the types of securities delineated in the first sentence of that rule.

With regard to your questions regarding our interpretation of the words "employees of the issuer" in Rule R14-4-104(A)(1), it is our interpretation of the Rule that wholly-owned subsidiaries are covered by that language provided that such subsidiaries have not been created solely to avoid the dealer and salesman registration requirements of the Rule. If you need clarification beyond wholly-owned subsidiaries, we will consider such questions only for specific transactions on a case-by-case basis.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

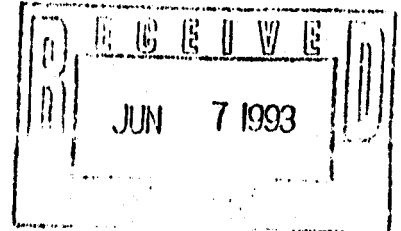
DRH:lb
Attachment

DEWEY BALLANTINE

1801 AVENUE OF THE AMERICAS
NEW YORK 10019-6092
TELEPHONE 212 259-8000 FACSIMILE 212 259-6888

(212) 259-7285

June 4, 1993



Ms. Sara Ziskin
Assistant Director of Securities
Arizona Corporation Commission,
Securities Division
1200 West Washington Street
Suite 201
Phoenix, Arizona 85007

Re: Request for an Interpretative Opinion
Re: Rule R14-4-104

Dear Ms. Ziskin:

Rule R14-4-104 of the Regulations of the Arizona Corporation Commission (the "Rule") requires that dealers and salesmen are required to be registered as such under the Arizona Blue Sky Law if they engage in Arizona in:

Transactions involving securities exempt from registration requirements pursuant to A.R.S. §44-1843(7)^{*} being securities fully listed, or regularly approved for full listing upon the issuance thereof, upon the New York stock exchange, the American stock exchange, Midwest stock exchange and any other national securities exchanges registered under the Securities Exchange Act of 1934 as may hereafter from time to time be designated by order of the Commission, and securities designated or approved for designation on notice of issuance on the National Market System of a national securities association registered under the Securities Exchange Act of 1934, and all securities senior or equal

* sic. §44-1843(A)(7)

Ms. Sara Ziskin
June 4, 1993

in rank to any securities so listed or approved for listing, designated or approved for designation or represented by subscription rights, or warrants which have been so listed, designated or approved for listing and any warrant or right to purchase or subscribe to any of the foregoing. (emphasis added).

The Rule then provides that:

No dealer or salesman shall however, be required to register for the purpose of selling or offering to sell that portion of an offering of securities so listed, designated or approved for listing which is directed to securities holders or employees of an issuer when the offering is made by the issuer, or is made by dealer or salesman acting without compensation other than a reasonable standby charge applicable to such securities by virtue of a distribution agreement relating to any balance of the offering remaining unsubscribed by existing securities holders or employees of the issuer. (emphasis added).

The underlined language referred to above with respect to securities senior to or substantially equal to the listed or designated securities** and for warrants or rights to purchase such listed or designated securities (which warrants or rights are not listed or designated) is absent from the later language providing an exemption from dealer and salesman registration requirements unless the underlined word "so" is interpreted to refer to all of the securities mentioned in the first sentence of the Rule.

Question 1: Does the Arizona Corporation Commission interpret Rule 44-4-104 to exempt from dealer and salesman registration requirements offerings made to securities holders or employees of an issuer when the securities involved are senior to or substantially equal to a listed or designated security exempt under § 44-1843(7) or are warrants or rights to purchase such exempt securities but where the securities involved are themselves not so listed or designated?

If not, it is respectfully submitted that the Arizona Corporation Commission may wish to modify the above Rule to so exempt offerings

** The term "listed or designated securities" refers to the exempt securities which are not underlined in the first excerpt from the Rule.

Ms. Sara Ziskin
June 4, 1993

involving such types of securities made to securities holders or employees or an issuer because:

- 1) the securities being offered are exempt securities;
- 2) the offering is made to specified groups of persons who have a preexisting relationship with the issuer;
- 3) such classes of offerings would not appear to need the additional protection of requiring dealer and salesman registration; and
- 4) there appears to be no useful public purpose served by differentiating between an offering involving exempt securities which are listed or designated and an offering involving exempt securities which are not listed or designated.

In prior telephone conversations with representatives of the Arizona Corporation Commission I was informed that the Commission has interpreted the underlined language "employees of an issuer" to include employees of wholly-owned subsidiaries of an issuer. If this is not correct, please inform me. An exemption from dealer or salesman registration requirements for offerings made to employees of the issuer and its subsidiaries is pertinent for employee benefit plan offerings.

Question 2: Does the language "employees of an issuer" also include employees of majority-owned subsidiaries?

Question 3: Does the language "employees of an issuer" also include employees of controlled subsidiaries when the control may involve only a minority holding in the subsidiary?

Question 4: Does the language "employees of an issuer" also include employees of any subsidiary of an issuer?


If the answers to the above questions is "no" it is respectfully submitted that the Arizona Corporation Commission may wish to amend the Rule to extend the language of the exemption from dealer and salesman registration requirements to cases involving at least majority owned and controlled subsidiaries since the same reasons that an exemption was granted for an offering made to employees of an issuer and to employees of wholly

Ms. Sara Ziskin
June 4, 1993

owned subsidiaries of an issuer would apply to offerings made to employees of majority owned subsidiaries and controlled subsidiaries.

If you have any questions please feel free to call me collect at the above number. Thank you for your consideration of this letter.

Very truly yours,


Joseph J. Kornblum