

Assembly Bill No. 3070

CHAPTER 461

An act to amend Sections 25004, 25102.1, 25231, and 25532 of, and to repeal Section 28506 of, the Corporations Code, and to amend Section 22337 of the Financial Code, relating to financial transactions.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3070, Committee on Banking and Finance. Securities: finance lenders.

Existing law, the Corporate Securities Law of 1968, provides for the regulation of the issuance of corporate securities by the Department of Corporations. Existing law requires an offer or sale of a security that is exempt from registration under the federal Securities Act of 1933 to meet specified requirements, including filing a notice with the Commissioner of Corporations.

This bill would authorize the commissioner to allow the notice to be filed by electronic transmission.

Existing law requires an investment adviser or a person who contemplates becoming an investment adviser subject to the Corporate Securities Law of 1968 to apply to the commissioner for a certificate.

This bill would require all investment adviser and investment adviser representative applications and related materials and fees to be filed electronically with the Investment Adviser Registration Depository operated by the National Association of Securities Dealers.

Existing law authorizes the commissioner, if he or she finds that certain prohibited actions are being taken with regard to the offer or sale of securities, to order the violator to desist and refrain from the violative actions. Existing law provides that the person may request a hearing to challenge the order, but that if the person fails to file a written request within one year from the date of service of the order, the order shall be deemed final and not subject to review.

This bill would instead provide that if the person fails to file a written request within 30 days from the date of service, the order would be deemed final and not subject to review.

Existing law requires the commissioner to forward economic benefit surveys and questionnaires to licensed capital access companies, for the purpose of evaluating the economic benefits to the State of California.

This bill would repeal this provision.

The California Finance Lenders Law requires licensed finance lenders to meet certain requirements when a loan is made, including obtaining statements relating to whether a broker or other person has participated in the transaction and to the sums paid or payable to the broker or other person. Existing law requires the finance lender to keep these statements for a period of 2 years from the date the loan is paid in full, matured, or charged off.

This bill would instead require the finance lender to keep these statements for a period of 3 years.

The people of the State of California do enact as follows:

SECTION 1. Section 25004 of the Corporations Code is amended to read:

25004. (a) “Broker-dealer” means any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account. “Broker-dealer” also includes a person engaged in the regular business of issuing or guaranteeing options with regard to securities not of his own issue. “Broker-dealer” does not include any of the following:

- (1) Any other issuer.
- (2) An agent, when an employee of a broker-dealer or issuer.
- (3) A bank, trust company, or savings and loan association.
- (4) Any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.
- (5) A person who has no place of business in this state if he effects transactions in this state exclusively with (A) the issuers of the securities involved in the transactions or (B) other broker-dealers.
- (6) A broker licensed by the Real Estate Commissioner of this state when engaged in transactions in securities exempted by subdivision (f) or (p) of Section 25100 or in securities the issuance of which is subject to authorization by the Real Estate Commissioner of this state or in transactions exempted by subdivision (e) of Section 25102.
- (7) An exchange certified by the Commissioner of Corporations pursuant to this section when it is issuing or guaranteeing options. The commissioner may by order certify an exchange under this section upon such conditions as he by rule or order deems appropriate, and upon notice and opportunity to be heard he may suspend or revoke such certification, if he finds such certification, suspension, or revocation to be in the public interest and necessary and appropriate for the protection of investors.



(b) For purposes of this section, an agent is an employee of a broker-dealer under paragraph (2) of subdivision (a) when the agent is employed by or associated with the broker-dealer under all of the following conditions:

(1) The agent is subject to the supervision and control of the broker-dealer.

(2) The agent performs under the name, authority, and marketing policies of the broker-dealer.

(3) The agent discloses to investors the identity of the broker-dealer.

(4) The agent is reported pursuant to subdivision (c) of Section 25210 and the rules adopted thereunder.

SEC. 2. Section 25102.1 of the Corporations Code is amended to read:

25102.1. The following transactions are not subject to Sections 25110, 25120, and 25130:

(a) Any offer or sale of a security to a “qualified purchaser” as that term is defined by rule of the Securities and Exchange Commission pursuant to Section 18(b)(3) of the Securities Act of 1933 (15 U.S.C. 77r), if all of the following requirements are met:

(1) A notice is filed with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice required by paragraph (1).

(3) Payment of a notice filing fee provided for in subdivision (b) of Section 25608.1.

(b) Any offer and sale of a security with respect to a transaction that is exempt from registration under Section 4(4) of the Securities Act of 1933 pursuant to Section 18 (b) (4) (B) of that act.

(c) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(C) of that act.

(d) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(D) of that act, if all of the following requirements are met:

(1) A notice in the form of a copy of the completed Form D (17 C.F.R. 239.500) filed with the Securities and Exchange Commission is filed with the commissioner within 15 days of the first sale in this state, along with documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems



appropriate. The commissioner may allow for a notice in the form of the electronic transmission of the information in Form D.

(2) A consent to service of process under Section 25165 is filed with the notice as required by paragraph (1).

(3) Payment of the notice filing fee provided for in subdivision (c) of Section 25608.1 is made.

(e) Notwithstanding the language of subdivisions (a), (b), (c), and (d) of this section, an issuer may file an application for qualification pursuant to Section 25111, 25112, 25113, 25121, 25131, or 25142.

SEC. 3. Section 25231 of the Corporations Code is amended to read:

25231. (a) Any investment adviser, or any person who contemplates becoming an investment adviser, may apply for a certificate to act as an investment adviser by filing with the commissioner an application. The application shall be accompanied by the consent to service of process specified in Section 25240 and shall contain information, in such form and detail, as the commissioner may by rule prescribe.

(b) Unless otherwise provided by rule or order of the commissioner, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the commissioner pursuant to this title shall be filed electronically with and transmitted to the Web-based Investment Adviser Registration Depository operated by the National Association of Securities Dealers.

SEC. 4. Section 25532 of the Corporations Code is amended to read:

25532. (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.



(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

(d) If, after an order has been served under subdivision (a), (b), or (c), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609.

SEC. 5. Section 28506 of the Corporations Code is repealed.

SEC. 6. Section 22337 of the Financial Code is amended to read:
22337. Each licensed finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other person has participated, then the finance lender shall obtain a full statement of all sums paid or payable to the broker or other person. The finance lender shall keep these statements for a period of three years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making



any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, and cancel or plainly mark “paid” and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, or an optical image reproduction thereof, except those documents that are a part of the court record in any action, or that have been delivered to a third person for the purpose of carrying out their terms, or a security agreement that secures any other indebtedness of a borrower to the licensee, or original documents otherwise required by law. When a trust deed on real property has been taken as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement, furnished to the borrower as provided for in Sections 9512 and 9513 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9501 of the Commercial Code.

For purposes of this subdivision, an optical image reproduction shall meet all of the following requirements:

(1) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(2) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(3) Written authentication identifying the optical image reproduction as an exact unaltered copy of the note, trust deed, mortgage, security agreement, assignment or order shall be stamped or printed on the optical image reproduction.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any.

