

ASSEMBLY BILL

No. 2281

Introduced by Assembly Member Miller

February 18, 2010

An act to amend Sections 1502.1 and 2117.1 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2281, as introduced, Miller. Corporate disclosures.

Existing law, the General Corporation Law, requires a domestic corporation and a foreign corporation to file statements annually with the Secretary of State disclosing specified information concerning its operation and makes the information contained in the statements open to public inspection. Existing law specifies additional information that a publicly traded company is required to include in the statement, including a description of any services performed for the corporation by an independent auditor during its 2 most recent fiscal years, information regarding the compensation for the most recent fiscal year of the corporation paid to each director and certain corporate officers, information regarding any loans made to any director in the 2 most recent fiscal years at below market rates, and a description of any material pending legal proceedings to which the corporation is a party, including any final judgments entered against the corporation during the 5 preceding years.

This bill would provide that these publicly traded corporations would be deemed to have satisfied various of those reporting requirements if the corporation includes certain information disclosed pursuant to federal securities laws relating to services provided to the corporation by an independent auditor, compensation paid to directors and certain

corporate officers, and loans to directors. The bill would also revise these reporting requirements to require disclosure of any loan to a director in the 2 most recent fiscal years and any final judgment entered against the corporation during the fiscal years covered by the statement. The bill would make various other clarifying and technical changes to the reporting provisions applicable to publicly traded corporations.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

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

1 SECTION 1. Section 1502.1 of the Corporations Code is
 2 amended to read:
 3 1502.1. (a) In addition to the statement required pursuant to
 4 Section 1502, every publicly traded corporation shall file annually,
 5 within 150 days after the end of its fiscal year, a statement, on a
 6 form prescribed by the Secretary of State, that includes all of the
 7 following information:
 8 (1) The name of the independent auditor that prepared the most
 9 recent auditor’s report on the corporation’s annual financial
 10 statements.
 11 (2) A description of other services, if any, performed for the
 12 corporation during its two most ~~recent~~ *recently completed* fiscal
 13 years ~~and the period between the end of its most recent fiscal year~~
 14 ~~and the date of the statement~~ by the foregoing independent auditor,
 15 by its parent corporation, or by a subsidiary or corporate affiliate
 16 of the independent auditor or its parent corporation. *A publicly*
 17 *traded corporation shall be deemed to satisfy the requirements of*
 18 *this paragraph if it includes the information required to be*
 19 *disclosed pursuant to Items 9(e)(1) to (9)(e)(4), inclusive, of Rule*
 20 *14a-101 (17 C.F.R. 240.14a-101) adopted pursuant to the*
 21 *Securities Exchange Act of 1934 (15 U.S.C. Sec. 78c).*
 22 (3) The name of the independent auditor employed by the
 23 corporation on the date of the statement, if different from the
 24 independent auditor listed pursuant to paragraph (1).
 25 (4) The *total* compensation for the most recent fiscal year of
 26 the corporation paid to each member of the board of directors and
 27 paid to each of the five most highly compensated executive officers
 28 of the corporation who are not members of the board of directors;
 29 ~~including~~ *and* the number of any shares issued, options for shares

1 granted, and similar equity-based compensation granted to each
2 of those persons. If the chief executive officer is not among the
3 five most highly compensated executive officers of the corporation,
4 the compensation paid to the chief executive officer shall also be
5 included. *A publicly traded corporation shall be deemed to satisfy*
6 *the requirements of this paragraph with respect to executive*
7 *officers if it includes the total compensation for the most recent*
8 *fiscal year of the corporation paid to each of the executive officers*
9 *for whom the publicly traded corporation reports compensation*
10 *for the most recent fiscal year pursuant to Item 402(a)(3) or*
11 *402(m)(2), as applicable, of Regulation S-K of the Securities and*
12 *Exchange Commission (17 C.F.R. 229.402) and the number of any*
13 *shares issued, options for shares granted, and similar equity-based*
14 *compensation granted to each of those persons.*

15 (5) A description of any loan, ~~including the amount and terms~~
16 ~~of the loan,~~ made to any member of the board of directors by the
17 corporation during the corporation's two most recent fiscal years
18 ~~at an interest rate lower than the interest rate available from~~
19 ~~unaffiliated commercial lenders generally to a similarly-situated~~
20 ~~borrower.~~ *A publicly traded corporation shall be deemed to satisfy*
21 *the requirements of this paragraph if it includes the information*
22 *with respect to any loan required to be disclosed under Item 404(a)*
23 *or 404(d)(1), as applicable, of Regulation S-K of the Securities*
24 *and Exchange Commission (17 C.F.R. 229.404).*

25 (6) A statement indicating whether an order for relief has been
26 entered in a bankruptcy case with respect to the corporation, its
27 executive officers, or members of the board of directors of the
28 corporation during the 10 years preceding the date of the statement.

29 (7) A statement indicating whether any member of the board of
30 directors or executive officer of the corporation was convicted of
31 fraud during the 10 years preceding the date of the statement, if
32 the conviction has not been overturned or expunged.

33 (8) A description of any material pending legal proceedings,
34 other than ordinary routine litigation incidental to the business, to
35 which the corporation or any of its subsidiaries is a party or of
36 which any of their property is the subject, ~~as specified by~~ *of a type*
37 *that would be required to be disclosed under Item 103 of*
38 *Regulation S-K of the Securities Exchange Commission (Section*
39 *229.103 of Title 12 of the Code of Federal Regulations) (17 C.F.R.*
40 *229.103).* A description of any material legal proceeding during

1 which the corporation was found legally liable by entry of a final
2 judgment or final order that was not overturned on appeal during
3 the ~~five years preceding the date of~~ *fiscal year covered* by the
4 statement.

5 (b) For purposes of this section, the following definitions apply:

6 (1) “Publicly traded corporation” means a corporation, as
7 defined in Section 162, that is an issuer as defined in Section 3 of
8 the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec.
9 78c), and has at least one class of securities listed ~~or admitted for~~
10 ~~trading~~ on a national securities exchange; *or that is quoted* on the
11 OTC Bulletin Board; or on the electronic *quotation* service operated
12 by Pink OTC Markets Inc.

13 (2) “Executive officer” means the chief executive officer,
14 president, any vice president in charge of a principal business unit,
15 division, or function, any other officer of the corporation who
16 performs a policymaking function, or any other person who
17 performs similar policymaking functions for the corporation.

18 (3) ~~“Compensation”~~ “*Total compensation*” as used in paragraph
19 (4) of subdivision (a) means all plan and nonplan compensation
20 awarded to, earned by, or paid to the person for all services
21 rendered in all capacities to the corporation and to its subsidiaries,
22 ~~as the compensation is specified by Item 402 would be required~~
23 ~~to be disclosed under Item 402(c)(2)(x) or 402(n)(2)(x), as~~
24 ~~applicable, in the case of the executive officer of the corporation,~~
25 ~~and Item 402(k)(2)(viii) or 402(r)(2)(viii), as applicable, in the~~
26 ~~case of members of the board of directors of the corporation, of~~
27 ~~Regulation S-K of the Securities and Exchange Commission~~
28 ~~(Section 229.402 of Title 17 of the Code of Federal Regulations)~~
29 ~~(17 C.F.R. 229.402).~~

30 (4) “Loan” as used in paragraph (5) of subdivision (a) ~~excludes~~
31 ~~an advance for expenses permitted under subdivision (d) of Section~~
32 ~~315, the corporation’s payment of life insurance premiums~~
33 ~~permitted under subdivision (e) of Section 315, and an advance of~~
34 ~~expenses permitted under Section 317 means indebtedness that~~
35 ~~would be required to be disclosed under Item 404(a) or 404(d)(1),~~
36 ~~as applicable, of Regulation S-K of the Securities and Exchange~~
37 ~~Commission (17 C.F.R. 229.404).~~

38 (c) This statement shall be available and open to the public for
39 inspection. The Secretary of State shall provide access to all

1 information contained in this statement by means of an online
2 database.

3 (d) A corporation shall certify that the information it provides
4 pursuant to this section is true and correct. No claim may be made
5 against the state for inaccurate information contained in statements
6 filed under this section with the Secretary of State.

7 SEC. 2. Section 2117.1 of the Corporations Code is amended
8 to read:

9 2117.1. (a) In addition to the statement required pursuant to
10 Section 2117, every publicly traded foreign corporation shall file
11 annually, within 150 days after the end of its fiscal year, on a form
12 prescribed by the Secretary of State, a statement that includes all
13 of the following information:

14 (1) The name of the independent auditor that prepared the most
15 recent auditor's report on the publicly traded foreign corporation's
16 annual financial statements.

17 (2) A description of other services, if any, performed for the
18 publicly traded foreign corporation during its two most ~~recent~~
19 *recently completed* fiscal years ~~and the period between the end of~~
20 ~~its most recent fiscal year and the date of the statement~~ by the
21 foregoing independent auditor, by its parent corporation, or by a
22 subsidiary or corporate affiliate of the independent auditor or its
23 parent corporation. *A publicly traded foreign corporation shall be*
24 *deemed to satisfy the requirements of this paragraph if it includes*
25 *the information required to be disclosed pursuant to Items 9(e)(1)*
26 *to (9)(e)(4), inclusive, of Rule 14a-101 (17 C.F.R. 240.14a-101)*
27 *adopted pursuant to the Securities Exchange Act of 1934 (15 U.S.C.*
28 *Sec. 78c).*

29 (3) The name of the independent auditor employed by the
30 foreign corporation on the date of the statement, if different from
31 the independent auditor listed pursuant to paragraph (1).

32 (4) The *total* compensation for the most recent fiscal year of
33 the publicly traded foreign corporation paid to each member of
34 the board of directors and paid to each of the five most highly
35 compensated executive officers of the foreign corporation who are
36 not members of the board of directors, ~~including~~ *and* the number
37 of any shares issued, options for shares granted, and similar
38 equity-based compensation granted to each of those persons. If
39 the chief executive officer is not among the five most highly
40 compensated executive officers of the corporation, the

1 compensation paid to the chief executive officer shall also be
2 included. *A publicly traded foreign corporation shall be deemed*
3 *to satisfy the requirements of this paragraph with respect to*
4 *executive officers if it includes the total compensation for the most*
5 *recent fiscal year of the foreign corporation paid to each of the*
6 *executive officers for whom the foreign corporation reports*
7 *compensation for the most recent fiscal year pursuant to Item*
8 *402(a)(3) or 402(m)(2), as applicable, of Regulation S-K of the*
9 *Securities and Exchange Commission (17 C.F.R. 229.402) and the*
10 *number of any shares issued, options for shares granted, and*
11 *similar equity-based compensation granted to each of those*
12 *persons.*

13 (5) A description of any loan, ~~including the amount and terms~~
14 ~~of the loans,~~ made to any member of the board of directors by the
15 publicly traded foreign corporation during the foreign corporation's
16 two most recent fiscal years ~~at an interest rate lower than the~~
17 ~~interest rate available from unaffiliated commercial lenders~~
18 ~~generally to a similarly situated borrower.~~ *A publicly traded foreign*
19 *corporation shall be deemed to satisfy the requirements of this*
20 *paragraph if it includes the information with respect to any loan*
21 *required to be disclosed under Item 404(a) or 404(d)(1), as*
22 *applicable, of Regulation S-K of the Securities and Exchange*
23 *Commission (17 C.F.R. 229.404).*

24 (6) A statement indicating whether an order for relief has been
25 entered in a bankruptcy case with respect to the foreign corporation,
26 its executive officers, or members of the board of directors of the
27 foreign corporation during the 10 years preceding the date of the
28 statement.

29 (7) A statement indicating whether any member of the board of
30 directors or executive officer of the publicly traded foreign
31 corporation was convicted of fraud during the 10 years preceding
32 the date of the statement, which conviction has not been overturned
33 or expunged.

34 (8) A description of any material pending legal proceedings,
35 other than ordinary routine litigation incidental to the business, to
36 which the corporation or any of its subsidiaries is a party or of
37 which any of their property is the subject, ~~as specified by~~ *of a type*
38 *that would be required to be disclosed under Item 103 of*
39 *Regulation S-K of the Securities Exchange Commission* ~~(Section~~
40 ~~229.103 of Title 12 of the Code of Federal Regulations)~~ *(17 C.F.R.*

1 229.103). A description of any material legal proceeding during
2 which the corporation was found legally liable by entry of a final
3 judgment or final order that was not overturned on appeal during
4 the five years preceding the date of *fiscal years covered by the*
5 *statement.*

6 (b) For purposes of this section, the following definitions apply:

7 (1) “Publicly traded foreign corporation” means a foreign
8 corporation, as defined in Section 171, that is an issuer as defined
9 in Section 3 of the Securities Exchange Act of 1934, as amended
10 (15 U.S.C. Sec. 78c), and has at least one class of securities listed
11 ~~or admitted for trading~~ on a national securities exchange; *or that*
12 *is quoted* on the OTC Bulletin Board; or on the electronic *quotation*
13 *service operated by Pink OTC Markets Inc.*

14 (2) “Executive officer” means the chief executive officer,
15 president, any vice president in charge of a principal business unit,
16 division, or function, any other officer of the corporation who
17 performs a policymaking function, or any other person who
18 performs similar policymaking functions for the corporation.

19 (3) ~~“Compensation”~~ “*Total compensation*” as used in paragraph
20 (4) of subdivision (a) means all plan and nonplan compensation
21 awarded to, earned by, or paid to the person for all services
22 rendered in all capacities to the corporation and to its subsidiaries,
23 ~~as the compensation is specified by Item 402 would be required~~
24 ~~to be disclosed under Item 402(c)(2)(x) or 402(n)(2)(x), as~~
25 ~~applicable, in the case of executive officer of the corporation, and~~
26 ~~Item 402(k)(2)(viii) or 402(r)(2)(viii), as applicable, in the case~~
27 ~~of members of the board of directors of the corporation, of~~
28 ~~Regulation S-K of the Securities and Exchange Commission~~
29 ~~(Section 229.402 of Title 17 of the Code of Federal Regulations)~~
30 ~~(17 C.F.R. 229.402).~~

31 (4) “Loan” as used in paragraph (5) of subdivision (a) ~~excludes~~
32 ~~an advance for expenses, the foreign corporation’s payment of life~~
33 ~~insurance premiums, and an advance of litigation expenses, in each~~
34 ~~instance as permitted according to the applicable law of the state~~
35 ~~or place of incorporation or organization of the foreign corporation~~
36 ~~means indebtedness that would be required to be disclosed under~~
37 ~~Item 404(a) or 404(d)(1), as applicable, of Regulation S-K of the~~
38 ~~Securities and Exchange Commission (17 C.F.R. 229.404).~~

39 (c) This statement shall be available and open to the public for
40 inspection. The Secretary of State shall provide access to all

1 information contained in this statement by means of an online
2 database.
3 (d) A foreign corporation shall certify that the information it
4 provides pursuant to this section is true and correct. No claim may
5 be made against the state for inaccurate information contained in
6 statements filed under this section with the Secretary of State.

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