

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN SENATE APRIL 12, 2010

AMENDED IN SENATE MARCH 22, 2010

SENATE BILL

No. 1155

Introduced by Senators Dutton and Price

February 18, 2010

An act to amend Sections 25102, 28047, 28100, 28152, 28154, 28400, and 28404 of, to add Sections 28047.1 and 28111 to, to repeal Sections 28401, 28402, and 28403 of, and to repeal and add Article 2 (commencing with Section 28820) of Chapter 12 of Division 3 of Title 4 of, the Corporations Code, relating to capital access companies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as amended, Dutton. Capital access companies.

Existing law, the Capital Access Company Law, provides for the licensure and regulation by the Commissioner of Corporations of capital access companies to enable those entities to provide risk capital and management assistance to small businesses in the state, exempt from the requirements of the federal Investment Company Act of 1940.

Under existing law, a capital access company is only authorized to engage in the business of providing financing assistance through the purchase of securities of small business firms doing business or proposing to do business wholly or substantially in this state, and providing managerial and technical assistance to these firms, subject to certain exceptions. Existing law defines a "small business firm" as a person meeting specified criteria, including, without limitation, having fewer than 500 employees.

This bill would redefine a small business firm as a person that, together with its affiliates, has a net worth of not more than \$18,000,000 and average net income after federal income taxes, as specified, no greater than \$6,000,000. The bill would also define a “smaller business firm” as a person that, together with its affiliates, has a net worth of not more than \$6,000,000 and average net income after federal income taxes, as specified, no greater than \$2,000,000, and would require that at least 20% of all financing assistance provided by a licensee shall be through the purchase of securities of smaller business firms proposing to do business wholly or substantially in this state.

Existing federal law provides for licensure and regulation of small business investment companies by the Small Business Administration.

This bill would provide that, if a capital access company becomes a small business investment company, specified federal regulations shall supersede regulatory requirements under the Corporations Code, except as specified, *and that a violation of those federal regulations would constitute a violation of this act.*

Existing law requires, as a condition of licensure of a capital access company, that a person who makes recommendations with respect to the investment of funds of the company be an investment adviser, as specified, and not be subject to specified acts and omissions, convictions, and other legal actions.

This bill would instead require that no person with a specified relationship or connection with the applicant be subject to those acts, omissions, convictions, or other legal actions.

This bill would also revise and recast provisions of the Capital Access Company Law relating to conflicts of interest.

Existing state law requires a capital access company to use its best efforts to provide financing assistance to small business firms doing business or proposing to do business wholly or substantially in this state, and makes related prohibitions and exceptions to providing services to persons out of state. Existing state law also prohibits a capital access company from providing financing assistance to a small business firm whose primary business is providing financing assistance. Existing federal law requires a California capital access company to state in its organizational documents that its activities are limited to providing financial or managerial services to enterprises doing business, or proposing to do business, in this state.

This bill would eliminate those state law prohibitions.

Existing law makes it unlawful for any person to offer or sell in this state any security in an issuer transaction unless the sale has been qualified or unless the security or transaction is exempt or not subject to qualification, as specified. Under existing law, an offer or sale of nonredeemable securities to accredited investors by a person licensed pursuant to the Capital Access Company Law is exempt from these qualification requirements.

This bill would maintain that exemption provided that all purchasers either have a preexisting personal or business relationship with the offeror, as specified, or by reason of their business or financial experience or the business or financial experience of their specified professional advisers could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction. The bill would specify that this exemption is not available under certain circumstances.

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

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

1 SECTION 1. Section 25102 of the Corporations Code is
2 amended to read:
3 25102. The following transactions are exempted from the
4 provisions of Section 25110:
5 (a) Any offer (but not a sale) not involving any public offering
6 and the execution and delivery of any agreement for the sale of
7 securities pursuant to the offer if (1) the agreement contains
8 substantially the following provision: “The sale of the securities
9 that are the subject of this agreement has not been qualified with
10 the Commissioner of Corporations of the State of California and
11 the issuance of the securities or the payment or receipt of any part
12 of the consideration therefor prior to the qualification is unlawful,
13 unless the sale of securities is exempt from the qualification by
14 Section 25100, 25102, or 25105 of the California Corporations
15 Code. The rights of all parties to this agreement are expressly
16 conditioned upon the qualification being obtained, unless the sale
17 is so exempt”; and (2) no part of the purchase price is paid or
18 received and none of the securities are issued until the sale of the
19 securities is qualified under this law unless the sale of securities

1 is exempt from the qualification by this section, Section 25100,
2 or 25105.

3 (b) Any offer (but not a sale) of a security for which a
4 registration statement has been filed under the Securities Act of
5 1933 but has not yet become effective, or for which an offering
6 statement under Regulation A has been filed but has not yet been
7 qualified, if no stop order or refusal order is in effect and no public
8 proceeding or examination looking towards an order is pending
9 under Section 8 of the act and no order under Section 25140 or
10 subdivision (a) of Section 25143 is in effect under this law.

11 (c) Any offer (but not a sale) and the execution and delivery of
12 any agreement for the sale of securities pursuant to the offer as
13 may be permitted by the commissioner upon application. Any
14 negotiating permit under this subdivision shall be conditioned to
15 the effect that none of the securities may be issued and none of
16 the consideration therefor may be received or accepted until the
17 sale of the securities is qualified under this law.

18 (d) Any transaction or agreement between the issuer and an
19 underwriter or among underwriters if the sale of the securities is
20 qualified, or exempt from qualification, at the time of distribution
21 thereof in this state, if any.

22 (e) Any offer or sale of any evidence of indebtedness, whether
23 secured or unsecured, and any guarantee thereof, in a transaction
24 not involving any public offering.

25 (f) Any offer or sale of any security in a transaction (other than
26 an offer or sale to a pension or profit-sharing trust of the issuer)
27 that meets each of the following criteria:

28 (1) Sales of the security are not made to more than 35 persons,
29 including persons not in this state.

30 (2) All purchasers either have a preexisting personal or business
31 relationship with the offeror or any of its partners, officers,
32 directors or controlling persons, or managers (as appointed or
33 elected by the members) if the offeror is a limited liability
34 company, or by reason of their business or financial experience or
35 the business or financial experience of their professional advisers
36 who are unaffiliated with and who are not compensated by the
37 issuer or any affiliate or selling agent of the issuer, directly or
38 indirectly, could be reasonably assumed to have the capacity to
39 protect their own interests in connection with the transaction.

1 (3) Each purchaser represents that the purchaser is purchasing
2 for the purchaser's own account (or a trust account if the purchaser
3 is a trustee) and not with a view to or for sale in connection with
4 any distribution of the security.

5 (4) The offer and sale of the security is not accomplished by
6 the publication of any advertisement. The number of purchasers
7 referred to above is exclusive of any described in subdivision (i),
8 any officer, director, or affiliate of the issuer, or manager (as
9 appointed or elected by the members) if the issuer is a limited
10 liability company, and any other purchaser who the commissioner
11 designates by rule. For purposes of this section, a husband and
12 wife (together with any custodian or trustee acting for the account
13 of their minor children) are counted as one person and a
14 partnership, corporation, or other organization that was not
15 specifically formed for the purpose of purchasing the security
16 offered in reliance upon this exemption, is counted as one person.
17 The commissioner may by rule require the issuer to file a notice
18 of transactions under this subdivision.

19 The failure to file the notice or the failure to file the notice within
20 the time specified by the rule of the commissioner shall not affect
21 the availability of this exemption. An issuer who fails to file the
22 notice as provided by rule of the commissioner shall, within 15
23 business days after discovery of the failure to file the notice or
24 after demand by the commissioner, whichever occurs first, file the
25 notice and pay to the commissioner a fee equal to the fee payable
26 had the transaction been qualified under Section 25110.

27 (g) Any offer or sale of conditional sale agreements, equipment
28 trust certificates, or certificates of interest or participation therein
29 or partial assignments thereof, covering the purchase of railroad
30 rolling stock or equipment or the purchase of motor vehicles,
31 aircraft, or parts thereof, in a transaction not involving any public
32 offering.

33 (h) Any offer or sale of voting common stock by a corporation
34 incorporated in any state if, immediately after the proposed sale
35 and issuance, there will be only one class of stock of the
36 corporation outstanding that is owned beneficially by no more than
37 35 persons, provided all of the following requirements have been
38 met:

1 (1) The offer and sale of the stock is not accompanied by the
2 publication of any advertisement, and no selling expenses have
3 been given, paid, or incurred in connection therewith.

4 (2) The consideration to be received by the issuer for the stock
5 to be issued consists of any of the following:

6 (A) Only assets (which may include cash) of an existing business
7 enterprise transferred to the issuer upon its initial organization, of
8 which all of the persons who are to receive the stock to be issued
9 pursuant to this exemption were owners during, and the enterprise
10 was operated for, a period of not less than one year immediately
11 preceding the proposed issuance, and the ownership of the
12 enterprise immediately prior to the proposed issuance was in the
13 same proportions as the shares of stock are to be issued.

14 (B) Only cash or cancellation of indebtedness for money
15 borrowed, or both, upon the initial organization of the issuer,
16 provided all of the stock is issued for the same price per share.

17 (C) Only cash, provided the sale is approved in writing by each
18 of the existing shareholders and the purchaser or purchasers are
19 existing shareholders.

20 (D) In a case where after the proposed issuance there will be
21 only one owner of the stock of the issuer, only any legal
22 consideration.

23 (3) No promotional consideration has been given, paid, or
24 incurred in connection with the issuance. Promotional consideration
25 means any consideration paid directly or indirectly to a person
26 who, acting alone or in conjunction with one or more other persons,
27 takes the initiative in founding and organizing the business or
28 enterprise of an issuer for services rendered in connection with the
29 founding or organizing.

30 (4) A notice in a form prescribed by rule of the commissioner,
31 signed by an active member of the State Bar of California, is filed
32 with or mailed for filing to the commissioner not later than 10
33 business days after receipt of consideration for the securities by
34 the issuer. That notice shall contain an opinion of the member of
35 the State Bar of California that the exemption provided by this
36 subdivision is available for the offer and sale of the securities. The
37 failure to file the notice as required by this subdivision and the
38 rules of the commissioner shall not affect the availability of this
39 exemption. An issuer who fails to file the notice within the time
40 specified by this subdivision shall, within 15 business days after

1 discovery of the failure to file the notice or after demand by the
2 commissioner, whichever occurs first, file the notice and pay to
3 the commissioner a fee equal to the fee payable had the transaction
4 been qualified under Section 25110. The notice, except when filed
5 on behalf of a California corporation, shall be accompanied by an
6 irrevocable consent, in the form that the commissioner by rule
7 prescribes, appointing the commissioner or his or her successor in
8 office to be the issuer's attorney to receive service of any lawful
9 process in any noncriminal suit, action, or proceeding against it
10 or its successor that arises under this law or any rule or order
11 hereunder after the consent has been filed, with the same force and
12 validity as if served personally on the issuer. An issuer on whose
13 behalf a consent has been filed in connection with a previous
14 qualification or exemption from qualification under this law (or
15 application for a permit under any prior law if the application or
16 notice under this law states that the consent is still effective) need
17 not file another. Service may be made by leaving a copy of the
18 process in the office of the commissioner, but it is not effective
19 unless (A) the plaintiff, who may be the commissioner in a suit,
20 action, or proceeding instituted by him or her, forthwith sends
21 notice of the service and a copy of the process by registered or
22 certified mail to the defendant or respondent at its last address on
23 file with the commissioner, and (B) the plaintiff's affidavit of
24 compliance with this section is filed in the case on or before the
25 return day of the process, if any, or within the further time as the
26 court allows.

27 (5) Each purchaser represents that the purchaser is purchasing
28 for the purchaser's own account, or a trust account if the purchaser
29 is a trustee, and not with a view to or for sale in connection with
30 any distribution of the stock.

31 For the purposes of this subdivision, all securities held by a
32 husband and wife, whether or not jointly, shall be considered to
33 be owned by one person, and all securities held by a corporation
34 that has issued stock pursuant to this exemption shall be considered
35 to be held by the shareholders to whom it has issued the stock.

36 All stock issued by a corporation pursuant to this subdivision as
37 it existed prior to the effective date of the amendments to this
38 section made during the 1996 portion of the 1995-96 Regular
39 Session that required the issuer to have stamped or printed
40 prominently on the face of the stock certificate a legend in a form

1 prescribed by rule of the commissioner restricting transfer of the
2 stock in a manner provided for by that rule shall not be subject to
3 the transfer restriction legend requirement and, by operation of
4 law, the corporation is authorized to remove that transfer restriction
5 legend from the certificates of those shares of stock issued by the
6 corporation pursuant to this subdivision as it existed prior to the
7 effective date of the amendments to this section made during the
8 1996 portion of the 1995–96 Regular Session.

9 (i) Any offer or sale (1) to a bank, savings and loan association,
10 trust company, insurance company, investment company registered
11 under the Investment Company Act of 1940, pension or
12 profit-sharing trust (other than a pension or profit-sharing trust of
13 the issuer, a self-employed individual retirement plan, or individual
14 retirement account), or other institutional investor or governmental
15 agency or instrumentality that the commissioner may designate
16 by rule, whether the purchaser is acting for itself or as trustee, or
17 (2) to any corporation with outstanding securities registered under
18 Section 12 of the Securities Exchange Act of 1934 or any wholly
19 owned subsidiary of the corporation that after the offer and sale
20 will own directly or indirectly 100 percent of the outstanding
21 capital stock of the issuer, provided the purchaser represents that
22 it is purchasing for its own account (or for the trust account) for
23 investment and not with a view to or for sale in connection with
24 any distribution of the security.

25 (j) Any offer or sale of any certificate of interest or participation
26 in an oil or gas title or lease (including subsurface gas storage and
27 payments out of production) if either of the following apply:

28 (1) All of the purchasers meet one of the following requirements:

29 (A) Are and have been during the preceding two years engaged
30 primarily in the business of drilling for, producing, or refining oil
31 or gas (or whose corporate predecessor, in the case of a corporation,
32 has been so engaged).

33 (B) Are persons described in paragraph (1) of subdivision (i).

34 (C) Have been found by the commissioner upon written
35 application to be substantially engaged in the business of drilling
36 for, producing, or refining oil or gas so as not to require the
37 protection provided by this law (which finding shall be effective
38 until rescinded).

39 (2) The security is concurrently hypothecated to a bank in the
40 ordinary course of business to secure a loan made by the bank,

1 provided that each purchaser represents that it is purchasing for
2 its own account for investment and not with a view to or for sale
3 in connection with any distribution of the security.

4 (k) Any offer or sale of any security under, or pursuant to, a
5 plan of reorganization under Chapter 11 of the federal bankruptcy
6 law that has been confirmed or is subject to confirmation by the
7 decree or order of a court of competent jurisdiction.

8 (l) Any offer or sale of an option, warrant, put, call, or straddle,
9 and any guarantee of any of these securities, by a person who is
10 not the issuer of the security subject to the right, if the transaction,
11 had it involved an offer or sale of the security subject to the right
12 by the person, would not have violated Section 25110 or 25130.

13 (m) Any offer or sale of a stock to a pension, profit-sharing,
14 stock bonus, or employee stock ownership plan, provided that (1)
15 the plan meets the requirements for qualification under Section
16 401 of the Internal Revenue Code, and (2) the employees are not
17 required or permitted individually to make any contributions to
18 the plan. The exemption provided by this subdivision shall not be
19 affected by whether the stock is contributed to the plan, purchased
20 from the issuer with contributions by the issuer or an affiliate of
21 the issuer, or purchased from the issuer with funds borrowed from
22 the issuer, an affiliate of the issuer, or any other lender.

23 (n) Any offer or sale of any security in a transaction, other than
24 an offer or sale of a security in a rollup transaction, that meets all
25 of the following criteria:

26 (1) The issuer is (A) a California corporation or foreign
27 corporation that, at the time of the filing of the notice required
28 under this subdivision, is subject to Section 2115, or (B) any other
29 form of business entity, including without limitation a partnership
30 or trust organized under the laws of this state. The exemption
31 provided by this subdivision is not available to a “blind pool”
32 issuer, as that term is defined by the commissioner, or to an
33 investment company subject to the Investment Company Act of
34 1940.

35 (2) Sales of securities are made only to qualified purchasers or
36 other persons the issuer reasonably believes, after reasonable
37 inquiry, to be qualified purchasers. A corporation, partnership, or
38 other organization specifically formed for the purpose of acquiring
39 the securities offered by the issuer in reliance upon this exemption
40 may be a qualified purchaser if each of the equity owners of the

1 corporation, partnership, or other organization is a qualified
2 purchaser. Qualified purchasers include the following:

3 (A) A person designated in Section 260.102.13 of Title 10 of
4 the California Code of Regulations.

5 (B) A person designated in subdivision (i) or any rule of the
6 commissioner adopted thereunder.

7 (C) A pension or profit-sharing trust of the issuer, a
8 self-employed individual retirement plan, or an individual
9 retirement account, if the investment decisions made on behalf of
10 the trust, plan, or account are made solely by persons who are
11 qualified purchasers.

12 (D) An organization described in Section 501(c)(3) of the
13 Internal Revenue Code, corporation, Massachusetts or similar
14 business trust, or partnership, each with total assets in excess of
15 five million dollars (\$5,000,000) according to its most recent
16 audited financial statements.

17 (E) With respect to the offer and sale of one class of voting
18 common stock of an issuer or of preferred stock of an issuer
19 entitling the holder thereof to at least the same voting rights as the
20 issuer's one class of voting common stock, provided that the issuer
21 has only one-class voting common stock outstanding upon
22 consummation of the offer and sale, a natural person who, either
23 individually or jointly with the person's spouse, (i) has a minimum
24 net worth of two hundred fifty thousand dollars (\$250,000) and
25 had, during the immediately preceding tax year, gross income in
26 excess of one hundred thousand dollars (\$100,000) and reasonably
27 expects gross income in excess of one hundred thousand dollars
28 (\$100,000) during the current tax year or (ii) has a minimum net
29 worth of five hundred thousand dollars (\$500,000). "Net worth"
30 shall be determined exclusive of home, home furnishings, and
31 automobiles. Other assets included in the computation of net worth
32 may be valued at fair market value.

33 Each natural person specified above, by reason of his or her
34 business or financial experience, or the business or financial
35 experience of his or her professional adviser, who is unaffiliated
36 with and who is not compensated, directly or indirectly, by the
37 issuer or any affiliate or selling agent of the issuer, can be
38 reasonably assumed to have the capacity to protect his or her
39 interests in connection with the transaction. The amount of the
40 investment of each natural person shall not exceed 10 percent of

1 the net worth, as determined by this subparagraph, of that natural
2 person.

3 (F) Any other purchaser designated as qualified by rule of the
4 commissioner.

5 (3) Each purchaser represents that the purchaser is purchasing
6 for the purchaser's own account (or trust account, if the purchaser
7 is a trustee) and not with a view to or for sale in connection with
8 a distribution of the security.

9 (4) Each natural person purchaser, including a corporation,
10 partnership, or other organization specifically formed by natural
11 persons for the purpose of acquiring the securities offered by the
12 issuer, receives, at least five business days before securities are
13 sold to, or a commitment to purchase is accepted from, the
14 purchaser, a written offering disclosure statement that shall meet
15 the disclosure requirements of Regulation D (17 C.F.R. 230.501
16 et seq.), and any other information as may be prescribed by rule
17 of the commissioner, provided that the issuer shall not be obligated
18 pursuant to this paragraph to provide this disclosure statement to
19 a natural person qualified under Section 260.102.13 of Title 10 of
20 the California Code of Regulations. The offer or sale of securities
21 pursuant to a disclosure statement required by this paragraph that
22 is in violation of Section 25401, or that fails to meet the disclosure
23 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall
24 not render unavailable to the issuer the claim of an exemption from
25 Section 25110 afforded by this subdivision. This paragraph does
26 not impose, directly or indirectly, any additional disclosure
27 obligation with respect to any other exemption from qualification
28 available under any other provision of this section.

29 (5) (A) A general announcement of proposed offering may be
30 published by written document only, provided that the general
31 announcement of proposed offering sets forth the following
32 required information:

33 (i) The name of the issuer of the securities.

34 (ii) The full title of the security to be issued.

35 (iii) The anticipated suitability standards for prospective
36 purchasers.

37 (iv) A statement that (I) no money or other consideration is
38 being solicited or will be accepted, (II) an indication of interest
39 made by a prospective purchaser involves no obligation or
40 commitment of any kind, and, if the issuer is required by paragraph

1 (4) to deliver a disclosure statement to prospective purchasers,
2 (III) no sales will be made or commitment to purchase accepted
3 until five business days after delivery of a disclosure statement
4 and subscription information to the prospective purchaser in
5 accordance with the requirements of this subdivision.

6 (v) Any other information required by rule of the commissioner.

7 (vi) The following legend: “For more complete information
8 about (Name of Issuer) and (Full Title of Security), send for
9 additional information from (Name and Address) by sending this
10 coupon or calling (Telephone Number).”

11 (B) The general announcement of proposed offering referred
12 to in subparagraph (A) may also set forth the following
13 information:

14 (i) A brief description of the business of the issuer.

15 (ii) The geographic location of the issuer and its business.

16 (iii) The price of the security to be issued, or, if the price is not
17 known, the method of its determination or the probable price range
18 as specified by the issuer, and the aggregate offering price.

19 (C) The general announcement of proposed offering shall
20 contain only the information that is set forth in this paragraph.

21 (D) Dissemination of the general announcement of proposed
22 offering to persons who are not qualified purchasers, without more,
23 shall not disqualify the issuer from claiming the exemption under
24 this subdivision.

25 (6) No telephone solicitation shall be permitted until the issuer
26 has determined that the prospective purchaser to be solicited is a
27 qualified purchaser.

28 (7) The issuer files a notice of transaction under this subdivision
29 both (A) concurrent with the publication of a general announcement
30 of proposed offering or at the time of the initial offer of the
31 securities, whichever occurs first, accompanied by a filing fee, and
32 (B) within 10 business days following the close or abandonment
33 of the offering, but in no case more than 210 days from the date
34 of filing the first notice. The first notice of transaction under
35 subparagraph (A) shall contain an undertaking, in a form acceptable
36 to the commissioner, to deliver any disclosure statement required
37 by paragraph (4) to be delivered to prospective purchasers, and
38 any supplement thereto, to the commissioner within 10 days of
39 the commissioner’s request for the information. The exemption
40 from qualification afforded by this subdivision is unavailable if

1 an issuer fails to file the first notice required under subparagraph
2 (A) or to pay the filing fee. The commissioner has the authority
3 to assess an administrative penalty of up to one thousand dollars
4 (\$1,000) against an issuer that fails to deliver the disclosure
5 statement required to be delivered to the commissioner upon the
6 commissioner's request within the time period set forth above.
7 Neither the filing of the disclosure statement nor the failure by the
8 commissioner to comment thereon precludes the commissioner
9 from taking any action deemed necessary or appropriate under this
10 division with respect to the offer and sale of the securities.

11 (o) An offer or sale of any security issued by a corporation or
12 limited liability company pursuant to a purchase plan or agreement,
13 or issued pursuant to an option plan or agreement, where the
14 security at the time of issuance or grant is exempt from registration
15 under the Securities Act of 1933, as amended, pursuant to Rule
16 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions
17 of which are hereby incorporated by reference into this section,
18 provided that (1) the terms of any purchase plan or agreement shall
19 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of
20 Title 10 of the California Code of Regulations, (2) the terms of
21 any option plan or agreement shall comply with Sections
22 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the
23 California Code of Regulations, and (3) the issuer files a notice of
24 transaction in accordance with rules adopted by the commissioner
25 no later than 30 days after the initial issuance of any security under
26 that plan, accompanied by a filing fee as prescribed by subdivision
27 (y) of Section 25608. The failure to file the notice of transaction
28 within the time specified in this subdivision shall not affect the
29 availability of this exemption. An issuer that fails to file the notice
30 shall, within 15 business days after discovery of the failure to file
31 the notice or after demand by the commissioner, whichever occurs
32 first, file the notice and pay the commissioner a fee equal to the
33 maximum aggregate fee payable had the transaction been qualified
34 under Section 25110.

35 Offers and sales exempt pursuant to this subdivision shall be
36 deemed to be part of a single, discrete offering and are not subject
37 to integration with any other offering or sale, whether qualified
38 under Chapter 2 (commencing with Section 25110), or otherwise
39 exempt, or not subject to qualification.

1 (p) An offer or sale of nonredeemable securities to accredited
2 investors (Section 28031) by a person licensed under the Capital
3 Access Company Law (Division 3 (commencing with Section
4 28000) of Title 4), provided that all purchasers either (1) have a
5 preexisting personal or business relationship with the offeror or
6 any of its partners, officers, directors, controlling persons, or
7 managers (as appointed or elected by the members), or (2) by
8 reason of their business or financial experience or the business or
9 financial experience of their professional advisers who are
10 unaffiliated with and who are not compensated by the issuer or
11 any affiliate or selling agent of the issuer, directly or indirectly,
12 could be reasonably assumed to have the capacity to protect their
13 own interests in connection with the transaction. All nonredeemable
14 securities shall be evidenced by certificates that shall have stamped
15 or printed prominently on their face a legend in a form to be
16 prescribed by rule or order of the commissioner restricting transfer
17 of the securities in the manner as the rule or order provides. The
18 exemption under this subdivision shall not be available for any
19 offering that is exempt or asserted to be exempt pursuant to Section
20 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))
21 or Rule 147 (17 C.F.R. Sec. 230.147) thereunder or otherwise is
22 conducted by means of any form of general solicitation or general
23 advertising.

24 (q) Any offer or sale of any viatical or life settlement contract
25 or fractionalized or pooled interest therein in a transaction that
26 meets all of the following criteria:

27 (1) Sales of securities described in this subdivision are made
28 only to qualified purchasers or other persons the issuer reasonably
29 believes, after reasonable inquiry, to be qualified purchasers. A
30 corporation, partnership, or other organization specifically formed
31 for the purpose of acquiring the securities offered by the issuer in
32 reliance upon this exemption may be a qualified purchaser only if
33 each of the equity owners of the corporation, partnership, or other
34 organization is a qualified purchaser. Qualified purchasers include
35 the following:

36 (A) A person designated in Section 260.102.13 of Title 10 of
37 the California Code of Regulations.

38 (B) A person designated in subdivision (i) or any rule of the
39 commissioner adopted thereunder.

1 (C) A pension or profit-sharing trust of the issuer, a
2 self-employed individual retirement plan, or an individual
3 retirement account, if the investment decisions made on behalf of
4 the trust, plan, or account are made solely by persons who are
5 qualified purchasers.

6 (D) An organization described in Section 501(c)(3) of the
7 Internal Revenue Code, corporation, Massachusetts or similar
8 business trust, or partnership, each with total assets in excess of
9 five million dollars (\$5,000,000) according to its most recent
10 audited financial statements.

11 (E) A natural person who, either individually or jointly with the
12 person's spouse, (i) has a minimum net worth of one hundred fifty
13 thousand dollars (\$150,000) and had, during the immediately
14 preceding tax year, gross income in excess of one hundred thousand
15 dollars (\$100,000) and reasonably expects gross income in excess
16 of one hundred thousand dollars (\$100,000) during the current tax
17 year or (ii) has a minimum net worth of two hundred fifty thousand
18 dollars (\$250,000). "Net worth" shall be determined exclusive of
19 home, home furnishings, and automobiles. Other assets included
20 in the computation of net worth may be valued at fair market value.

21 Each natural person specified above, by reason of his or her
22 business or financial experience, or the business or financial
23 experience of his or her professional adviser, who is unaffiliated
24 with and who is not compensated, directly or indirectly, by the
25 issuer or any affiliate or selling agent of the issuer, can be
26 reasonably assumed to have the capacity to protect his or her
27 interests in connection with the transaction.

28 The amount of the investment of each natural person shall not
29 exceed 10 percent of the net worth, as determined by this
30 subdivision, of that natural person.

31 (F) Any other purchaser designated as qualified by rule of the
32 commissioner.

33 (2) Each purchaser represents that the purchaser is purchasing
34 for the purchaser's own account (or trust account, if the purchaser
35 is a trustee) and not with a view to or for sale in connection with
36 a distribution of the security.

37 (3) Each natural person purchaser, including a corporation,
38 partnership, or other organization specifically formed by natural
39 persons for the purpose of acquiring the securities offered by the
40 issuer, receives, at least five business days before securities

1 described in this subdivision are sold to, or a commitment to
2 purchase is accepted from, the purchaser, the following information
3 in writing:

4 (A) The name, principal business and mailing address, and
5 telephone number of the issuer.

6 (B) The suitability standards for prospective purchasers as set
7 forth in paragraph (1) of this subdivision.

8 (C) A description of the issuer's type of business organization
9 and the state in which the issuer is organized or incorporated.

10 (D) A brief description of the business of the issuer.

11 (E) If the issuer retains ownership or becomes the beneficiary
12 of the insurance policy, an audit report of an independent certified
13 public accountant together with a balance sheet and related
14 statements of income, retained earnings, and cashflows that reflect
15 the issuer's financial position, the results of the issuer's operations,
16 and the issuer's cashflows as of a date within 15 months before
17 the date of the initial issuance of the securities described in this
18 subdivision. The financial statements listed in this subparagraph
19 shall be prepared in conformity with generally accepted accounting
20 principles. If the date of the audit report is more than 120 days
21 before the date of the initial issuance of the securities described
22 in this subdivision, the issuer shall provide unaudited interim
23 financial statements.

24 (F) The names of all directors, officers, partners, members, or
25 trustees of the issuer.

26 (G) A description of any order, judgment, or decree that is final
27 as to the issuing entity of any state, federal, or foreign country
28 governmental agency or administrator, or of any state, federal or
29 foreign country court of competent jurisdiction (i) revoking,
30 suspending, denying, or censuring for cause any license, permit,
31 or other authority of the issuer or of any director, officer, partner,
32 member, trustee, or person owning or controlling, directly or
33 indirectly, 10 percent or more of the outstanding interest or equity
34 securities of the issuer, to engage in the securities, commodities,
35 franchise, insurance, real estate, or lending business or in the offer
36 or sale of securities, commodities, franchises, insurance, real estate,
37 or loans, (ii) permanently restraining, enjoining, barring,
38 suspending, or censuring any such person from engaging in or
39 continuing any conduct, practice, or employment in connection
40 with the offer or sale of securities, commodities, franchises,

1 insurance, real estate, or loans, (iii) convicting any such person
2 of, or pleading nolo contendere by any such person to, any felony
3 or misdemeanor involving a security, commodity, franchise,
4 insurance, real estate, or loan, or any aspect of the securities,
5 commodities, franchise, insurance, real estate, or lending business,
6 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
7 conversion, or misappropriation of property, or (iv) holding any
8 such person liable in a civil action involving breach of a fiduciary
9 duty, fraud, deceit, embezzlement, fraudulent conversion, or
10 misappropriation of property. This subparagraph does not apply
11 to any order, judgment, or decree that has been vacated, overturned,
12 or is more than 10 years old.

13 (H) Notice of the purchaser's right to rescind or cancel the
14 investment and receive a refund pursuant to Section 25508.5.

15 (I) The name, address, and telephone number of the issuing
16 insurance company, and the name, address, and telephone number
17 of the state or foreign country regulator of the insurance company.

18 (J) The total face value of the insurance policy and the
19 percentage of the insurance policy the purchaser will own.

20 (K) The insurance policy number, issue date, and type.

21 (L) If a group insurance policy, the name, address, and telephone
22 number of the group, and, if applicable, the material terms and
23 conditions of converting the policy to an individual policy,
24 including the amount of increased premiums.

25 (M) If a term insurance policy, the term and the name, address,
26 and telephone number of the person who will be responsible for
27 renewing the policy if necessary.

28 (N) That the insurance policy is beyond the state statute for
29 contestability and the reason therefor.

30 (O) The insurance policy premiums and terms of premium
31 payments.

32 (P) The amount of the purchaser's moneys that will be set aside
33 to pay premiums.

34 (Q) The name, address, and telephone number of the person
35 who will be the insurance policy owner and the person who will
36 be responsible for paying premiums.

37 (R) The date on which the purchaser will be required to pay
38 premiums and the amount of the premium, if known.

39 (S) A statement to the effect that any projected rate of return to
40 the purchaser from the purchase of a viatical or life settlement

1 contract or a fractionalized or pooled interest therein is based on
2 an estimated life expectancy for the person insured under the life
3 insurance policy; that the return on the purchase may vary
4 substantially from the expected rate of return based upon the actual
5 life expectancy of the insured that may be less than, equal to, or
6 may greatly exceed the estimated life expectancy; and that the rate
7 of return would be higher if the actual life expectancy were less
8 than, and lower if the actual life expectancy were greater than the
9 estimated life expectancy of the insured at the time the viatical or
10 life settlement contract was closed.

11 (T) A statement that the purchaser should consult with his or
12 her tax adviser regarding the tax consequences of the purchase of
13 the viatical or life settlement contract or fractionalized or pooled
14 interest therein and, if the purchaser is using retirement funds or
15 accounts for that purchase, whether or not any adverse tax
16 consequences might result from the use of those funds for the
17 purchase of that investment.

18 (U) Any other information as may be prescribed by rule of the
19 commissioner.

20 SEC. 2. Section 28047 of the Corporations Code is amended
21 to read:

22 28047. “Small business firm” means a person that proposes to
23 transact, or transacts, business on a regular and continuous basis
24 in California and, together with its affiliates, has a net worth of
25 not more than eighteen million dollars (\$18,000,000) and average
26 net income after federal income taxes, excluding any carryover
27 losses, for the preceding two years no greater than six million
28 dollars (\$6,000,000).

29 SEC. 3. Section 28047.1 is added to the Corporations Code,
30 to read:

31 28047.1. “Smaller business firm” means a person that proposes
32 to transact, or transacts, business on a regular and continuous basis
33 in California and, together with its affiliates, has a net worth of
34 not more than six million dollars (\$6,000,000), and average net
35 income after federal income taxes, excluding any carryover losses,
36 for the preceding two years no greater than two million dollars
37 (\$2,000,000).

38 SEC. 4. Section 28100 of the Corporations Code is amended
39 to read:

1 28100. The commissioner shall administer and enforce the
2 provisions of this division in a manner that facilitates the legislative
3 purposes set forth in Section 28004, consistent with protection of
4 investors.

5 SEC. 5. Section 28111 is added to the Corporations Code, to
6 read:

7 28111. (a) If a licensee becomes licensed as a small business
8 investment company and is subject to regulation by the Small
9 Business Administration under the federal Small Business
10 ~~Investment Act of 1958, the regulations under that act shall~~
11 ~~supersede all of the regulatory requirements under this division~~
12 *Investment Act of 1958, the commissioner may by rule or order*
13 *provide that a licensee in compliance with those federal regulations*
14 *shall be deemed to be in compliance with the regulatory*
15 *requirements under this division except those provisions required*
16 *to exempt licensees from regulation under the federal Investment*
17 *Company Act of 1940, and the provisions of Chapter 8*
18 *(commencing with Section 28550), Chapter 9 (commencing with*
19 *Section 28600), Chapter 10 (commencing with Section 28650),*
20 *Chapter 11 (commencing with Section 28700), Chapter 12*
21 *(commencing with Section 28800), Chapter 13 (commencing with*
22 *Section 28900), and Chapter 14 (commencing with Section 28950).*

23 (b) *A violation by a licensee of any regulation promulgated by*
24 *the Small Business Administration that the commissioner has by*
25 *rule or order deemed to be consistent with the regulatory*
26 *requirements under this division shall constitute a violation of this*
27 *division. The commissioner shall have all of the powers granted*
28 *in this division to enforce those federal regulations against a*
29 *licensee.*

30 SEC. 6. Section 28152 of the Corporations Code is amended
31 to read:

32 28152. If the commissioner finds all of the following with
33 respect to an application for a license, the commissioner shall
34 approve the application:

35 (a) That the applicant has a tangible net worth, exclusive of the
36 funds to invest under subdivision (b), in an amount that is not less
37 than two hundred fifty thousand dollars (\$250,000) and that the
38 tangible net worth is adequate for the applicant to transact business
39 as a capital access company.

1 (b) That the applicant has funds to invest in an amount that is
2 not less than five million dollars (\$5,000,000).

3 (c) That the applicant has, in addition to the requirements of
4 subdivisions (a) and (b), financial resources in an amount that is
5 adequate for the applicant to pay its expenses in transacting
6 business as a capital access company for a period of not less than
7 three years from the date of licensure.

8 (d) That the directors, officers, and controlling persons of the
9 applicant are each of good character and sound financial standing,
10 that the directors and officers of the applicant are each competent
11 to perform their functions with respect to the applicant, and that
12 the directors and officers of the applicant are collectively adequate
13 to manage the business of the applicant as a capital access
14 company. For purposes of this subdivision, the commissioner shall
15 accord weight to the prior or current successful operation of a
16 commercial or investment enterprise.

17 (e) That none of the following persons are subject to any act or
18 omission enumerated in subdivision (a), (e), (f), or (g) of Section
19 25212, or has been convicted of, or pled nolo contendere to, any
20 offense or been held liable in any civil action specified in
21 subdivision (b) of Section 25212, or is enjoined from any act,
22 conduct, or practice specified in subdivision (c) of Section 25212,
23 or is subject to any order specified in subdivision (d) of Section
24 25212:

25 (1) A person who is or will be a controlling person of the
26 applicant.

27 (2) A person who makes or will make recommendations with
28 respect to the investment of funds of the applicant.

29 (3) A person who is or will be a partner, principal executive
30 officer, manager, or director of the applicant.

31 (4) A person who occupies or will occupy a similar status or
32 who performs or will perform similar functions to those listed
33 above in paragraphs (1) to (3), inclusive.

34 (5) An employee who materially aids or assists or will materially
35 aid or assist in the applicant's investment-related functions.

36 (6) A broker-dealer or agent who materially aids or assists or
37 will materially aid or assist in the sale or distribution of any
38 securities of the applicant.

39 (f) That it is reasonable to believe that the applicant, if licensed,
40 will comply with the provisions of Section 6(a)(5) of the

1 Investment Company Act of 1940, the applicable provisions of
2 the Corporate Securities Law of 1968, this division, and of any
3 regulation adopted or order issued under this division.

4 If, after notice and a hearing, the commissioner finds otherwise,
5 the commissioner shall deny the application.

6 SEC. 7. Section 28154 of the Corporations Code is amended
7 to read:

8 28154. Except pursuant to Section 28551, no license shall be
9 transferable or assignable.

10 SEC. 8. Section 28400 of the Corporations Code is amended
11 to read:

12 28400. No licensee shall engage in any business other than the
13 following:

14 (a) The business of providing financing assistance through the
15 purchase of securities of small business firms or smaller business
16 firms doing business or proposing to do business wholly or
17 substantially in this state.

18 (b) The business of providing managerial assistance (including
19 managerial and technical assistance) to small business firms or
20 smaller business firms doing business or proposing to do business
21 wholly or substantially in this state.

22 (c) At least 20 percent of all financing assistance provided by
23 the licensee shall be through purchase of securities of smaller
24 business firms doing business or proposing to do business wholly
25 or substantially in this state.

26 SEC. 9. Section 28401 of the Corporations Code is repealed.

27 SEC. 10. Section 28402 of the Corporations Code is repealed.

28 SEC. 11. Section 28403 of the Corporations Code is repealed.

29 SEC. 12. Section 28404 of the Corporations Code is amended
30 to read:

31 28404. No licensee shall provide financing assistance to any
32 small business firm for the purpose of evading the requirements
33 of this division.

34 SEC. 13. Article 2 (commencing with Section 28820) of
35 Chapter 12 of Division 3 of Title 4 of the Corporations Code is
36 repealed.

37 SEC. 14. Article 2 (commencing with Section 28820) is added
38 to Chapter 12 of Division 3 of Title 4 of the Corporations Code,
39 to read:

Article 2. Conflicts of Interest

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

28820. In this article, unless the context otherwise requires:

(a) (1) “Associate,” when used with respect to a licensee, means all of the following:

- (A) Any principal shareholder, director, officer, manager, agent, or adviser of the licensee.
- (B) Any director, officer, partner, general manager, agent, employer, or employee of any person referred to in subparagraph (A).
- (C) Any person who controls, is controlled by, or is under common control with, any person referred to in subparagraph (A), directly or indirectly, through one or more intermediaries.
- (D) Any close relative of any person referred to in subparagraph (A).
- (E) Any person of whom any person referred to in subparagraphs (A) to (D), inclusive, is a director or officer.
- (F) Any person in whom any person referred to in subparagraphs (A) to (D), inclusive, or any combination of persons acting in concert owns or controls, directly or indirectly, a 10-percent or greater equity interest.

(2) For purposes of this subdivision, any person who is in any of the relationships referred to in subparagraphs (A) to (F), inclusive, of paragraph (1) within six months before or after a licensee provides financing assistance shall be deemed to be in the relationship as of the date when the licensee provides the financing assistance.

(3) For purposes of this subdivision, if a licensee, in order to protect its interests, designates any person to serve as a director of, officer of, or in any capacity in the management of, a small business firm to which the licensee provides financing assistance, the person shall not, on that account, be deemed to have any relationship with the small business firm. However, this paragraph shall not apply in any case where the person has, directly or indirectly, any other financial interest in the small business firm or where the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in any other capacity in the management of, the small business firm for a period of 30 days or more.

1 (b) “Close relative” means ancestor, lineal descendant, brother
2 or sister and lineal descendants of either, spouse, father-in-law,
3 mother-in-law, son-in-law, brother-in-law, daughter-in-law, or
4 sister-in-law.

5 28821. (a) A licensee shall not provide financial or managerial
6 assistance to, or for the benefit of, any person to the detriment of
7 a small business firm or smaller business firm, the licensee, its
8 shareholders, or partners. Unless a licensee obtains a prior written
9 exemption from the commissioner for special instances in which
10 providing financial assistance may further the purposes of this
11 division despite presenting a conflict of interest, a licensee shall
12 not directly or indirectly do any of the following:

13 (1) Provide financial assistance to any of the licensee’s
14 associates.

15 (2) Provide financial assistance to an associate of another
16 licensee, if one of the licensee’s associates has received or will
17 receive any direct or indirect financial assistance or a commitment
18 from that licensee or a third licensee, including financial assistance
19 or commitments received under any understanding, agreement, or
20 cross dealing, reciprocal or circular arrangement.

21 (3) Borrow money from any of the following:

22 (A) A small business firm or smaller business firm to which the
23 licensee has provided financial assistance.

24 (B) An officer, director, or owner of at least a 10-percent equity
25 interest in the business.

26 (C) A close relative of a person described in subparagraph (B).

27 (4) Provide financial assistance to a small business firm or
28 smaller business firm to discharge an obligation to a licensee’s
29 associate or to make other funds available to pay the obligation,
30 except if the obligation is to an associate lending institution and
31 is a line of credit or other obligation incurred in the normal course
32 of business.

33 (5) Provide financial assistance to a small business firm or
34 smaller business firm for the purpose of purchasing property from
35 a licensee’s associate.

36 (b) Without the commissioner’s prior written approval, a
37 licensee’s associates shall not, directly or indirectly, do either of
38 the following:

39 (1) Borrow money from any person described in paragraph (3)
40 of subdivision (a).

1 (2) Receive from a small business firm or smaller business firm
2 any compensation in connection with any financial assistance a
3 licensee provides or anything of value for procuring, attempting
4 to procure, or influencing a licensee's action with respect to that
5 financial assistance.

6 (c) (1) Without the commissioner's prior written approval, a
7 licensee shall not provide financial assistance to any business in
8 which the licensee's associate has either a voting equity interest,
9 or total equity interests, including potential interests, of at least 5
10 percent.

11 (2) If a licensee and its associate provide financial assistance
12 to the same small business firm or smaller business firm, whether
13 at the same time or different times, a licensee shall demonstrate
14 to the commissioner's satisfaction that the terms and conditions
15 are, or were, fair and equitable to the licensee, taking into account
16 any differences in the timing of each party's financial transactions.

17 (3) Financial assistance that meets either of the following criteria
18 is exempt from the prior approval requirement in paragraph (1)
19 and shall be presumed to be fair and equitable to the licensee for
20 the purposes of paragraph (2):

21 (A) The licensee's associate is a lending institution that is
22 providing financing under a credit facility in order to meet the
23 operational needs of a small business firm or smaller business firm,
24 and the terms of that financing are usual and customary.

25 (B) The licensee's associate invests in the small business firm
26 or smaller business firm on the same terms and conditions and at
27 the same time as the licensee.

28 (d) To protect a licensee's investment, a licensee may designate
29 an associate to serve as an officer, director, or other participant in
30 the management of a small business firm or smaller business firm.
31 The licensee shall identify this associate in the licensee's records
32 maintained and made available for the commissioner's review.
33 Without the commissioner's prior written approval, the associate
34 shall not do any of the following:

35 (1) Have any other direct or indirect financial interest in the
36 small business firm or smaller business firm that exceeds, or has
37 the potential to exceed, 5 percent of the firm's equity.

38 (2) Have served for more than 30 days as an officer, director,
39 or other participant in the management of the small business firm

1 or smaller business firm before the licensee provided the financial
2 assistance.

3 (3) Receive any income or anything of value from the small
4 business firm or smaller business firm unless it is for the licensee's
5 benefit, with the exception of director's fees, expenses, and
6 distributions based upon the associate's ownership interest in the
7 small business firm or smaller business firm.

O