

**ASSEMBLY BILL**

**No. 2096**

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**Introduced by Assembly Member Muratsuchi**

February 20, 2014

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An act to amend Section 25102 of the Corporations Code, relating to securities transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2096, as introduced, Muratsuchi. Securities transactions: qualification requirements: exemptions.

Existing law, the Corporate Securities Law of 1968, requires certain securities offered or sold in this state to be qualified through application filed with the Commissioner of Corporations, or to be exempt from the qualification requirements. Existing law exempts offers and sales of securities in specified transactions including, but not limited to, offers made to no more than 35 persons, excluding accredited investors, as defined by reference to Regulation D promulgated under the federal Securities Act of 1933, as amended, to include specified minimum net worth and income requirements for prospective investors.

This bill would exempt from qualification an offering or sale of securities using a general solicitation or general advertising, provided the transaction meets specified requirements, including a requirement that the sale is made to an accredited investor and the aggregate offering price of securities, as defined by reference to Regulation D, does not exceed \$1,000,000, less the aggregate offering price for all securities sold within 12 months, as specified.

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 exempt 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  
20 is exempt from the qualification by this section, Section 25100,  
21 or 25105.  
22 (b) Any offer (but not a sale) of a security for which a  
23 registration statement has been filed under the Securities Act of  
24 1933 but has not yet become effective, or for which an offering  
25 statement under Regulation A has been filed but has not yet been  
26 qualified, if no stop order or refusal order is in effect and no public  
27 proceeding or examination looking ~~towards~~ *toward* an order is  
28 pending under Section 8 of the act and no order under Section  
29 25140 or subdivision (a) of Section 25143 is in effect under this  
30 law.  
31 (c) Any offer (but not a sale) and the execution and delivery of  
32 any agreement for the sale of securities pursuant to the offer as  
33 may be permitted by the commissioner upon application. Any  
34 negotiating permit under this subdivision shall be conditioned to  
35 the effect that none of the securities may be issued and none of  
36 the consideration therefor may be received or accepted until the  
37 sale of the securities is qualified under this law.

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

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

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

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

13 (2) All purchasers either have a preexisting personal or business  
14 relationship with the offeror or any of its partners, officers,  
15 directors or controlling persons, or managers (as appointed or  
16 elected by the members) if the offeror is a limited liability  
17 company, or by reason of their business or financial experience or  
18 the business or financial experience of their professional advisers  
19 who are unaffiliated with and who are not compensated by the  
20 issuer or any affiliate or selling agent of the issuer, directly or  
21 indirectly, could be reasonably assumed to have the capacity to  
22 protect their own interests in connection with the transaction.

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

27 (4) The offer and sale of the security is not accomplished by  
28 the publication of any advertisement. The number of purchasers  
29 referred to above is exclusive of any described in subdivision (i),  
30 any officer, director, or affiliate of the issuer, or manager (as  
31 appointed or elected by the members) if the issuer is a limited  
32 liability company, and any other purchaser who the commissioner  
33 designates by rule. For purposes of this section, a husband and  
34 wife (together with any custodian or trustee acting for the account  
35 of their minor children) are counted as one person and a  
36 partnership, corporation, or other organization that was not  
37 specifically formed for the purpose of purchasing the security  
38 offered in reliance upon this exemption, is counted as one person.  
39 The commissioner shall by rule require the issuer to file a notice  
40 of transactions under this subdivision.

1 The failure to file the notice or the failure to file the notice within  
2 the time specified by the rule of the commissioner shall not affect  
3 the availability of ~~the~~ *this* exemption. Any issuer that fails to file  
4 the notice as provided by rule of the commissioner shall, within  
5 15 business days after discovery of the failure to file the notice or  
6 after demand by the commissioner, whichever occurs first, file the  
7 notice and pay to the commissioner a fee equal to the fee payable  
8 had the transaction been qualified under Section 25110. Neither  
9 the filing of the notice nor the failure by the commissioner to  
10 comment thereon precludes the commissioner from taking any  
11 action that the commissioner deems necessary or appropriate under  
12 this division with respect to the offer and sale of the securities.

13 (g) Any offer or sale of conditional sale agreements, equipment  
14 trust certificates, or certificates of interest or participation therein  
15 or partial assignments thereof, covering the purchase of railroad  
16 rolling stock or equipment or the purchase of motor vehicles,  
17 aircraft, or parts thereof, in a transaction not involving any public  
18 offering.

19 (h) Any offer or sale of voting common stock by a corporation  
20 incorporated in any state if, immediately after the proposed sale  
21 and issuance, there will be only one class of stock of the  
22 corporation outstanding that is owned beneficially by no more than  
23 35 persons, provided all of the following requirements have been  
24 met:

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

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

30 (A) Only assets (which may include cash) of an existing business  
31 enterprise transferred to the issuer upon its initial organization, of  
32 which all of the persons who are to receive the stock to be issued  
33 pursuant to this exemption were owners during, and the enterprise  
34 was operated for, a period of not less than one year immediately  
35 preceding the proposed issuance, and the ownership of the  
36 enterprise immediately prior to the proposed issuance was in the  
37 same proportions as the shares of stock are to be issued.

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

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

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

7 (3) No promotional consideration has been given, paid, or  
8 incurred in connection with the issuance. Promotional consideration  
9 means any consideration paid directly or indirectly to a person  
10 who, acting alone or in conjunction with one or more other persons,  
11 takes the initiative in founding and organizing the business or  
12 enterprise of an issuer for services rendered in connection with the  
13 founding or organizing.

14 (4) A notice in a form prescribed by rule of the commissioner,  
15 signed by an active member of the State Bar of California, is filed  
16 with or mailed for filing to the commissioner not later than 10  
17 business days after receipt of consideration for the securities by  
18 the issuer. That notice shall contain an opinion of the member of  
19 the State Bar of California that the exemption provided by this  
20 subdivision is available for the offer and sale of the securities. The  
21 failure to file the notice as required by this subdivision and the  
22 rules of the commissioner shall not affect the availability of this  
23 exemption. An issuer who fails to file the notice within the time  
24 specified by this subdivision shall, within 15 business days after  
25 discovery of the failure to file the notice or after demand by the  
26 commissioner, whichever occurs first, file the notice and pay to  
27 the commissioner a fee equal to the fee payable had the transaction  
28 been qualified under Section 25110. The notice, except when filed  
29 on behalf of a California corporation, shall be accompanied by an  
30 irrevocable consent, in the form that the commissioner by rule  
31 prescribes, appointing the commissioner or his or her successor in  
32 office to be the issuer's attorney to receive service of any lawful  
33 process in any noncriminal suit, action, or proceeding against it  
34 or its successor that arises under this law or any rule or order  
35 hereunder after the consent has been filed, with the same force and  
36 validity as if served personally on the issuer. An issuer on whose  
37 behalf a consent has been filed in connection with a previous  
38 qualification or exemption from qualification under this law (or  
39 application for a permit under any prior law if the application or  
40 notice under this law states that the consent is still effective) need

1 not file another. Service may be made by leaving a copy of the  
 2 process in the office of the commissioner, but it is not effective  
 3 unless (A) the plaintiff, who may be the commissioner in a suit,  
 4 action, or proceeding instituted by him or her, forthwith sends  
 5 notice of the service and a copy of the process by registered or  
 6 certified mail to the defendant or respondent at its last address on  
 7 file with the commissioner, and (B) the plaintiff’s affidavit of  
 8 compliance with this section is filed in the case on or before the  
 9 return day of the process, if any, or within the further time as the  
 10 court allows.

11 (5) Each purchaser represents that the purchaser is purchasing  
 12 for the purchaser’s own account, or a trust account if the purchaser  
 13 is a trustee, and not with a view to or for sale in connection with  
 14 any distribution of the stock.

15 For the purposes of this subdivision, all securities held by a  
 16 husband and wife, whether or not jointly, shall be considered to  
 17 be owned by one person, and all securities held by a corporation  
 18 that has issued stock pursuant to this exemption shall be considered  
 19 to be held by the shareholders to whom it has issued the stock.

20 All stock issued by a corporation pursuant to this subdivision as  
 21 it existed prior to the effective date of the amendments to this  
 22 section made during the 1996 portion of the 1995–96 Regular  
 23 Session that required the issuer to have stamped or printed  
 24 prominently on the face of the stock certificate a legend in a form  
 25 prescribed by rule of the commissioner restricting transfer of the  
 26 stock in a manner provided for by that rule shall not be subject to  
 27 the transfer restriction legend requirement and, by operation of  
 28 law, the corporation is authorized to remove that transfer restriction  
 29 legend from the certificates of those shares of stock issued by the  
 30 corporation pursuant to this subdivision as it existed prior to the  
 31 effective date of the amendments to this section made during the  
 32 1996 portion of the 1995–96 Regular Session.

33 (i) Any offer or sale (1) to a bank, savings and loan association,  
 34 trust company, insurance company, investment company registered  
 35 under the Investment Company Act of 1940, pension or  
 36 profit-sharing trust (other than a pension or profit-sharing trust of  
 37 the issuer, a self-employed individual retirement plan, or individual  
 38 retirement account), or other institutional investor or governmental  
 39 agency or instrumentality that the commissioner may designate  
 40 by rule, whether the purchaser is acting for itself or as trustee, or

1 (2) to any corporation with outstanding securities registered under  
2 Section 12 of the Securities Exchange Act of 1934 or any wholly  
3 owned subsidiary of the corporation that after the offer and sale  
4 will own directly or indirectly 100 percent of the outstanding  
5 capital stock of the issuer, provided the purchaser represents that  
6 it is purchasing for its own account (or for the trust account) for  
7 investment and not with a view to or for sale in connection with  
8 any distribution of the security.

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

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

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

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

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

23 (2) The security is concurrently hypothecated to a bank in the  
24 ordinary course of business to secure a loan made by the bank,  
25 provided that each purchaser represents that it is purchasing for  
26 its own account for investment and not with a view to or for sale  
27 in connection with any distribution of the security.

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

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

37 (m) Any offer or sale of a stock to a pension, profit-sharing,  
38 stock bonus, or employee stock ownership plan, provided that (1)  
39 the plan meets the requirements for qualification under Section  
40 401 of the Internal Revenue Code, and (2) the employees are not

1 required or permitted individually to make any contributions to  
2 the plan. The exemption provided by this subdivision shall not be  
3 affected by whether the stock is contributed to the plan, purchased  
4 from the issuer with contributions by the issuer or an affiliate of  
5 the issuer, or purchased from the issuer with funds borrowed from  
6 the issuer, an affiliate of the issuer, or any other lender.

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

10 (1) The issuer is (A) a California corporation or foreign  
11 corporation that, at the time of the filing of the notice required  
12 under this subdivision, is subject to Section 2115, or (B) any other  
13 form of business entity, including without limitation a partnership  
14 or trust organized under the laws of this state. The exemption  
15 provided by this subdivision is not available to a “blind pool”  
16 issuer, as that term is defined by the commissioner, or to an  
17 investment company subject to the Investment Company Act of  
18 1940.

19 (2) Sales of securities are made only to qualified purchasers or  
20 other persons the issuer reasonably believes, after reasonable  
21 inquiry, to be qualified purchasers. A corporation, partnership, or  
22 other organization specifically formed for the purpose of acquiring  
23 the securities offered by the issuer in reliance upon this exemption  
24 may be a qualified purchaser if each of the equity owners of the  
25 corporation, partnership, or other organization is a qualified  
26 purchaser. Qualified purchasers include the following:

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

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

31 (C) A pension or profit-sharing trust of the issuer, a  
32 self-employed individual retirement plan, or an individual  
33 retirement account, if the investment decisions made on behalf of  
34 the trust, plan, or account are made solely by persons who are  
35 qualified purchasers.

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

1 (E) With respect to the offer and sale of one class of voting  
2 common stock of an issuer or of preferred stock of an issuer  
3 entitling the holder thereof to at least the same voting rights as the  
4 issuer's one class of voting common stock, provided that the issuer  
5 has only one-class voting common stock outstanding upon  
6 consummation of the offer and sale, a natural person who, either  
7 individually or jointly with the person's spouse, (i) has a minimum  
8 net worth of two hundred fifty thousand dollars—~~(\$250,000)~~  
9 *(\$250,000)*, and had, during the immediately preceding tax year,  
10 gross income in excess of one hundred thousand dollars (\$100,000)  
11 and reasonably expects gross income in excess of one hundred  
12 thousand dollars (\$100,000) during the current tax year or (ii) has  
13 a minimum net worth of five hundred thousand dollars (\$500,000).  
14 "Net worth" shall be determined exclusive of home, home  
15 furnishings, and automobiles. Other assets included in the  
16 computation of net worth may be valued at fair market value.

17 Each natural person specified above, by reason of his or her  
18 business or financial experience, or the business or financial  
19 experience of his or her professional adviser, who is unaffiliated  
20 with and who is not compensated, directly or indirectly, by the  
21 issuer or any affiliate or selling agent of the issuer, can be  
22 reasonably assumed to have the capacity to protect his or her  
23 interests in connection with the transaction. The amount of the  
24 investment of each natural person shall not exceed 10 percent of  
25 the net worth, as determined by this subparagraph, of that natural  
26 person.

27 (F) Any other purchaser designated as qualified by rule of the  
28 commissioner.

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

33 (4) Each natural person purchaser, including a corporation,  
34 partnership, or other organization specifically formed by natural  
35 persons for the purpose of acquiring the securities offered by the  
36 issuer, receives, at least five business days before securities are  
37 sold to, or a commitment to purchase is accepted from, the  
38 purchaser, a written offering disclosure statement that shall meet  
39 the disclosure requirements of Regulation D (17 C.F.R. 230.501  
40 et seq.), and any other information as may be prescribed by rule

1 of the commissioner, provided that the issuer shall not be obligated  
2 pursuant to this paragraph to provide this disclosure statement to  
3 a natural person qualified under Section 260.102.13 of Title 10 of  
4 the California Code of Regulations. The offer or sale of securities  
5 pursuant to a disclosure statement required by this paragraph that  
6 is in violation of Section 25401, or that fails to meet the disclosure  
7 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall  
8 not render unavailable to the issuer the claim of an exemption from  
9 Section 25110 afforded by this subdivision. This paragraph does  
10 not impose, directly or indirectly, any additional disclosure  
11 obligation with respect to any other exemption from qualification  
12 available under any other provision of this section.

13 (5) (A) A general announcement of proposed offering may be  
14 published by written document only, provided that the general  
15 announcement of proposed offering sets forth the following  
16 required information:

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

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

19 (iii) The anticipated suitability standards for prospective  
20 purchasers.

21 (iv) A statement that (I) no money or other consideration is  
22 being solicited or will be accepted, (II) an indication of interest  
23 made by a prospective purchaser involves no obligation or  
24 commitment of any kind, and, if the issuer is required by paragraph  
25 (4) to deliver a disclosure statement to prospective purchasers,  
26 (III) no sales will be made or commitment to purchase accepted  
27 until five business days after delivery of a disclosure statement  
28 and subscription information to the prospective purchaser in  
29 accordance with the requirements of this subdivision.

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

31 (vi) The following legend: "For more complete information  
32 about (Name of Issuer) and (Full Title of Security), send for  
33 additional information from (Name and Address) by sending this  
34 coupon or calling (Telephone Number)."

35 (B) The general announcement of proposed offering referred  
36 to in subparagraph (A) may also set forth the following  
37 information:

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

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

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

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

6 (D) Dissemination of the general announcement of proposed  
7 offering to persons who are not qualified purchasers, without more,  
8 shall not disqualify the issuer from claiming the exemption under  
9 this subdivision.

10 (6) No telephone solicitation shall be permitted until the issuer  
11 has determined that the prospective purchaser to be solicited is a  
12 qualified purchaser.

13 (7) The issuer files a notice of transaction under this subdivision  
14 both (A) concurrent with the publication of a general announcement  
15 of proposed offering or at the time of the initial offer of the  
16 securities, whichever occurs first, accompanied by a filing fee, and  
17 (B) within 10 business days following the close or abandonment  
18 of the offering, but in no case more than 210 days from the date  
19 of filing the first notice. The first notice of transaction under  
20 subparagraph (A) shall contain an undertaking, in a form acceptable  
21 to the commissioner, to deliver any disclosure statement required  
22 by paragraph (4) to be delivered to prospective purchasers, and  
23 any supplement thereto, to the commissioner within 10 days of  
24 the commissioner's request for the information. The exemption  
25 from qualification afforded by this subdivision is unavailable if  
26 an issuer fails to file the first notice required under subparagraph  
27 (A) or to pay the filing fee. The commissioner has the authority  
28 to assess an administrative penalty of up to one thousand dollars  
29 (\$1,000) against an issuer that fails to deliver the disclosure  
30 statement required to be delivered to the commissioner upon the  
31 commissioner's request within the time period set forth above.  
32 Neither the filing of the disclosure statement nor the failure by the  
33 commissioner to comment thereon precludes the commissioner  
34 from taking any action deemed necessary or appropriate under this  
35 division with respect to the offer and sale of the securities.

36 (o) An offer or sale of any security issued by a corporation or  
37 limited liability company pursuant to a purchase plan or agreement,  
38 or issued pursuant to an option plan or agreement, where the  
39 security at the time of issuance or grant is exempt from registration  
40 under the Securities Act of 1933, as amended, pursuant to Rule

1 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions  
2 of which are hereby incorporated by reference into this section,  
3 provided that (1) the terms of any purchase plan or agreement shall  
4 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of  
5 Title 10 of the California Code of Regulations, (2) the terms of  
6 any option plan or agreement shall comply with Sections  
7 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the  
8 California Code of Regulations, and (3) the issuer files a notice of  
9 transaction in accordance with rules adopted by the commissioner  
10 no later than 30 days after the initial issuance of any security under  
11 that plan, accompanied by a filing fee as prescribed by subdivision  
12 (y) of Section 25608. The failure to file the notice of transaction  
13 within the time specified in this subdivision shall not affect the  
14 availability of this exemption. An issuer that fails to file the notice  
15 shall, within 15 business days after discovery of the failure to file  
16 the notice or after demand by the commissioner, whichever occurs  
17 first, file the notice and pay the commissioner a fee equal to the  
18 maximum aggregate fee payable had the transaction been qualified  
19 under Section 25110.

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

25 (p) An offer or sale of nonredeemable securities to accredited  
26 investors (Section 28031) by a person licensed under the Capital  
27 Access Company Law (Division 3 (commencing with Section  
28 28000) of Title 4), provided that all purchasers either (1) have a  
29 preexisting personal or business relationship with the offeror or  
30 any of its partners, officers, directors, controlling persons, or  
31 managers (as appointed or elected by the members), or (2) by  
32 reason of their business or financial experience or the business or  
33 financial experience of their professional advisers who are  
34 unaffiliated with and who are not compensated by the issuer or  
35 any affiliate or selling agent of the issuer, directly or indirectly,  
36 could be reasonably assumed to have the capacity to protect their  
37 own interests in connection with the transaction. All nonredeemable  
38 securities shall be evidenced by certificates that shall have stamped  
39 or printed prominently on their face a legend in a form to be  
40 prescribed by rule or order of the commissioner restricting transfer

1 of the securities in the manner as the rule or order provides. The  
2 exemption under this subdivision shall not be available for any  
3 offering that is exempt or asserted to be exempt pursuant to Section  
4 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))  
5 or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is  
6 conducted by means of any form of general solicitation or general  
7 advertising.

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

11 (1) Sales of securities described in this subdivision are made  
12 only to qualified purchasers or other persons the issuer reasonably  
13 believes, after reasonable inquiry, to be qualified purchasers. A  
14 corporation, partnership, or other organization specifically formed  
15 for the purpose of acquiring the securities offered by the issuer in  
16 reliance upon this exemption may be a qualified purchaser only if  
17 each of the equity owners of the corporation, partnership, or other  
18 organization is a qualified purchaser. Qualified purchasers include  
19 the following:

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

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

24 (C) A pension or profit-sharing trust of the issuer, a  
25 self-employed individual retirement plan, or an individual  
26 retirement account, if the investment decisions made on behalf of  
27 the trust, plan, or account are made solely by persons who are  
28 qualified purchasers.

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

34 (E) A natural person who, either individually or jointly with the  
35 person's spouse, (i) has a minimum net worth of one hundred fifty  
36 thousand dollars (\$150,000) and had, during the immediately  
37 preceding tax year, gross income in excess of one hundred thousand  
38 dollars (\$100,000) and reasonably expects gross income in excess  
39 of one hundred thousand dollars (\$100,000) during the current tax  
40 year or (ii) has a minimum net worth of two hundred fifty thousand

1 dollars (\$250,000). “Net worth” shall be determined exclusive of  
2 home, home furnishings, and automobiles. Other assets included  
3 in the computation of net worth may be valued at fair market value.

4 Each natural person specified above, by reason of his or her  
5 business or financial experience, or the business or financial  
6 experience of his or her professional adviser, who is unaffiliated  
7 with and who is not compensated, directly or indirectly, by the  
8 issuer or any affiliate or selling agent of the issuer, can be  
9 reasonably assumed to have the capacity to protect his or her  
10 interests in connection with the transaction.

11 The amount of the investment of each natural person shall not  
12 exceed 10 percent of the net worth, as determined by this  
13 subdivision, of that natural person.

14 (F) Any other purchaser designated as qualified by rule of the  
15 commissioner.

16 (2) Each purchaser represents that the purchaser is purchasing  
17 for the purchaser’s own account (or trust account, if the purchaser  
18 is a trustee) and not with a view to or for sale in connection with  
19 a distribution of the security.

20 (3) Each natural person purchaser, including a corporation,  
21 partnership, or other organization specifically formed by natural  
22 persons for the purpose of acquiring the securities offered by the  
23 issuer, receives, at least five business days before securities  
24 described in this subdivision are sold to, or a commitment to  
25 purchase is accepted from, the purchaser, the following information  
26 in writing:

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

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

31 (C) A description of the issuer’s type of business organization  
32 and the state in which the issuer is organized or incorporated.

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

34 (E) If the issuer retains ownership or becomes the beneficiary  
35 of the insurance policy, an audit report of an independent certified  
36 public accountant together with a balance sheet and related  
37 statements of income, retained earnings, and cashflows that reflect  
38 the issuer’s financial position, the results of the issuer’s operations,  
39 and the issuer’s cashflows as of a date within 15 months before  
40 the date of the initial issuance of the securities described in this

1 subdivision. The financial statements listed in this subparagraph  
2 shall be prepared in conformity with generally accepted accounting  
3 principles. If the date of the audit report is more than 120 days  
4 before the date of the initial issuance of the securities described  
5 in this subdivision, the issuer shall provide unaudited interim  
6 financial statements.

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

9 (G) A description of any order, judgment, or decree that is final  
10 as to the issuing entity of any state, federal, or foreign country  
11 governmental agency or administrator, or of any state, federal, or  
12 foreign country court of competent jurisdiction (i) revoking,  
13 suspending, denying, or censuring for cause any license, permit,  
14 or other authority of the issuer or of any director, officer, partner,  
15 member, trustee, or person owning or controlling, directly or  
16 indirectly, 10 percent or more of the outstanding interest or equity  
17 securities of the issuer, to engage in the securities, commodities,  
18 franchise, insurance, real estate, or lending business or in the offer  
19 or sale of securities, commodities, franchises, insurance, real estate,  
20 or ~~loans~~, *loans*; (ii) permanently restraining, enjoining, barring,  
21 suspending, or censuring any such person from engaging in or  
22 continuing any conduct, practice, or employment in connection  
23 with the offer or sale of securities, commodities, franchises,  
24 insurance, real estate, or ~~loans~~, *loans*; (iii) convicting any such  
25 person of, or pleading nolo contendere by any such person to, any  
26 felony or misdemeanor involving a security, commodity, franchise,  
27 insurance, real estate, or loan, or any aspect of the securities,  
28 commodities, franchise, insurance, real estate, or lending business,  
29 or involving dishonesty, fraud, deceit, embezzlement, fraudulent  
30 conversion, or misappropriation of ~~property~~, *property*; or (iv)  
31 holding any such person liable in a civil action involving breach  
32 of a fiduciary duty, fraud, deceit, embezzlement, fraudulent  
33 conversion, or misappropriation of property. This subparagraph  
34 does not apply to any order, judgment, or decree that has been  
35 vacated, overturned, or is more than 10 years old.

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

38 (I) The name, address, and telephone number of the issuing  
39 insurance company, and the name, address, and telephone number  
40 of the state or foreign country regulator of the insurance company.

- 1 (J) The total face value of the insurance policy and the  
2 percentage of the insurance policy the purchaser will own.
- 3 (K) The insurance policy number, issue date, and type.
- 4 (L) If a group insurance policy, the name, address, and telephone  
5 number of the group, and, if applicable, the material terms and  
6 conditions of converting the policy to an individual policy,  
7 including the amount of increased premiums.
- 8 (M) If a term insurance policy, the term and the name, address,  
9 and telephone number of the person who will be responsible for  
10 renewing the policy if necessary.
- 11 (N) That the insurance policy is beyond the state statute for  
12 contestability and the reason therefor.
- 13 (O) The insurance policy premiums and terms of premium  
14 payments.
- 15 (P) The amount of the purchaser's moneys that will be set aside  
16 to pay premiums.
- 17 (Q) The name, address, and telephone number of the person  
18 who will be the insurance policy owner and the person who will  
19 be responsible for paying premiums.
- 20 (R) The date on which the purchaser will be required to pay  
21 premiums and the amount of the premium, if known.
- 22 (S) A statement to the effect that any projected rate of return to  
23 the purchaser from the purchase of a viatical or life settlement  
24 contract or a fractionalized or pooled interest therein is based on  
25 an estimated life expectancy for the person insured under the life  
26 insurance policy; that the return on the purchase may vary  
27 substantially from the expected rate of return based upon the actual  
28 life expectancy of the insured that may be less than, equal to, or  
29 may greatly exceed the estimated life expectancy; and that the rate  
30 of return would be higher if the actual life expectancy were less  
31 than, and lower if the actual life expectancy were greater ~~than~~ *than*,  
32 the estimated life expectancy of the insured at the time the viatical  
33 or life settlement contract was closed.
- 34 (T) A statement that the purchaser should consult with his or  
35 her tax adviser regarding the tax consequences of the purchase of  
36 the viatical or life settlement contract or fractionalized or pooled  
37 interest therein and, if the purchaser is using retirement funds or  
38 accounts for that purchase, whether or not any adverse tax  
39 consequences might result from the use of those funds for the  
40 purchase of that investment.

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

3 (r) (1) (A) Any offer or sale of a security by an issuer using  
4 any form of general solicitation or general advertising, as specified  
5 in Rule 502(c) of Regulation D under the Securities Act of 1933  
6 (17 C.F.R. 230.502(c)), except as provided in subparagraph (B).

7 (B) Any offer of a security made by means of an unsolicited  
8 telephone call to a person's residence or cellular telephone, unless  
9 the issuer and the caller take reasonable steps, prior to the  
10 unsolicited telephone call, to verify that the person is an accredited  
11 investor, as defined in Rule 501 of Regulation D under the  
12 Securities Act of 1933 (17 C.F.R. 230.501), and the transaction  
13 meets all the requirements of this subdivision.

14 (2) In order for the exemption under this subdivision to apply,  
15 all of the following shall be satisfied:

16 (A) The aggregate offering price for an offering of securities  
17 under this subdivision, as defined in Rule 501(c) of Regulation D  
18 under the Securities Act of 1933 (17 C.F.R. 230.501(c)), shall not  
19 exceed one million dollars (\$1,000,000), less the aggregate offering  
20 price for all securities sold within 12 months before the start of  
21 and during the offering of securities pursuant to the exemption  
22 under this subdivision.

23 (B) Prior to selling any security to a person solicited pursuant  
24 to this subdivision, an issuer shall obtain from that person a  
25 completed offeree questionnaire in a form adopted by the  
26 commissioner.

27 (C) The issuer shall maintain the confidentiality of any and all  
28 information in the questionnaire and not otherwise sell, distribute,  
29 or use the information in that questionnaire for any purpose other  
30 than to assist in establishing the suitability of that investor for that  
31 particular offering. A violation of this subparagraph shall result  
32 in disqualification of the offering and from the future use of this  
33 exemption under this subdivision by the issuer.

34 (D) The issuer shall take reasonable steps to verify that,  
35 immediately prior to the sale, the offering is suitable for the person,  
36 based on the person's financial status, objectives, investment  
37 experience, time horizon, risk tolerance, and any other information  
38 the issuer deems relevant to determine whether the offering is  
39 suitable to the person. The issuer shall maintain, for a period of

1 *four years, documentation sufficient to establish the basis for its*  
2 *determination of suitability.*

3 *(E) For purposes of this paragraph, an issuer may reasonably*  
4 *assume that the person has the capacity to protect his or her*  
5 *interests in connection with the offering due to his or her business*  
6 *or financial experience, or the business or financial experience of*  
7 *his or her professional adviser, who is unaffiliated with and not*  
8 *compensated, directly or indirectly, by the issuer or any affiliate*  
9 *or selling agent of the issuer.*

10 *(F) (i) The issuer shall make available to potential investors a*  
11 *Small Corporate Offering Registration disclosure document based*  
12 *on the Form U-7 as adopted by the North American Securities*  
13 *Administrators Association prior to the commencement of the*  
14 *offering of securities.*

15 *(ii) The Form U-7 shall include financial statements of the*  
16 *issuer prepared in accordance with generally accepted accounting*  
17 *principles. If the issuer has not conducted significant operations,*  
18 *statements of receipts, and disbursements shall be included in*  
19 *place of statements of income. Interim financial statements may*  
20 *be unaudited. All other financial statements shall be audited by*  
21 *independent certified public accountants. However, if each of the*  
22 *following four conditions are met, the financial statements in place*  
23 *of being audited may be reviewed by independent certified public*  
24 *accountants in accordance with the Accounting and Review Service*  
25 *Standards promulgated by the American Institute of Certified*  
26 *Public Accountants:*

27 *(I) The issuer shall not have previously sold securities in an*  
28 *offering involving the general solicitation of prospective investors*  
29 *using advertising, mass mailings, public meetings, “cold call”*  
30 *telephone solicitation or any other method directed toward the*  
31 *public.*

32 *(II) The issuer has not been previously required under federal*  
33 *or state securities laws to provide audited financial statements in*  
34 *connection with any sale of its securities.*

35 *(III) The aggregate amount of all previous sales of securities*  
36 *by the issuer, exclusive of any debt financing with banks and*  
37 *similar commercial lenders, shall not exceed one million dollars*  
38 *(\$1,000,000).*

39 *(IV) The amount of the present offering does not exceed one*  
40 *million dollars (\$1,000,000).*

1 (G) (i) *The aggregate amount of securities sold to all investors*  
2 *by the issuer in reliance on this subdivision during the 12-month*  
3 *period preceding the date of the offer or sale, including the*  
4 *securities offered in the transaction, shall not exceed one million*  
5 *dollars (\$1,000,000).*

6 (ii) *The aggregate amount of securities sold to any investor by*  
7 *any issuer in reliance on this subdivision during the 12-month*  
8 *period preceding the date of the transaction, including the*  
9 *securities sold to the investor in that transaction, shall not exceed*  
10 *the greater of the following:*

11 (I) *Two thousand dollars (\$2,000) or 5 percent of annual income*  
12 *or net worth of the investor, whichever is greater, if both the annual*  
13 *income and net worth are less than one hundred thousand dollars*  
14 *(\$100,000).*

15 (II) *Ten percent of annual income or of net worth of the investor,*  
16 *whichever is greater, not to exceed an amount sold of one hundred*  
17 *thousand dollars (\$100,000), if either the annual income or net*  
18 *worth of the investor is equal to or more than one hundred*  
19 *thousand dollars (\$100,000). To determine the investment limit*  
20 *for a natural person, the person's annual income and net worth*  
21 *shall be calculated as those values are calculated for purposes of*  
22 *determining accredited investor status in accordance with Rule*  
23 *501 of Regulation D under the Securities Act of 1933 (17 C.F.R.*  
24 *501). The person's annual income and net worth may be calculated*  
25 *jointly with the annual income and net worth of the person's*  
26 *spouse. "Net worth" shall be determined as specified in Rule*  
27 *501(a) of Regulation D under the Securities Act of 1933, (17 C.F.R.*  
28 *230.501(a)).*

29 (H) *The issuer believes in good faith that the offer and sale are*  
30 *exempt from registration under Section 5 of the Securities Act of*  
31 *1933 (15 U.S.C. Sec. 77e) pursuant to Section 3(a)(11) of that act*  
32 *(15 U.S.C. Sec. 77c(a)(11)), or the rules and regulations adopted*  
33 *by the Securities and Exchange Commission under Section 3(b)*  
34 *or Section 4(2) of that act (15 U.S.C. Sec. 77d(2)).*

35 (I) *The issuer specifies in all advertisements, communications,*  
36 *sales literature, or other information that is publicly disseminated*  
37 *in connection with the offering, including by means of electronic*  
38 *transmission or broadcast media, that the offering is exempt from*  
39 *the qualification requirements of Section 25110 under the*  
40 *exemption provided for in this subdivision.*

1 (J) An issuer shall maintain a copy of any advertisement or  
2 solicitation, and any other offering material, for four years.

3 (3) The commissioner may by rule require the issuer to file a  
4 notice of transactions under this subdivision. The failure to file  
5 the notice or the failure to file the notice within the time specified  
6 by the rule of the commissioner shall not affect the availability of  
7 the exemption. An issuer who has failed to file the notice as  
8 provided by rule of the commissioner, within 15 business days  
9 after discovery of the failure to file the notice, or after demand by  
10 the commissioner, whichever occurs first, shall file the notice and  
11 pay to the commissioner a fee equal to the fee payable had the  
12 transaction been qualified under Section 25110.

13 (4) (A) A person who purchases securities in an offering that  
14 fails to meet all of the terms and conditions of this subdivision may  
15 bring an action under Sections 25503, 25504, and 25504.1 for  
16 rescission of the purchase and any other remedy provided in those  
17 sections.

18 (B) The court shall award attorney's fees and costs to a  
19 prevailing purchaser in an action brought pursuant to this  
20 paragraph, and may award treble or punitive damages.

21 (5) The exemption under this subdivision shall not be available  
22 for an offering by an issuer that is either an investment company,  
23 as defined in Section 3(a)(1) of the Investment Company Act of  
24 1940 (15 U.S.C. Sec. 80a et seq.), or a development stage company,  
25 as referred to in Rule 504(a)(3) of Regulation D under the  
26 Securities Act of 1933 (17 C.F.R. 504(a)(3)).

27 (6) The exemption under this subdivision shall not be available  
28 to an issuer if the issuer; a predecessor of the issuer; an affiliated  
29 issuer; a director, officer, general partner or managing member  
30 of the issuer; a beneficial owner of 20 percent or more of the  
31 issuer's outstanding voting equity securities, calculated on the  
32 basis of voting power; a promoter connected with the issuer in  
33 any capacity at the time of the sale; a person that has been or will  
34 be paid, directly or indirectly, remuneration for solicitation of  
35 purchasers in connection with the sale of securities, or a general  
36 partner, director, officer or managing member of that solicitor,  
37 meets any of the following criteria:

38 (A) Has been convicted, within 10 years before the filing of the  
39 information required by Section 4A(b) of the Securities Act (15  
40 U.S.C. Sec. 77d-1(b)), or five years, in the case of issuers, their

1 *predecessors and affiliated issuers, of a felony or misdemeanor*  
2 *that satisfies any of the following conditions:*

3 *(i) The felony or misdemeanor is in connection with the purchase*  
4 *or sale of any security.*

5 *(ii) The felony or misdemeanor involves the making of any false*  
6 *filing with the commission.*

7 *(iii) The felony or misdemeanor arises out of the conduct of the*  
8 *business of an underwriter, broker, dealer, municipal securities*  
9 *dealer, investment adviser, or paid solicitor of purchasers of*  
10 *securities.*

11 *(B) Is subject to any order, judgment or decree of any court of*  
12 *competent jurisdiction, entered within five years before the filing*  
13 *of the information required by Section 4A(b) of the Securities Act*  
14 *(15 U.S.C. Sec. 77d-1(b)) that, at the time of the filing, restrains*  
15 *or enjoins the person from engaging or continuing to engage in a*  
16 *conduct or practice that satisfies any of the following conditions:*

17 *(i) The conduct is in connection with the purchase or sale of*  
18 *any security.*

19 *(ii) The conduct involves the making of any false filing with the*  
20 *Securities and Exchange Commission.*

21 *(iii) The conduct arises out of the conduct of the business of an*  
22 *underwriter, broker, dealer, municipal securities dealer, investment*  
23 *adviser, or paid solicitor of purchasers of securities.*

24 *(C) Is subject to a final order of a state securities commission,*  
25 *or an agency or officer of a state performing like functions; a state*  
26 *authority that supervises or examines banks, savings associations,*  
27 *or credit unions; a state insurance commission, or an agency or*  
28 *officer of a state performing like functions; an appropriate federal*  
29 *banking agency, the United States Commodity Futures Trading*  
30 *Commission, or the National Credit Union Administration that*  
31 *does either of the following:*

32 *(i) At the time of the filing of the information required by Section*  
33 *4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)), bars the*  
34 *person from any of the following activities:*

35 *(I) Associating with an entity regulated by the commission,*  
36 *authority, agency, or officer.*

37 *(II) Engaging in the business of securities, insurance, or*  
38 *banking.*

39 *(III) Engaging in savings association or credit union activities.*

1 (ii) (I) Constitutes a final order based on a violation of a law  
2 or regulation that prohibits fraudulent, manipulative, or deceptive  
3 conduct and for which the order was entered within the 10-year  
4 period ending on the date of the filing of the information required  
5 by Section 4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)).

6 (II) For purposes of this clause, “final order” means a written  
7 directive or declaratory statement issued by a federal or state  
8 agency, described in proposed Section 227.503(a)(3) of Title 17  
9 of the Code of Federal Regulations, under applicable statutory  
10 authority that provides for notice and an opportunity for hearing,  
11 which constitutes a final disposition or action by that federal or  
12 state agency.

13 (D) Is subject to an order of the Securities and Exchange  
14 Commission entered pursuant to Section 15(b) or 15B(c) of the  
15 Exchange Act (15 U.S.C. Sec. 78o(b) or 78o-4(c)) or Section 203(e)  
16 or (f) of the Investment Advisers Act of 1940 (15 U.S.C. Sec.  
17 80b-3(e) or (f)) that, at the time of the filing of the information  
18 required by Section 4A(b) of the Securities Act (15 U.S.C. Sec.  
19 77d-1(b)), satisfies any of the following conditions:

20 (i) The order suspends or revokes the person’s registration as  
21 a broker, dealer, municipal securities dealer, or investment adviser.

22 (ii) The order places limitations on the activities, functions, or  
23 operations of the person.

24 (iii) The order bars the person from being associated with any  
25 entity or from participating in the offering of any penny stock.

26 (E) Is subject to any order of the Securities Exchange  
27 Commission entered within five years before the filing of the  
28 information required by Section 4A(b) of the Securities Act (15  
29 U.S.C. Sec. 77d-1(b)) that, at the time of the filing, orders the  
30 person to cease and desist from committing or causing a violation  
31 or future violation of either of the following:

32 (i) Any scienter-based antifraud provision of the federal  
33 securities laws, including without limitation Section 17(a)(1) of  
34 the Securities Act (15 U.S.C. Sec. 77q(a)(1)), Section 10(b) of the  
35 Exchange Act (15 U.S.C. Sec. 78j(b)) and 17 C.F.R. 240.10b-5,  
36 Section 15(c)(1) of the Exchange Act (15 U.S.C. Sec. 78o(c)(1))  
37 and Section 206(1) of the Investment Advisers Act of 1940 (15  
38 U.S.C. Sec. 80b-6(1)) or any other rule or regulation thereunder.

39 (ii) Section 5 of the federal Securities Act (15 U.S.C. Sec. 77e).

1 (F) *Is suspended or expelled from membership in, or suspended*  
2 *or barred from association with a member of, a registered national*  
3 *securities exchange or a registered national or affiliated securities*  
4 *association for any act or omission constituting conduct*  
5 *inconsistent with just and equitable principles of trade.*

6 (G) *Has filed, as a registrant or issuer, or was named as an*  
7 *underwriter in, any registration statement or Regulation A (17*  
8 *C.F.R. 230.251 et seq.) offering statement filed with the commission*  
9 *that, within five years before the filing of the information required*  
10 *by Section 4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)),*  
11 *was the subject of a refusal order, stop order, or order suspending*  
12 *the Regulation A exemption, or is, at the time of that filing, the*  
13 *subject of an investigation or proceeding to determine whether a*  
14 *stop order or suspension order should be issued.*

15 (H) *Is subject to a United States Postal Service false*  
16 *representation order entered within five years before the filing of*  
17 *the information required by Section 4A(b) of the Securities Act (15*  
18 *U.S.C. Sec. 77d-1(b)), or, at the time of the filing, is subject to a*  
19 *temporary restraining order or preliminary injunction with respect*  
20 *to conduct alleged by the United States Postal Service to constitute*  
21 *a scheme or device for obtaining money or property through the*  
22 *mail by means of false representations.*

23 (7) *Subparagraph (A) of paragraph (6) shall not apply in any*  
24 *of the following circumstances:*

25 (A) *With respect to any conviction, order, judgment, decree,*  
26 *suspension, expulsion or bar that occurred or was issued before*  
27 *effective date of the final rule.*

28 (B) *Upon a showing of good cause and without prejudice to any*  
29 *other action by the Securities and Exchange commission, if the*  
30 *Securities and Exchange commission determines that it is not*  
31 *necessary under the circumstances that an exemption be denied.*

32 (C) *If, before the filing of the information required by Section*  
33 *4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)), the court or*  
34 *regulatory authority that entered the relevant order, judgment, or*  
35 *decree advises in writing, whether contained in the relevant*  
36 *judgment, order or decree or separately to the Securities and*  
37 *Exchange Commission or its staff, that disqualification under*  
38 *subparagraph (A) of paragraph (6) should not arise as a*  
39 *consequence of the order, judgment, or decree.*

1     (D) *If the issuer establishes that it did not know and, in the*  
2 *exercise of reasonable care, could not have known that a*  
3 *disqualification existed under subparagraph (A) of paragraph (6).*  
4 *An issuer shall not be able to establish that it has exercised*  
5 *reasonable care unless it has made factual inquiry into whether*  
6 *any disqualification exists. The nature and scope of the factual*  
7 *inquiry will vary based on the facts and circumstances concerning,*  
8 *among other things, the issuer and the other offering participants.*  
9     (8) For purposes of subparagraph (A) of paragraph (6), events  
10 relating to any affiliated issuer that occurred before the affiliation  
11 arose will be not considered disqualifying if the affiliated entity  
12 is neither in control of the issuer, nor under common control with  
13 the issuer by a third party that was in control of the affiliated entity  
14 at the time of those events.