

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 722**

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**Introduced by Assembly Member Perea**

February 25, 2015

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An act to amend Sections 25102, 25104, 25110, 25501, 25503, and 25608 of, and to add Section 25113.1 to, the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 722, as amended, Perea. Securities transactions: qualifications by permit: liability.

Existing law, the Corporate Securities Law of 1968, requires securities offered or sold in this state in an issuer or nonissuer transaction to be qualified through an application filed with the Commissioner of Business Oversight, unless exempt from the qualification requirements. That law makes it unlawful, for a person in connection with the offer, sale, or purchase of a security, to engage in fraudulent or misleading acts or omissions.

This bill would authorize an applicant to file an application for qualification of the offer or sale of a security by crowdfunding permit if certain conditions are met, including that the total offering of securities by the applicant to be sold in a 12-month period, within or outside this state, is limited to \$1,000,000, less a specified amount; the aggregate amount of securities sold to any investor, including any amount sold during the 12-month period preceding the date of the transaction, does not exceed the lesser of \$5,000 or 10% of the net worth of that natural

person; and the issuer will not, directly or indirectly, conduct any unsolicited telephone solicitation of the securities offered. This bill would impose a filing fee of \$200 plus  $\frac{1}{5}$  of 2% of the aggregate value of the securities sought to be sold in this state.

Existing law provides that any person who violates a condition of qualification of the offer or sale of a security is liable to any person acquiring the security sold in violation, who may sue to recover the consideration paid for such security with interest thereon at the legal rate or for damages, as specified.

This bill would extend that provision to a violation of a condition of qualification by permit authorized by this bill. This bill would also require a court to award reasonable attorney's fees and costs, and authorize the award of treble and punitive damages, to a prevailing purchaser in an action brought against any person who violates those conditions of qualification by permit authorized by this bill.

Existing law imposes liability on any person who engages in specified unlawful activity to the person who purchases a security from him or sells a security to him, and authorizes the purchaser or seller to sue either for rescission or for damages.

This bill would provide that the plaintiff is not required to plead or prove that the defendant acted with scienter.

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

1 Code. The rights of all parties to this agreement are expressly  
2 conditioned upon the qualification being obtained, unless the sale  
3 is so exempt"; and (2) no part of the purchase price is paid or  
4 received and none of the securities are issued until the sale of the  
5 securities is qualified under this law unless the sale of securities  
6 is exempt from the qualification by this section, Section 25100,  
7 or 25105.

8 (b) Any offer (but not a sale) of a security for which (1) a  
9 registration statement has been filed under the Securities Act of  
10 1933 but has not yet become effective, or for which an offering  
11 statement under Regulation A has been filed but has not yet been  
12 qualified, if no stop order or refusal order is in effect and (2) no  
13 public proceeding or examination looking towards an order is  
14 pending under Section 8 of the act and no order under Section  
15 25140 or subdivision (a) of Section 25143 is in effect under this  
16 law.

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

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

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

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

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

36 (2) All purchasers either have a preexisting personal or business  
37 relationship with the offeror or any of its partners, officers,  
38 directors or controlling persons, or managers (as appointed or  
39 elected by the members) if the offeror is a limited liability  
40 company, or by reason of their business or financial experience or

1 the business or financial experience of their professional advisers  
2 who are unaffiliated with and who are not compensated by the  
3 issuer or any affiliate or selling agent of the issuer, directly or  
4 indirectly, could be reasonably assumed to have the capacity to  
5 protect their own interests in connection with the transaction.

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

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

24 The failure to file the notice or the failure to file the notice within  
25 the time specified by the rule of the commissioner shall not affect  
26 the availability of the exemption. Any issuer that fails to file the  
27 notice as provided by rule of the commissioner shall, within 15  
28 business days after discovery of the failure to file the notice or  
29 after demand by the commissioner, whichever occurs first, file the  
30 notice and pay to the commissioner a fee equal to the fee payable  
31 had the transaction been qualified under Section 25110. Neither  
32 the filing of the notice nor the failure by the commissioner to  
33 comment thereon precludes the commissioner from taking any  
34 action that the commissioner deems necessary or appropriate under  
35 this division with respect to the offer and sale of the securities.

36 (g) Any offer or sale of conditional sale agreements, equipment  
37 trust certificates, or certificates of interest or participation therein  
38 or partial assignments thereof, covering the purchase of railroad  
39 rolling stock or equipment or the purchase of motor vehicles,

1 aircraft, or parts thereof, in a transaction not involving any public  
2 offering.

3 (h) Any offer or sale of voting common stock by a corporation  
4 incorporated in any state if, immediately after the proposed sale  
5 and issuance, there will be only one class of stock of the  
6 corporation outstanding that is owned beneficially by no more than  
7 35 persons, provided all of the following requirements have been  
8 met:

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

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

14 (A) Only assets (which may include cash) of an existing business  
15 enterprise transferred to the issuer upon its initial organization, of  
16 which all of the persons who are to receive the stock to be issued  
17 pursuant to this exemption were owners during, and the enterprise  
18 was operated for, a period of not less than one year immediately  
19 preceding the proposed issuance, and the ownership of the  
20 enterprise immediately prior to the proposed issuance was in the  
21 same proportions as the shares of stock are to be issued.

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

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

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

31 (3) No promotional consideration has been given, paid, or  
32 incurred in connection with the issuance. Promotional consideration  
33 means any consideration paid directly or indirectly to a person  
34 who, acting alone or in conjunction with one or more other persons,  
35 takes the initiative in founding and organizing the business or  
36 enterprise of an issuer for services rendered in connection with the  
37 founding or organizing.

38 (4) A notice in a form prescribed by rule of the commissioner,  
39 signed by an active member of the State Bar of California, is filed  
40 with or mailed for filing to the commissioner not later than 10

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

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

39 For the purposes of this subdivision, all securities held by a  
40 husband and wife, whether or not jointly, shall be considered to

1 be owned by one person, and all securities held by a corporation  
2 that has issued stock pursuant to this exemption shall be considered  
3 to be held by the shareholders to whom it has issued the stock.

4 All stock issued by a corporation pursuant to this subdivision as  
5 it existed prior to the effective date of the amendments to this  
6 section made during the 1996 portion of the 1995–96 Regular  
7 Session that required the issuer to have stamped or printed  
8 prominently on the face of the stock certificate a legend in a form  
9 prescribed by rule of the commissioner restricting transfer of the  
10 stock in a manner provided for by that rule shall not be subject to  
11 the transfer restriction legend requirement and, by operation of  
12 law, the corporation is authorized to remove that transfer restriction  
13 legend from the certificates of those shares of stock issued by the  
14 corporation pursuant to this subdivision as it existed prior to the  
15 effective date of the amendments to this section made during the  
16 1996 portion of the 1995–96 Regular Session.

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

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

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

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

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

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

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

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

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

21 (m) Any offer or sale of a stock to a pension, profit-sharing,  
22 stock bonus, or employee stock ownership plan, provided that (1)  
23 the plan meets the requirements for qualification under Section  
24 401 of the Internal Revenue Code, and (2) the employees are not  
25 required or permitted individually to make any contributions to  
26 the plan. The exemption provided by this subdivision shall not be  
27 affected by whether the stock is contributed to the plan, purchased  
28 from the issuer with contributions by the issuer or an affiliate of  
29 the issuer, or purchased from the issuer with funds borrowed from  
30 the issuer, an affiliate of the issuer, or any other lender.

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

34 (1) The issuer is (A) a California corporation or foreign  
35 corporation that, at the time of the filing of the notice required  
36 under this subdivision, is subject to Section 2115, or (B) any other  
37 form of business entity, including without limitation a partnership  
38 or trust organized under the laws of this state. The exemption  
39 provided by this subdivision is not available to a “blind pool”  
40 issuer, as that term is defined by the commissioner, or to an



1 investment company subject to the Investment Company Act of  
2 1940.

3 (2) Sales of securities are made only to qualified purchasers or  
4 other persons the issuer reasonably believes, after reasonable  
5 inquiry, to be qualified purchasers. A corporation, partnership, or  
6 other organization specifically formed for the purpose of acquiring  
7 the securities offered by the issuer in reliance upon this exemption  
8 may be a qualified purchaser if each of the equity owners of the  
9 corporation, partnership, or other organization is a qualified  
10 purchaser. Qualified purchasers include the following:

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

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

15 (C) A pension or profit-sharing trust of the issuer, a  
16 self-employed individual retirement plan, or an individual  
17 retirement account, if the investment decisions made on behalf of  
18 the trust, plan, or account are made solely by persons who are  
19 qualified purchasers.

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

25 (E) With respect to the offer and sale of one class of voting  
26 common stock of an issuer or of preferred stock of an issuer  
27 entitling the holder thereof to at least the same voting rights as the  
28 issuer's one class of voting common stock, provided that the issuer  
29 has only one-class voting common stock outstanding upon  
30 consummation of the offer and sale, a natural person who, either  
31 individually or jointly with the person's spouse, (i) has a minimum  
32 net worth of two hundred fifty thousand dollars (\$250,000) and  
33 had, during the immediately preceding tax year, gross income in  
34 excess of one hundred thousand dollars (\$100,000) and reasonably  
35 expects gross income in excess of one hundred thousand dollars  
36 (\$100,000) during the current tax year or (ii) has a minimum net  
37 worth of five hundred thousand dollars (\$500,000). "Net worth"  
38 shall be determined exclusive of home, home furnishings, and  
39 automobiles. Other assets included in the computation of net worth  
40 may be valued at fair market value.

1 Each natural person specified above, by reason of his or her  
2 business or financial experience, or the business or financial  
3 experience of his or her professional adviser, who is unaffiliated  
4 with and who is not compensated, directly or indirectly, by the  
5 issuer or any affiliate or selling agent of the issuer, can be  
6 reasonably assumed to have the capacity to protect his or her  
7 interests in connection with the transaction. The amount of the  
8 investment of each natural person shall not exceed 10 percent of  
9 the net worth, as determined by this subparagraph, of that natural  
10 person.

11 (F) Any other purchaser designated as qualified by rule of the  
12 commissioner.

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

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

37 (5) (A) A general announcement of proposed offering may be  
38 published by written document only, provided that the general  
39 announcement of proposed offering sets forth the following  
40 required information:

- 1 (i) The name of the issuer of the securities.  
2 (ii) The full title of the security to be issued.  
3 (iii) The anticipated suitability standards for prospective  
4 purchasers.  
5 (iv) A statement that (I) no money or other consideration is  
6 being solicited or will be accepted, (II) an indication of interest  
7 made by a prospective purchaser involves no obligation or  
8 commitment of any kind, and, if the issuer is required by paragraph  
9 (4) to deliver a disclosure statement to prospective purchasers,  
10 (III) no sales will be made or commitment to purchase accepted  
11 until five business days after delivery of a disclosure statement  
12 and subscription information to the prospective purchaser in  
13 accordance with the requirements of this subdivision.  
14 (v) Any other information required by rule of the commissioner.  
15 (vi) The following legend: “For more complete information  
16 about (Name of Issuer) and (Full Title of Security), send for  
17 additional information from (Name and Address) by sending this  
18 coupon or calling (Telephone Number).”  
19 (B) The general announcement of proposed offering referred  
20 to in subparagraph (A) may also set forth the following  
21 information:  
22 (i) A brief description of the business of the issuer.  
23 (ii) The geographic location of the issuer and its business.  
24 (iii) The price of the security to be issued, or, if the price is not  
25 known, the method of its determination or the probable price range  
26 as specified by the issuer, and the aggregate offering price.  
27 (C) The general announcement of proposed offering shall  
28 contain only the information that is set forth in this paragraph.  
29 (D) Dissemination of the general announcement of proposed  
30 offering to persons who are not qualified purchasers, without more,  
31 shall not disqualify the issuer from claiming the exemption under  
32 this subdivision.  
33 (6) No telephone solicitation shall be permitted until the issuer  
34 has determined that the prospective purchaser to be solicited is a  
35 qualified purchaser.  
36 (7) The issuer files a notice of transaction under this subdivision  
37 both (A) concurrent with the publication of a general announcement  
38 of proposed offering or at the time of the initial offer of the  
39 securities, whichever occurs first, accompanied by a filing fee, and  
40 (B) within 10 business days following the close or abandonment

1 of the offering, but in no case more than 210 days from the date  
2 of filing the first notice. The first notice of transaction under  
3 subparagraph (A) shall contain an undertaking, in a form acceptable  
4 to the commissioner, to deliver any disclosure statement required  
5 by paragraph (4) to be delivered to prospective purchasers, and  
6 any supplement thereto, to the commissioner within 10 days of  
7 the commissioner's request for the information. The exemption  
8 from qualification afforded by this subdivision is unavailable if  
9 an issuer fails to file the first notice required under subparagraph  
10 (A) or to pay the filing fee. The commissioner has the authority  
11 to assess an administrative penalty of up to one thousand dollars  
12 (\$1,000) against an issuer that fails to deliver the disclosure  
13 statement required to be delivered to the commissioner upon the  
14 commissioner's request within the time period set forth above.  
15 Neither the filing of the disclosure statement nor the failure by the  
16 commissioner to comment thereon precludes the commissioner  
17 from taking any action deemed necessary or appropriate under this  
18 division with respect to the offer and sale of the securities.

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

1 maximum aggregate fee payable had the transaction been qualified  
2 under Section 25110.

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

8 (p) An offer or sale of nonredeemable securities to accredited  
9 investors (Section 28031) by a person licensed under the Capital  
10 Access Company Law (Division 3 (commencing with Section  
11 28000) of Title 4), provided that all purchasers either (1) have a  
12 preexisting personal or business relationship with the offeror or  
13 any of its partners, officers, directors, controlling persons, or  
14 managers (as appointed or elected by the members), or (2) by  
15 reason of their business or financial experience or the business or  
16 financial experience of their professional advisers who are  
17 unaffiliated with and who are not compensated by the issuer or  
18 any affiliate or selling agent of the issuer, directly or indirectly,  
19 could be reasonably assumed to have the capacity to protect their  
20 own interests in connection with the transaction. All nonredeemable  
21 securities shall be evidenced by certificates that shall have stamped  
22 or printed prominently on their face a legend in a form to be  
23 prescribed by rule or order of the commissioner restricting transfer  
24 of the securities in the manner as the rule or order provides. The  
25 exemption under this subdivision shall not be available for any  
26 offering that is exempt or asserted to be exempt pursuant to Section  
27 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))  
28 or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is  
29 conducted by means of any form of general solicitation or general  
30 advertising.

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

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

1 organization is a qualified purchaser. Qualified purchasers include  
2 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) A natural person who, either individually or jointly with the  
18 person's spouse, (i) has a minimum net worth of one hundred fifty  
19 thousand dollars (\$150,000) and had, during the immediately  
20 preceding tax year, gross income in excess of one hundred thousand  
21 dollars (\$100,000) and reasonably expects gross income in excess  
22 of one hundred thousand dollars (\$100,000) during the current tax  
23 year or (ii) has a minimum net worth of two hundred fifty thousand  
24 dollars (\$250,000). "Net worth" shall be determined exclusive of  
25 home, home furnishings, and automobiles. Other assets included  
26 in the computation of net worth may be valued at fair market value.

27 Each natural person specified above, by reason of his or her  
28 business or financial experience, or the business or financial  
29 experience of his or her professional adviser, who is unaffiliated  
30 with and who is not compensated, directly or indirectly, by the  
31 issuer or any affiliate or selling agent of the issuer, can be  
32 reasonably assumed to have the capacity to protect his or her  
33 interests in connection with the transaction.

34 The amount of the investment of each natural person shall not  
35 exceed 10 percent of the net worth, as determined by this  
36 subdivision, of that natural person.

37 (F) Any other purchaser designated as qualified by rule of the  
38 commissioner.

39 (2) Each purchaser represents that the purchaser is purchasing  
40 for the purchaser's own account (or trust account, if the purchaser

1 is a trustee) and not with a view to or for sale in connection with  
2 a distribution of the security.

3 (3) Each natural person purchaser, including a corporation,  
4 partnership, or other organization specifically formed by natural  
5 persons for the purpose of acquiring the securities offered by the  
6 issuer, receives, at least five business days before securities  
7 described in this subdivision are sold to, or a commitment to  
8 purchase is accepted from, the purchaser, the following information  
9 in writing:

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

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

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

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

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

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

32 (G) A description of any order, judgment, or decree that is final  
33 as to the issuing entity of any state, federal, or foreign country  
34 governmental agency or administrator, or of any state, federal, or  
35 foreign country court of competent jurisdiction (i) revoking,  
36 suspending, denying, or censuring for cause any license, permit,  
37 or other authority of the issuer or of any director, officer, partner,  
38 member, trustee, or person owning or controlling, directly or  
39 indirectly, 10 percent or more of the outstanding interest or equity  
40 securities of the issuer, to engage in the securities, commodities,

1 franchise, insurance, real estate, or lending business or in the offer  
2 or sale of securities, commodities, franchises, insurance, real estate,  
3 or loans, (ii) permanently restraining, enjoining, barring,  
4 suspending, or censuring any such person from engaging in or  
5 continuing any conduct, practice, or employment in connection  
6 with the offer or sale of securities, commodities, franchises,  
7 insurance, real estate, or loans, (iii) convicting any such person  
8 of, or pleading nolo contendere by any such person to, any felony  
9 or misdemeanor involving a security, commodity, franchise,  
10 insurance, real estate, or loan, or any aspect of the securities,  
11 commodities, franchise, insurance, real estate, or lending business,  
12 or involving dishonesty, fraud, deceit, embezzlement, fraudulent  
13 conversion, or misappropriation of property, or (iv) holding any  
14 such person liable in a civil action involving breach of a fiduciary  
15 duty, fraud, deceit, embezzlement, fraudulent conversion, or  
16 misappropriation of property. This subparagraph does not apply  
17 to any order, judgment, or decree that has been vacated, overturned,  
18 or is more than 10 years old.

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

21 (I) The name, address, and telephone number of the issuing  
22 insurance company, and the name, address, and telephone number  
23 of the state or foreign country regulator of the insurance company.

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

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

27 (L) If a group insurance policy, the name, address, and telephone  
28 number of the group, and, if applicable, the material terms and  
29 conditions of converting the policy to an individual policy,  
30 including the amount of increased premiums.

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

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

36 (O) The insurance policy premiums and terms of premium  
37 payments.

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



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

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

6 (S) A statement to the effect that any projected rate of return to  
7 the purchaser from the purchase of a viatical or life settlement  
8 contract or a fractionalized or pooled interest therein is based on  
9 an estimated life expectancy for the person insured under the life  
10 insurance policy; that the return on the purchase may vary  
11 substantially from the expected rate of return based upon the actual  
12 life expectancy of the insured that may be less than, equal to, or  
13 may greatly exceed the estimated life expectancy; and that the rate  
14 of return would be higher if the actual life expectancy were less  
15 than, and lower if the actual life expectancy were greater than the  
16 estimated life expectancy of the insured at the time the viatical or  
17 life settlement contract was closed.

18 (T) A statement that the purchaser should consult with his or  
19 her tax adviser regarding the tax consequences of the purchase of  
20 the viatical or life settlement contract or fractionalized or pooled  
21 interest therein and, if the purchaser is using retirement funds or  
22 accounts for that purchase, whether or not any adverse tax  
23 consequences might result from the use of those funds for the  
24 purchase of that investment.

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

27 SEC. 2. Section 25104 of the Corporations Code is amended  
28 to read:

29 25104. The following transactions are exempted from the  
30 provisions of Section 25130:

31 (a) Any offer or sale of a security by the bona fide owner thereof  
32 for his or her own account if the sale (1) is not accompanied by  
33 the publication of any advertisement and (2) is not effected by or  
34 through a broker-dealer in a public offering.

35 (b) Any offer or sale effected by or through a licensed  
36 broker-dealer pursuant to an unsolicited order or offer to buy. For  
37 the purpose of this subdivision, an inquiry regarding a written bid  
38 for a security or a written solicitation of an offer to sell a security  
39 made by another broker-dealer within the previous 60 days shall  
40 not be considered the solicitation of an order or offer to buy.

1 (c) Any offer or sale to a bank, savings and loan association,  
2 trust company, insurance company, investment company registered  
3 under the Investment Company Act of 1940, pension or  
4 profit-sharing trust (other than a pension or profit-sharing trust of  
5 the issuer, a self-employed individual retirement plan, or individual  
6 retirement account), or such other institutional investor or  
7 governmental agency or instrumentality as the commissioner may  
8 designate by rule, whether the purchaser is acting for itself or as  
9 trustee; provided the purchaser represents that it is purchasing for  
10 its own account (or for the trust account) for investment and not  
11 with a view to or for sale in connection with any distribution of  
12 the security.

13 (d) Any transaction or agreement between a person on whose  
14 behalf an offering is made and an underwriter or among  
15 underwriters, if the sale of the securities is exempt from  
16 qualification at the time of or qualified prior to distribution in this  
17 state, if any.

18 (e) Any offer or sale of any security by or for the account of a  
19 bona fide secured party selling the security in the ordinary course  
20 of business to liquidate a bona fide debt.

21 (f) Any transaction by an executor, administrator, sheriff,  
22 marshal, receiver, trustee in bankruptcy, guardian, or conservator.

23 (g) Any offer (but not a sale) of a security for which (1) a  
24 registration statement has been filed under the Securities Act of  
25 1933 but has not yet become effective, or for which an offering  
26 statement under Regulation A has been filed but has not yet been  
27 qualified, if no stop order or refusal order is in effect and no public  
28 proceeding or examination looking toward such an order is pending  
29 under Section 8 of that act and (2) no order under Section 25140  
30 or subdivision (a) of Section 25143 is in effect under this division.

31 (h) Any offer or sale of a security if a qualification under  
32 Chapter 2 (commencing with Section 25110) of this part for any  
33 securities of the same class has become effective within 18 months,  
34 or longer period as the commissioner may order provided that each  
35 consecutive order shall be for no more than six months, prior to  
36 the offer or sale or if a qualification under Chapter 3 (commencing  
37 with Section 25120) or Chapter 4 (commencing with Section  
38 25130) of this part for any securities of the same class has become  
39 effective within 12 months prior to that offer or sale, provided no  
40 order under Section 25140 or subdivision (a) of Section 25143 is

1 in effect under this division with respect to the qualification, and,  
2 provided further, that this exemption does not apply to securities  
3 offered pursuant to a registration under the Securities Act of 1933  
4 or pursuant to an exemption under Regulation A under that act if  
5 the aggregate offering price of the securities offered under such  
6 exemption exceeds fifty thousand dollars (\$50,000). The  
7 commissioner may, by rule or order, withhold this exemption with  
8 respect to securities qualified only pursuant to a limited offering  
9 qualification.

10 SEC. 3. Section 25110 of the Corporations Code is amended  
11 to read:

12 25110. It is unlawful for any person to offer or sell in this state  
13 any security in an issuer transaction (other than in a transaction  
14 subject to Section 25120), whether or not by or through  
15 underwriters, unless such sale has been qualified under Section  
16 25111, 25112, 25113, or 25113.1 (and no order under Section  
17 25140 or subdivision (a) of Section 25143 is in effect with respect  
18 to such qualification) or unless such security or transaction is  
19 exempted or not subject to qualification under Chapter 1  
20 (commencing with Section 25100) of this part. The offer or sale  
21 of such a security in a manner that varies or differs from, exceeds  
22 the scope of, or fails to conform with either a material term or  
23 material condition of qualification of the offering as set forth in  
24 the permit or qualification order, or a material representation as  
25 to the manner of offering which is set forth in the application for  
26 qualification, shall be an unqualified offer or sale.

27 SEC. 4. Section 25113.1 is added to the Corporations Code,  
28 to read:

29 25113.1. (a) Any offer or sale of any security that meets all  
30 of the conditions in subdivision (b) may be qualified by permit  
31 under this section.

32 (b) (1) An application for a crowdfunding permit under this  
33 section shall contain any information and be accompanied by any  
34 documents as shall be required by rule of the commissioner, in  
35 addition to the information specified in Section 25160 and the  
36 consent to service of process required by Section 25165. For this  
37 purpose, the commissioner may classify issuers and types of  
38 securities.

39 (2) An applicant may file an application for a crowdfunding  
40 permit under this section if it meets all of the following conditions:

1 (A) The applicant is: (i) a California corporation or a foreign  
2 corporation, which at the time of filing an application under this  
3 subdivision is subject to Section 2115, and neither corporation is  
4 a “blind pool” company, as that term is defined by the  
5 commissioner; (ii) not issuing fractional undivided interests in oil  
6 or gas rights, or a similar interest in other mineral rights; (iii) not  
7 an investment company subject to the Investment Company Act  
8 of 1940; and (iv) not subject to the reporting requirements of  
9 Section 13 or 15(d) of the Securities Exchange Act of 1934.

10 (B) The total offering of securities by the applicant to be sold  
11 in a 12-month period, within or outside this state, is limited to one  
12 million dollars (\$1,000,000), less the aggregate offering price for  
13 all securities sold (within the 12 months before the start, and during  
14 the offering, of the securities) under Rule 504 (17 C.F.R. 230.504)  
15 under the Securities Act of 1933 or in violation of subdivision (a)  
16 of Section 5 of that act.

17 (C) Offers and sales made in reliance on this section will not  
18 be integrated with: (i) prior offers or sales of securities or (ii)  
19 subsequent offers or sales of securities that are (I) registered under  
20 the Securities Act of 1933; (II) made pursuant to Rule 701 (17  
21 C.F.R. 230.701) under that act; (III) made pursuant to an employee  
22 benefit plan; (IV) made pursuant to Regulation S (17 C.F.R.  
23 230.901-905) under that act; (V) made in reliance on a federal rule  
24 in substantially the same form as the rule proposed by the Securities  
25 Exchange Commission to govern the offer and sale of securities  
26 under Section 4 (a)(6) of the Securities Act of 1933, referred to as  
27 Regulation Crowdfunding, proposed 17 C.F.R. Parts 200, 227,  
28 232, 239, 240, and 249 [Release Nos. 33-9470; 34-70741; File  
29 Nos. 7-09-13]; or (VI) made more than six months after the  
30 completion of the offering in reliance on this section.

31 (D) The aggregate amount of securities sold to any investor in  
32 reliance on this section, including any amount sold during the  
33 12-month period preceding the date of the transaction, does not  
34 exceed the lesser of five thousand dollars (\$5,000) or 10 percent  
35 of the net worth of that natural person, or such amount as the  
36 commissioner may provide by rule or order. “Net worth” shall be  
37 determined exclusive of home, home furnishings, and automobiles.  
38 Other assets included in the computation of net worth may be  
39 valued at fair market value.

1 (E) The applicant has taken reasonable steps to ensure that each  
2 investor who is a natural person who is not an accredited investor  
3 as defined in Rule 501 (17 C.F.R. 230.501) under the Securities  
4 Act of 1933 either alone or with his or her purchaser representative  
5 or representatives has such knowledge and experience in financial  
6 and business matters that he or she is capable of evaluating the  
7 merits and risks of the prospective investment.

8 (F) The applicant files with the commissioner, provides to  
9 investors, and makes available to potential ~~investors~~ investors: (i)  
10 a disclosure document meeting the requirements of Section  
11 260.113.1 of Title 10 of the California Code of Regulations; and  
12 (ii) a Small Company Offering Registration disclosure document  
13 on Form U-7, as adopted by the North American Securities  
14 Administrators Association, *no less than 10 business days* prior  
15 to the commencement of the offering of securities.

16 (G) *The offering is made pursuant to this section, a disclosure*  
17 *document meeting the requirements of Section 260.113.1 of Title*  
18 *10 of the California Code of Regulations, a permit application*  
19 *disclosure documents based on the Form U-7, as adopted by the*  
20 *North American Security Administrators Association, and any*  
21 *additional requirements as the commissioner shall prescribe, that*  
22 *may include, but not be limited to, investor suitability and due*  
23 *diligence investigation requirements.*

24 (H) *The investor shall have a three-day right to rescind any*  
25 *investment made in any security offered under this section. The*  
26 *three-day period shall end at 11:59 p.m. Pacific standard time on*  
27 *the third business day after the date on which the issuer's*  
28 *confirmation of its acceptance of the investor's investment is*  
29 *communicated in writing and received by the investor.*

30 ~~(G)~~

31 (I) The applicant sets aside in a separate third-party escrow  
32 account all funds raised as part of the offering, to be held in escrow  
33 until the time that the minimum offering amount is reached. If the  
34 minimum offering amount is not reached within one year of the  
35 effective date of the offering, the applicant shall return all funds  
36 to investors.

37 (J) *The applicant shall not, directly or indirectly, conduct any*  
38 *direct solicitation of the securities offered by this section. For*  
39 *purposes of this subparagraph, "direct solicitation" means and*  
40 *includes the following: any in-person or face-to-face conversation*

1 *between the applicant or any of its founders, promoters, officers,*  
2 *directors, controlling persons, agents, or other persons acting*  
3 *directly or indirectly on behalf of the applicant and any investor*  
4 *or prospective investor or any person acting directly or indirectly*  
5 *on behalf of, or in regular communication with, the investor.*

6 ~~(H)~~

7 (K) The applicant shall not, directly or indirectly, conduct any  
8 unsolicited telephone solicitation of the securities offered by this  
9 section.

10 (L) *The applicant or any person or entity selling an investment*  
11 *to an investor pursuant to this section, including without limitation,*  
12 *any issuer, securities broker-dealer, agent, or officer, director,*  
13 *founder, promoter, controlling person, or other persons acting*  
14 *directly or indirectly on behalf of the applicant shall have a*  
15 *fiduciary obligation to any investor or prospective investor.*

16 ~~(I)~~

17 (M) The applicant, a predecessor of the applicant, an affiliated  
18 applicant, a director, executive officer, or other officer participating  
19 in the offering, a general partner or managing member of the  
20 applicant, a beneficial owner of 20 percent or more of the  
21 applicant's outstanding voting equity securities, calculated on the  
22 basis of voting power, a promoter connected with the issuer in any  
23 capacity at the time of the sale, an investment manager of an  
24 applicant that is a pooled investment fund, a person that has been  
25 or will be paid, directly or indirectly, remuneration for solicitation  
26 of purchasers in connection with the sale of securities, a general  
27 partner or managing member of the investment manager or  
28 solicitor, or any director, executive officer, or other officer  
29 participating in the offering of the investment manager or solicitor  
30 or general partner or managing member of the investment manager  
31 or solicitor shall not be disqualified as a "bad actor" under Rule  
32 506(d) (17 C.F.R. 230.506(d)) under the Securities Act of 1933.

33 (N) *The applicant undertakes that there will be no stock splits,*  
34 *stock dividends, spinoffs, or mergers for a period of two years*  
35 *from the close of the offering.*

36 ~~(J)~~

37 (O) Any other requirement set forth by rule adopted by the  
38 commissioner.

39 ~~(e) If no stop order or order under subdivision (a) of Section~~  
40 ~~25143 is in effect under this law, qualification of the sale of the~~

1 securities under this section automatically becomes effective (and  
2 the securities may be offered and sold in accordance with the terms  
3 of the application as amended) at 12 o'clock noon California time  
4 of the 60th calendar day after the filing of the application or at  
5 such earlier time as the commissioner determines.

6 (c) *The Department of Business Oversight shall either issue or*  
7 *deny the permit within 60 days of the receipt of the application. If*  
8 *the Department of Business Oversight fails to either issue or deny*  
9 *the permit within 60 days, the applicant may demand a hearing*  
10 *with the Department of Business Oversight to explain why the*  
11 *permit has not been granted.*

12 SEC. 5. Section 25501 of the Corporations Code is amended  
13 to read:

14 25501. Any person who violates Section 25401 shall be liable  
15 to the person who purchases a security from him or her or sells a  
16 security to him or her, who may sue either for rescission or for  
17 damages (if the plaintiff or the defendant, as the case may be, no  
18 longer owns the security), unless the defendant proves that the  
19 plaintiff knew the facts concerning the untruth or omission or that  
20 the defendant exercised reasonable care and did not know (or if  
21 he had exercised reasonable care would not have known) of the  
22 untruth or omission. The plaintiff shall not be required to plead or  
23 prove that the defendant acted with scienter. Upon rescission, a  
24 purchaser may recover the consideration paid for the security, plus  
25 interest at the legal rate, less the amount of any income received  
26 on the security, upon tender of the security. Upon rescission, a  
27 seller may recover the security, upon tender of the consideration  
28 paid for the security plus interest at the legal rate, less the amount  
29 of any income received by the defendant on the security. Damages  
30 recoverable under this section by a purchaser shall be an amount  
31 equal to the difference between (a) the price at which the security  
32 was bought plus interest at the legal rate from the date of purchase  
33 and (b) the value of the security at the time it was disposed of by  
34 the plaintiff plus the amount of any income received on the security  
35 by the plaintiff. Damages recoverable under this section by a seller  
36 shall be an amount equal to the difference between (1) the value  
37 of the security at the time of the filing of the complaint plus the  
38 amount of any income received by the defendant on the security  
39 and (2) the price at which the security was sold plus interest at the

1 legal rate from the date of sale. Any tender specified in this section  
2 may be made at any time before entry of judgment.

3 SEC. 6. Section 25503 of the Corporations Code is amended  
4 to read:

5 25503. Any person who violates Section 25110, 25130 or  
6 25133, or a condition of qualification under Chapter 2  
7 (commencing with Section 25110) of this part, imposed pursuant  
8 to Section 25141, or an order suspending trading issued pursuant  
9 to Section 25219, shall be liable to any person acquiring from him  
10 the security sold in violation of such section, who may sue to  
11 recover the consideration he paid for such security with interest  
12 thereon at the legal rate, less the amount of any income received  
13 therefrom, upon the tender of such security, or for damages, if he  
14 no longer owns the security, or if the consideration given for the  
15 security is not capable of being returned. Damages, if the plaintiff  
16 no longer owns the security, shall be equal to the difference  
17 between (a) his purchase price plus interest at the legal rate from  
18 the date of purchase and (b) the value of the security at the time it  
19 was disposed of by the plaintiff plus the amount of any income  
20 received therefrom by the plaintiff.

21 Damages, if the consideration given for the security is not  
22 capable of being returned, shall be equal to the value of that  
23 consideration plus interest at the legal rate from the date of  
24 purchase, provided the security is tendered; and if the plaintiff no  
25 longer owns the security, damages in such case shall be equal to  
26 the difference between (a) the value of the consideration given for  
27 the security plus interest at the legal rate from the date of purchase  
28 and (b) the value of the security at the time it was disposed of by  
29 the plaintiff plus the amount of any income received therefrom by  
30 the plaintiff. Any person who violates Section 25120 or a condition  
31 of qualification under Chapter 3 (commencing with Section 25120)  
32 of this part imposed pursuant to Section 25141, shall be liable to  
33 any person acquiring from him the security sold in violation of  
34 such section who may sue to recover the difference between (a)  
35 the value of the consideration received by the seller and (b) the  
36 value of the security at the time it was received by the buyer, with  
37 interest thereon at the legal rate from the date of purchase. Any  
38 person on whose behalf an offering is made and any underwriter  
39 of the offering, whether on a best efforts or a firm commitment  
40 basis, shall be jointly and severally liable under this section, but



1 in no event shall any underwriter (unless such underwriter shall  
 2 have knowingly received from the issuer for acting as an  
 3 underwriter some benefit, directly or indirectly, in which all other  
 4 underwriters similarly situated did not share in proportion to their  
 5 respective interest in the underwriting) be liable in any suit or suits  
 6 authorized under this section for damages in excess of the total  
 7 price at which the securities underwritten by him and distributed  
 8 to the public were offered to the public. Any tender specified in  
 9 this section may be made at any time before entry of judgment.  
 10 No person shall be liable under this section for violation of Section  
 11 25110, 25120, or 25130 if the sale of the security is qualified prior  
 12 to the payment or receipt of any part of the consideration for the  
 13 security sold, even though an offer to sell or a contract of sale may  
 14 have been made or entered into without qualification. The court  
 15 shall award reasonable attorney’s fees and costs, and, in its  
 16 discretion, may award treble and punitive damages, to a prevailing  
 17 purchaser in an action brought against any person who violates  
 18 Section 25110 in any offering qualified under Section 25113.1.

19 SEC. 7. Section 25608 of the Corporations Code is amended  
 20 to read:

21 25608. (a) The commissioner shall charge and collect the fees  
 22 fixed in this section and Section 25608.1. All fees charged and  
 23 collected under this section and Section 25608.1 shall be  
 24 transmitted to the Treasurer at least weekly, accompanied by a  
 25 detailed statement thereof and shall be credited to the State  
 26 Corporations Fund.

27 (b) The fee for filing an application for a negotiating permit  
 28 under subdivision (c) of Section 25102 is fifty dollars (\$50).

29 (c) The fee for filing a notice pursuant to paragraph (5) of  
 30 subdivision (h) of Section 25102 and the fee for filing a notice  
 31 pursuant to paragraph (4) of subdivision (f) of Section 25102, in  
 32 addition to the fee prescribed in those paragraphs, if applicable,  
 33 shall be determined based on the value of the securities proposed  
 34 to be sold in the transaction for which the notice is filed and in  
 35 accordance with subdivision (g), and shall be as follows:

36		
37	Value of Securities	
38	Proposed to be Sold	Filing Fee
39	\$25,000 or less	\$ 25
40	\$25,001 to \$100,000	\$ 35

1	\$100,001 to \$500,000	\$ 50
2	\$500,001 to \$1,000,000	\$150
3	Over \$1,000,000	\$300

4

5 (d) The fee for filing an application for designation of an issuer  
6 pursuant to subdivision (k) of Section 25100 is fifty dollars (\$50).

7 (e) The fee for filing an application for qualification of the sale  
8 of securities by notification under Section 25112 or by permit  
9 under paragraph (1) of subdivision (b) of Section 25113 (except  
10 applications for qualification by permit of the sale of any guarantee  
11 of any security, the fees for which applications are fixed in  
12 subdivision (k)) is two hundred dollars (\$200) plus one-fifth of 1  
13 percent of the aggregate value of the securities sought to be sold  
14 in this state up to a maximum aggregate fee of two thousand five  
15 hundred dollars (\$2,500).

16 The fee for filing a small company application for qualification  
17 of the sale of securities by permit under paragraph (2) of  
18 subdivision (b) of Section 25113 is two thousand five hundred  
19 dollars (\$2,500). In the case where the costs of processing a small  
20 company application exceed the filing fee, an additional fee shall  
21 be charged, not to exceed one thousand dollars (\$1,000), over and  
22 above the filing fee based on the costs of the salary or other  
23 compensation paid to persons processing the application plus  
24 overhead costs reasonably incurred in the performance of the work.  
25 In determining the costs, the commissioner may use the estimated  
26 average hourly cost for all persons processing applications for the  
27 fiscal year.

28 The fee for filing a crowdfunding application for qualification  
29 of the sale of securities by permit under Section 25113.1 is two  
30 hundred dollars (\$200) plus one-fifth of 2 percent of the aggregate  
31 value of the securities sought to be sold in this state.

32 (f) The fee for filing an application for qualification of the sale  
33 of securities by coordination under Section 25111 or a notice of  
34 intention to sell under subdivision (t) of Section 25100 is two  
35 hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate  
36 value of the securities sought to be sold in this state up to a  
37 maximum aggregate fee of two thousand five hundred dollars  
38 (\$2,500).

39 (g) For the purpose of determining the fees fixed in subdivisions  
40 (e) and (f):

1 (1) The value of the securities shall be the price at which the  
2 company proposes to sell the securities, or the value, as alleged in  
3 the application, or the actual value, as determined by the  
4 commissioner, of the consideration (if other than money) to be  
5 received in exchange therefor, or of the securities when sold,  
6 whichever is greater.

7 (2) Interim or voting trust certificates shall have a value equal  
8 to the aggregate value of the securities to be represented by the  
9 interim or voting trust certificates.

10 (3) The value of a warrant or right to purchase or subscribe to  
11 another security of the same or another issuer shall be an amount  
12 equal to the consideration to be paid for that warrant or right plus  
13 an amount equal to the consideration to be paid upon purchase of  
14 the additional securities, provided that if the latter amount is not  
15 determinable at the time of qualification, that amount shall then  
16 be the value of the additional securities as determined by the  
17 commissioner.

18 (4) In the case of a share dividend where the shareholders are  
19 given an option to accept either cash or additional shares of  
20 common stock, the value of the securities to be sold shall be the  
21 maximum amount of cash that would be payable in the event that  
22 all shareholders elected to accept cash.

23 (h) The fee for filing an application for qualification of the sale  
24 of securities by permit under Section 25121 is:

25 (1) Two hundred dollars (\$200) in connection with any change  
26 (including any stock split or reverse stock split or stock dividend,  
27 except a stock dividend where the shareholders are given an option  
28 to accept either cash or additional shares of common stock) in the  
29 rights, preferences, privileges, or restrictions of or on outstanding  
30 securities.

31 (2) Two hundred dollars (\$200) plus one-fifth of 1 percent of  
32 the value, as alleged in the application, or the actual value, as  
33 determined by the commissioner, of the consideration to be  
34 received in exchange therefor, up to a maximum aggregate fee of  
35 two thousand five hundred dollars (\$2,500), in any exchange of  
36 securities by the issuer with its existing security holders  
37 exclusively, or in any exchange in connection with any merger or  
38 consolidation or purchase of corporate assets in consideration of  
39 the issuance of securities, or any entity conversion transaction.

1 (i) The fee for filing an application for qualification of the sale  
2 of securities by notification under Section 25131 shall be one  
3 hundred dollars (\$100).

4 (j) The fee for an application for the removal of any condition  
5 under Section 25141 is fifty dollars (\$50).

6 (k) The fee for filing any application for a permit to execute or  
7 issue any guarantee of any security is fifty dollars (\$50).

8 (l) The fee for acting as escrowholder for securities under  
9 Section 25149 is fifty dollars (\$50). In addition, a fee of two dollars  
10 and fifty cents (\$2.50) shall be paid for the deposit with the  
11 commissioner of each new certificate or other document resulting  
12 from a transfer in escrow.

13 (m) The fee for filing an application for an order (1) consenting  
14 to the transfer in escrow of securities or (2) consenting to the  
15 transfer of securities subject to any condition imposed by the  
16 commissioner requiring the commissioner's consent to the transfer  
17 is twenty dollars (\$20) for each transfer.

18 (n) The filing fee for an amendment to an application filed after  
19 the effective date of the qualification of the sale of securities is  
20 fifty dollars (\$50) plus any additional fee that would have been  
21 required to be paid with the original application for qualification  
22 of the sale of securities under this section if the matters set forth  
23 in the amendment had been included in the original application.

24 (o) (1) The fee for filing an application for a broker-dealer  
25 certificate under Section 25211 is three hundred dollars (\$300).

26 (2) Each broker-dealer shall pay to the commissioner its pro  
27 rata share of all costs and expenses, reasonably incurred in the  
28 administration of the broker-dealer program under this division,  
29 as estimated by the commissioner for the ensuing year and any  
30 deficit actually incurred or anticipated in the administration of the  
31 program in the year in which the assessment is made. The pro rata  
32 share shall be the proportion that the broker-dealer and the number  
33 of its agents in this state bears to the aggregate number of  
34 broker-dealers and agents in this state as shown by records  
35 maintained by or on behalf of the commissioner. The pro rata share  
36 may include the costs of any examinations, audit, or investigation  
37 provided for in subdivision (r).

38 (3) Every broker-dealer who has secured from the commissioner  
39 a certificate shall, in order to keep the certificate in effect for an

1 additional period, pay a minimum assessment of seventy-five  
2 dollars (\$75) on or before the 31st of December in each year.

3 (4) The commissioner may assess and levy against each  
4 broker-dealer any additional amount above the minimum  
5 assessment amount of seventy-five dollars (\$75) that is reasonable  
6 and necessary to support the broker-dealer program under this  
7 division. If an additional amount is assessed, the commissioner  
8 shall notify each broker-dealer by mail of any additional amount  
9 assessed and levied against it on or before the 30th day of May in  
10 each year, and that amount shall be paid within 20 days thereafter.  
11 If payment is not made within 20 days, the commissioner shall  
12 assess and collect a penalty in addition to the assessment of 1  
13 percent of the assessment for each month or part of a month that  
14 the payment is delayed or withheld.

15 (5) If a broker-dealer fails to pay any assessment on or before  
16 the 30th day of the month following the day upon which payment  
17 is due, the commissioner may by order summarily suspend or  
18 revoke the certificate issued to the broker-dealer. If, after that order  
19 is made, a request for hearing is filed in writing and a hearing is  
20 not held within 60 days thereafter, the order is deemed rescinded  
21 as of its effective date. During any period when its certificate is  
22 revoked or suspended, a broker-dealer shall not conduct business  
23 pursuant to this division except as may be permitted by order of  
24 the commissioner; provided, however, that the revocation,  
25 suspension, or surrender of a certificate shall not affect the powers  
26 of the commissioner as provided under this division.

27 (6) In determining the amount assessed, the commissioner shall  
28 consider all appropriations from the State Corporations Fund for  
29 the support of the broker-dealer program under this division and  
30 all reimbursements applicable to the administration of the  
31 broker-dealer program under this division.

32 (p) (1) The commissioner shall charge a fee of twenty-five  
33 dollars (\$25) for the filing of a notice or report required by rules  
34 adopted pursuant to subdivision (b) of Section 25210 or subdivision  
35 (b) of Section 25230.

36 (2) The commissioner may charge a fee up to thirty-five dollars  
37 (\$35) to keep in effect for the following year any notice or report  
38 required by rules adopted pursuant to subdivision (b) of Section  
39 25210 or subdivision (b) of Section 25230.

1 (3) No person shall, on behalf of a broker-dealer licensed  
2 pursuant to Section 25211, effect any transaction in, or induce or  
3 attempt to induce the purchase or sale of, any security in this state  
4 unless the broker-dealer pays the annual fee required by paragraph  
5 (2) of this subdivision on or before the day upon which payment  
6 is due.

7 (4) No person may, in this state, on behalf of an investment  
8 adviser licensed pursuant to Section 25231, offer or negotiate for  
9 the sale of investment advisory services of the investment adviser,  
10 determine which recommendations shall be made to, make  
11 recommendations to, or manage the accounts of, clients of the  
12 investment adviser, or determine the reports or analyses concerning  
13 securities to be published by the investment adviser, unless the  
14 investment adviser pays the annual fee required by paragraph (2)  
15 on or before the day upon which payment is due.

16 (5) The commissioner may by order summarily enjoin an  
17 individual from performing any activity under paragraph (3) or  
18 (4) if the annual fee in paragraph (2) is not paid on or before the  
19 day upon which payment is due. An order under this paragraph  
20 may not be made before 10 days after notice by the commissioner  
21 that the fee is due and unpaid.

22 (q) (1) Except as provided for in paragraph (2), the fee for filing  
23 an application for an investment adviser under Section 25231 is  
24 one hundred twenty-five dollars (\$125), and payment of this  
25 amount shall keep the certificate, if granted, in effect during the  
26 calendar year during which it is granted. Every investment adviser  
27 who has secured from the commissioner a certificate shall, in order  
28 to keep the certificate in effect for an additional period, pay a  
29 renewal fee of one hundred twenty-five dollars (\$125) on or before  
30 the 31st day of December.

31 (2) Paragraph (1) shall not apply to a broker-dealer licensed  
32 under Section 25210.

33 (r) (1) Except as provided for in paragraph (2), the fee for any  
34 routine or nonroutine regulatory examination, audit, or  
35 investigation is the amount of the salary or other compensation  
36 paid to the persons making the examination, audit, or investigation  
37 plus the amount of expenses including overhead reasonably  
38 incurred in the performance of the work. In determining the costs  
39 associated with an examination, audit, or investigation, the  
40 commissioner may use the estimated average hourly cost for all

1 persons performing examinations, audits, or investigations for the  
2 fiscal year.

3 (2) An investment adviser licensed under Section 25230 pursuant  
4 to the Investment Adviser Registration Depository shall not be  
5 subject to paragraph (1) only in regard to the fee for a routine  
6 regulatory examination of its investment advisory services for  
7 which it is licensed under Section 25230.

8 (s) The fee for any hearing held by the commissioner pursuant  
9 to Section 25142 shall be the sum determined by the commissioner  
10 to cover the actual expense of noticing and holding the hearing.

11 (t) The commissioner may fix by rule a reasonable charge for  
12 any publications issued under his or her authority. The charges  
13 shall not apply to reports of the commissioner in the ordinary  
14 course of distribution.

15 (u) The fee for filing an offer under subdivision (b) of Section  
16 25507 shall be the amount of filing fee payable under subdivision  
17 (e), (f), (h), or (i) of this section if an application had been filed to  
18 qualify the transaction in which the securities upon which the offer  
19 is to be made were sold in violation of the qualification provisions  
20 of this law.

21 (v) The fee for filing an application for exemption pursuant to  
22 subdivision (l) of Section 25100 is two hundred fifty dollars (\$250).

23 (w) The commissioner may by rule require payment of a fee  
24 for filing a notice or report required by a rule adopted pursuant to  
25 Section 25105. The fee required in connection with a transaction  
26 as defined by that rule shall not exceed the fees specified in  
27 subdivision (c) based on the value of the securities sold, but the  
28 commissioner may permit a single notice for more than one  
29 transaction.

30 (x) The fee for filing the first notice of transaction under  
31 subdivision (n) of Section 25102 is six hundred dollars (\$600).

32 (y) The fee for filing a notice of transaction under subdivision  
33 (o) of Section 25102 shall be the fee for filing an application for  
34 qualification of the sale of securities by permit under paragraph  
35 (1) of subdivision (b) of Section 25113 as set forth in subdivision  
36 (e) of this section.

37 (z) The fee for filing a notice of transaction under subdivision  
38 (h) of Section 25103 shall be six hundred dollars (\$600).

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