

AMENDED IN ASSEMBLY APRIL 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2178

Introduced by Assembly Member Chiu
(Principal coauthor: Senator Allen)

February 18, 2016

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 2178, as amended, Chiu. 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; *the transaction is conducted through an intermediary*, 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 her or sells a security to him, him or her, 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

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

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

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

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

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

(A) Are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas (or whose corporate predecessor, in the case of a corporation, 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]; Regulation CF (17 C.F.R. 227.100-503); or (VI)~~
30 made more than six months after the completion of the offering
31 in reliance on this section.

32 (D) The aggregate amount of securities sold to any investor in
33 reliance on this section, including any amount sold during the
34 12-month period preceding the date of the transaction, does not
35 exceed the lesser of five thousand dollars (\$5,000) or 10 percent
36 of the net worth of that natural person, or such amount as the
37 commissioner may provide by rule or order. “Net worth” shall be
38 determined exclusive of home, home furnishings, and automobiles.
39 Other assets included in the computation of net worth may be
40 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~~ prospective investors:
10 (i) ~~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 to~~
15 ~~the commencement of the offering of securities. Association; and~~
16 *(ii) any other disclosures and documents deemed necessary or*
17 *desirable by the commissioner.*

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

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

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

39 (J) The applicant shall not, ~~directly or indirectly, itself or through~~
40 *any third party*, conduct any direct solicitation of the securities

1 offered by this section. For purposes of this subparagraph, “direct
2 solicitation” means and includes the following: any in-person or
3 face-to-face conversation between the applicant or any of its
4 founders, promoters, officers, directors, controlling persons, agents,
5 or other persons acting directly or indirectly on behalf of the
6 applicant and any investor or prospective investor or any person
7 acting directly or indirectly on behalf of, or in regular
8 communication with, the investor.

9 ~~(K) investor. The applicant shall not, directly or indirectly, itself~~
10 ~~or through any third party, conduct any unsolicited telephone~~
11 ~~solicitation of the securities offered by this section.~~

12 *(K) Each sales transaction shall meet the following*
13 *requirements:*

14 *(i) The transaction is conducted through an intermediary that*
15 *complies with the requirements in Section 4A(a) of the Securities*
16 *Act (15 U.S.C. 77d–1(a)).*

17 *(ii) The transaction is conducted exclusively through the*
18 *intermediary’s platform.*

19 *(L) The applicant shall not conduct an offering or concurrent*
20 *offerings in reliance on this section using more than one*
21 *intermediary.*

22 *(M) The applicant shall comply with the following requirements*
23 *regarding its advertisements, as that term is defined in Section*
24 *25002, including, but not limited to, advertisement that is published*
25 *by electronic means:*

26 *(i) No applicant shall publish any advertisement in this state*
27 *concerning any security sold or offered for sale in this state unless*
28 *a true copy of the advertisement has first been filed in the office*
29 *of the commissioner at least three business days prior to the*
30 *publication or such shorter period as the commissioner may by*
31 *rule or order allow.*

32 *(ii) No applicant shall advertise, print, display, publish,*
33 *distribute, or broadcast, or cause or permit to be advertised,*
34 *printed, displayed, published, distributed, or broadcast, in any*
35 *manner, any statement or representation with regard to the*
36 *business subject to the provisions of this section, including the*
37 *rates, terms, or conditions for an offering or transaction that is*
38 *false, misleading, or deceptive, or that omits any statement*
39 *necessary in order to make the statement made, in the light of the*
40 *circumstances under which they were made, not misleading.*

(iii) No applicant shall place an advertisement disseminated primarily in this state unless the applicant discloses in the printed text of the advertisement, or the oral text in the case of a radio or television advertisement, that the applicant has a permit issued by the department pursuant to this section.

(iv) The commissioner may require that rates of charges or fees, if stated by the applicant, be stated fully and clearly in the manner that the commissioner deems necessary to give adequate information to, or to prevent misunderstanding by, prospective investors.

(v) No advertisement shall be used after its use has been disapproved by the commissioner and the applicant is notified in writing of the disapproval. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section, the person desiring to use the advertisement may in writing request that the order be rescinded. Upon the receipt of such a written request, the matter shall be set down for hearing to commence within 15 business days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) the commissioner shall determine whether to affirm and continue or to rescind such order, and the commissioner shall have all the powers granted under such act.

(vi) The commissioner may require applicants to maintain a file of all advertisements for a period of three years from the date of their use, unless by regulation, the commissioner specifies a different period of time for retaining such advertisements. The file shall be available to the commissioner upon request.

~~(L)~~

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

~~(M)~~

(O) The applicant, a predecessor of the applicant, an affiliated applicant, a director, executive officer, or other officer participating

1 in the offering, a general partner or managing member of the
2 applicant, a beneficial owner of 20 percent or more of the
3 applicant's outstanding voting equity securities, calculated on the
4 basis of voting power, a promoter connected with the issuer in any
5 capacity at the time of the sale, an investment manager of an
6 applicant that is a pooled investment fund, a person that has been
7 or will be paid, directly or indirectly, remuneration for solicitation
8 of purchasers in connection with the sale of securities, a general
9 partner or managing member of the investment manager or
10 solicitor, or any director, executive officer, or other officer
11 participating in the offering of the investment manager or solicitor
12 or general partner or managing member of the investment manager
13 or solicitor shall not be disqualified as a "bad actor" under Rule
14 506(d) (17 C.F.R. 230.506(d)) under the Securities Act of 1933.

15 ~~(N)~~

16 (P) The applicant undertakes that there will be no stock splits,
17 stock dividends, spinoffs, or mergers for a period of two years
18 from the close of the offering.

19 ~~(O)~~

20 (Q) Any other requirement set forth by rule adopted by the
21 commissioner.

22 (c) The Department of Business Oversight shall either issue or
23 deny the permit within 60 days of the receipt of the application.
24 If the Department of Business Oversight fails to either issue or
25 deny the permit within 60 days, the applicant may demand a
26 hearing with the Department of Business Oversight for an
27 ~~explanation as to why the permit has not been granted.~~ Oversight.
28 *Upon the receipt of such a written request, the matter shall be set*
29 *down for hearing to commence within 15 business days after such*
30 *receipt unless the person making the request consents to a later*
31 *date. After such hearing, which shall be conducted in accordance*
32 *with the provisions of the Administrative Procedure Act (Chapter*
33 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
34 *2 of the Government Code) the commissioner shall determine*
35 *whether to affirm and continue or to rescind such order denying*
36 *the permit, and the commissioner shall have all the powers granted*
37 *under such act.*

38 SEC. 5. Section 25501 of the Corporations Code is amended
39 to read:

25501. Any person who violates Section 25401 shall be liable to the person who purchases a security from him or her or sells a security to him or her, who may sue either for rescission or for damages (if the plaintiff or the defendant, as the case may be, no longer owns the security), unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know (or if he *or she* had exercised reasonable care would not have known) of the untruth or omission. The plaintiff shall not be required to plead or prove that the defendant acted with scienter. Upon rescission, a purchaser ~~may~~ *shall* recover the consideration paid for the security, plus interest at the legal rate, less the amount of any income received on the security, upon tender of the security. Upon rescission, a seller ~~may~~ *shall* recover the security, upon tender of the consideration paid for the security plus interest at the legal rate, less the amount of any income received by the defendant on the security. Damages recoverable under this section by a purchaser shall be an amount equal to the difference between (a) the price at which the security was bought plus interest at the legal rate from the date of purchase and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any income received on the security by the plaintiff. Damages recoverable under this section by a seller shall be an amount equal to the difference between (1) the value of the security at the time of the filing of the complaint plus the amount of any income received by the defendant on the security and (2) the price at which the security was sold plus interest at the legal rate from the date of sale. Any tender specified in this section may be made at any time before entry of judgment.

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

25503. Any person who violates Section 25110, ~~25130~~ 25130, or 25133, or a condition of qualification under Chapter 2 (commencing with Section 25110) of this part, imposed pursuant to Section 25141, or an order suspending trading issued pursuant to Section 25219, shall be liable to any person acquiring from him *or her* the security sold in violation of such section, who may sue to recover the consideration he *or she* paid for such security with interest thereon at the legal rate, less the amount of any income received therefrom, upon the tender of such security, or for

1 damages, if he *or she* no longer owns the security, or if the
2 consideration given for the security is not capable of being
3 returned. Damages, if the plaintiff no longer owns the security,
4 shall be equal to the difference between (a) his *or her* purchase
5 price plus interest at the legal rate from the date of purchase and
6 (b) the value of the security at the time it was disposed of by the
7 plaintiff plus the amount of any income received therefrom by the
8 plaintiff.

9 Damages, if the consideration given for the security is not
10 capable of being returned, shall be equal to the value of that
11 consideration plus interest at the legal rate from the date of
12 purchase, provided the security is tendered; and if the plaintiff no
13 longer owns the security, damages in such case shall be equal to
14 the difference between (a) the value of the consideration given for
15 the security plus interest at the legal rate from the date of purchase
16 and (b) the value of the security at the time it was disposed of by
17 the plaintiff plus the amount of any income received therefrom by
18 the plaintiff. Any person who violates Section 25120 or a condition
19 of qualification under Chapter 3 (commencing with Section 25120)
20 of this part imposed pursuant to Section 25141, shall be liable to
21 any person acquiring from him *or her* the security sold in violation
22 of such section who may sue to recover the difference between (a)
23 the value of the consideration received by the seller and (b) the
24 value of the security at the time it was received by the buyer, with
25 interest thereon at the legal rate from the date of purchase. Any
26 person on whose behalf an offering is made and any underwriter
27 of the offering, whether on a best efforts or a firm commitment
28 basis, shall be jointly and severally liable under this section, but
29 in no event shall any underwriter (unless such underwriter ~~shall~~
30 ~~have~~ knowingly received from the issuer for acting as an
31 underwriter some benefit, directly or indirectly, in which all other
32 underwriters similarly situated did not share in proportion to their
33 respective interest in the underwriting) be liable in any suit or suits
34 authorized under this section for damages in excess of the total
35 price at which the securities underwritten by him *or her* and
36 distributed to the public were offered to the public. Any tender
37 specified in this section may be made at any time before entry of
38 judgment. No person shall be liable under this section for violation
39 of Section 25110, 25120, or 25130 if the sale of the security is
40 qualified prior to the payment or receipt of any part of the

consideration for the security sold, even though an offer to sell or a contract of sale may have been made or entered into without qualification. The court shall award reasonable attorney's fees and costs, and, in its discretion, may award treble and punitive damages, to a prevailing purchaser in an action brought against any person who violates Section 25110 in any offering qualified under Section 25113.1.

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

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

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

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

Value of Securities	Filing Fee
Proposed to be Sold	
\$25,000 or less	\$ 25
\$25,001 to \$100,000	\$ 35
\$100,001 to \$500,000	\$ 50
\$500,001 to \$1,000,000	\$150
Over \$1,000,000	\$300

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

(e) The fee for filing an application for qualification of the sale of securities by notification under Section 25112 or by permit under paragraph (1) of subdivision (b) of Section 25113 (except applications for qualification by permit of the sale of any guarantee of any security, the fees for which applications are fixed in

subdivision (k)) is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

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

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

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

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

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

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

(3) The value of a warrant or right to purchase or subscribe to another security of the same or another issuer shall be an amount

1 equal to the consideration to be paid for that warrant or right plus
2 an amount equal to the consideration to be paid upon purchase of
3 the additional securities, provided that if the latter amount is not
4 determinable at the time of qualification, that amount shall then
5 be the value of the additional securities as determined by the
6 commissioner.

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

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

14 (1) Two hundred dollars (\$200) in connection with any change
15 (including any stock split or reverse stock split or stock dividend,
16 except a stock dividend where the shareholders are given an option
17 to accept either cash or additional shares of common stock) in the
18 rights, preferences, privileges, or restrictions of or on outstanding
19 securities.

20 (2) Two hundred dollars (\$200) plus one-fifth of 1 percent of
21 the value, as alleged in the application, or the actual value, as
22 determined by the commissioner, of the consideration to be
23 received in exchange therefor, up to a maximum aggregate fee of
24 two thousand five hundred dollars (\$2,500), in any exchange of
25 securities by the issuer with its existing security holders
26 exclusively, or in any exchange in connection with any merger or
27 consolidation or purchase of corporate assets in consideration of
28 the issuance of securities, or any entity conversion transaction.

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

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

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

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

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

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

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

14 (2) Each broker-dealer shall pay to the commissioner its pro
15 rata share of all costs and expenses, reasonably incurred in the
16 administration of the broker-dealer program under this division,
17 as estimated by the commissioner for the ensuing year and any
18 deficit actually incurred or anticipated in the administration of the
19 program in the year in which the assessment is made. The pro rata
20 share shall be the proportion that the broker-dealer and the number
21 of its agents in this state bears to the aggregate number of
22 broker-dealers and agents in this state as shown by records
23 maintained by or on behalf of the commissioner. The pro rata share
24 may include the costs of any examinations, audit, or investigation
25 provided for in subdivision (r).

26 (3) Every broker-dealer who has secured from the commissioner
27 a certificate shall, in order to keep the certificate in effect for an
28 additional period, pay a minimum assessment of seventy-five
29 dollars (\$75) on or before the 31st of December in each year.

30 (4) The commissioner may assess and levy against each
31 broker-dealer any additional amount above the minimum
32 assessment amount of seventy-five dollars (\$75) that is reasonable
33 and necessary to support the broker-dealer program under this
34 division. If an additional amount is assessed, the commissioner
35 shall notify each broker-dealer by mail of any additional amount
36 assessed and levied against it on or before the 30th day of May in
37 each year, and that amount shall be paid within 20 days thereafter.
38 If payment is not made within 20 days, the commissioner shall
39 assess and collect a penalty in addition to the assessment of 1

1 percent of the assessment for each month or part of a month that
2 the payment is delayed or withheld.

3 (5) If a broker-dealer fails to pay any assessment on or before
4 the 30th day of the month following the day upon which payment
5 is due, the commissioner may by order summarily suspend or
6 revoke the certificate issued to the broker-dealer. If, after that order
7 is made, a request for hearing is filed in writing and a hearing is
8 not held within 60 days thereafter, the order is deemed rescinded
9 as of its effective date. During any period when its certificate is
10 revoked or suspended, a broker-dealer shall not conduct business
11 pursuant to this division except as may be permitted by order of
12 the commissioner; provided, however, that the revocation,
13 suspension, or surrender of a certificate shall not affect the powers
14 of the commissioner as provided under this division.

15 (6) In determining the amount assessed, the commissioner shall
16 consider all appropriations from the State Corporations Fund for
17 the support of the broker-dealer program under this division and
18 all reimbursements applicable to the administration of the
19 broker-dealer program under this division.

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

24 (2) The commissioner may charge a fee up to thirty-five dollars
25 (\$35) to keep in effect for the following year any notice or report
26 required by rules adopted pursuant to subdivision (b) of Section
27 25210 or subdivision (b) of Section 25230.

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

34 (4) No person may, in this state, on behalf of an investment
35 adviser licensed pursuant to Section 25231, offer or negotiate for
36 the sale of investment advisory services of the investment adviser,
37 determine which recommendations shall be made to, make
38 recommendations to, or manage the accounts of, clients of the
39 investment adviser, or determine the reports or analyses concerning
40 securities to be published by the investment adviser, unless the

1 investment adviser pays the annual fee required by paragraph (2)
2 on or before the day upon which payment is due.

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

9 (q) (1) Except as provided for in paragraph (2), the fee for filing
10 an application for an investment adviser under Section 25231 is
11 one hundred twenty-five dollars (\$125), and payment of this
12 amount shall keep the certificate, if granted, in effect during the
13 calendar year during which it is granted. Every investment adviser
14 who has secured from the commissioner a certificate shall, in order
15 to keep the certificate in effect for an additional period, pay a
16 renewal fee of one hundred twenty-five dollars (\$125) on or before
17 the 31st day of December.

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

20 (r) (1) Except as provided for in paragraph (2), the fee for any
21 routine or nonroutine regulatory examination, audit, or
22 investigation is the amount of the salary or other compensation
23 paid to the persons making the examination, audit, or investigation
24 plus the amount of expenses including overhead reasonably
25 incurred in the performance of the work. In determining the costs
26 associated with an examination, audit, or investigation, the
27 commissioner may use the estimated average hourly cost for all
28 persons performing examinations, audits, or investigations for the
29 fiscal year.

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

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

38 (t) The commissioner may fix by rule a reasonable charge for
39 any publications issued under his or her authority. The charges

1 shall not apply to reports of the commissioner in the ordinary
2 course of distribution.

3 (u) The fee for filing an offer under subdivision (b) of Section
4 25507 shall be the amount of filing fee payable under subdivision
5 (e), (f), (h), or (i) of this section if an application had been filed to
6 qualify the transaction in which the securities upon which the offer
7 is to be made were sold in violation of the qualification provisions
8 of this law.

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

11 (w) The commissioner may by rule require payment of a fee
12 for filing a notice or report required by a rule adopted pursuant to
13 Section 25105. The fee required in connection with a transaction
14 as defined by that rule shall not exceed the fees specified in
15 subdivision (c) based on the value of the securities sold, but the
16 commissioner may permit a single notice for more than one
17 transaction.

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

20 (y) The fee for filing a notice of transaction under subdivision
21 (o) of Section 25102 shall be the fee for filing an application for
22 qualification of the sale of securities by permit under paragraph
23 (1) of subdivision (b) of Section 25113 as set forth in subdivision
24 (e) of this section.

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