

ASSEMBLY BILL

No. 2751

Introduced by Assembly Member Brown

February 19, 2016

An act to amend Sections 25100 and 25102 of the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2751, as introduced, Brown. Securities: qualification: exemptions.

Existing law, the Corporate Securities Law of 1968, requires the offer and sale of securities in the state to be qualified with the Commissioner of Business Oversight, unless exempt. That law exempts specific securities or transactions from qualification, including, among others, any security other than evidences of indebtedness of an issuer organized exclusively for specified non profit purposes or as a chamber of commerce or trade or professional association.

This bill would also exempt from qualification any security that is evidence of indebtedness of an issuer organized exclusively for specified non profit purposes or as a chamber of commerce or trade or professional association.

This bill would exempt from qualification the offer or sale of any security in three additional transactions that meet specified requirements that include, among others: that the aggregate amount of securities sold to all investors in a 12-month period does not exceed \$500,000; that the aggregate amount of securities of an issuer that is a specified agricultural enterprise that are used for specified purposes sold to all investors in a 12-month period does not exceed \$2,000,000; that the aggregate amount of securities of an issuer that is a cooperative corporation, nonprofit or mutual benefit corporation, or an entity

controlled by tenants in multitenant housing that are sold to all investors in a 12-month period does not exceed \$2,000,000; to purchase solar photovoltaic panels, wind turbines, or other necessary equipment or labor. The bill would change references throughout these provisions from husband and wife to spouses, generally.

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 25100 of the Corporations Code is
2 amended to read:

3 25100. The following securities are exempted from Sections
4 25110, 25120, and 25130:

5 (a) Any security (including a revenue obligation) issued or
6 guaranteed by the United States, any state, any city, county, city
7 and county, public district, public authority, public corporation,
8 public entity, or political subdivision of a state or any agency or
9 corporate or other instrumentality of any one or more of the
10 foregoing; or any certificate of deposit for any of the foregoing.

11 (b) Any security issued or guaranteed by Canada, any Canadian
12 province, any political subdivision or municipality of that province,
13 or by any other foreign government with which the United States
14 currently maintains diplomatic relations, if the security is
15 recognized as a valid obligation by the issuer or guarantor; or any
16 certificate of deposit for any of the foregoing.

17 (c) Any security issued or guaranteed by and representing an
18 interest in or a direct obligation of a national bank or a bank or
19 trust company incorporated under the laws of this state, and any
20 security issued by a bank to one or more other banks and
21 representing an interest in an asset of the issuing bank.

22 (d) Any security issued or guaranteed by a federal savings
23 association or federal savings bank or federal land bank or joint
24 land bank or national farm loan association or by any savings
25 association, as defined in subdivision (a) of Section 5102 of the
26 Financial Code, which is subject to the supervision and regulation
27 of the Commissioner of Business Oversight of this state.

28 (e) Any security (other than an interest in all or portions of a
29 parcel or parcels of real property which are subdivided land or a
30 subdivision or in a real estate development), the issuance of which

1 is subject to authorization by the Insurance Commissioner, the
2 Public Utilities Commission, or the Real Estate Commissioner of
3 this state.

4 (f) Any security consisting of any interest in all or portions of
5 a parcel or parcels of real property that are subdivided lands or a
6 subdivision or in a real estate development; provided that the
7 exemption in this subdivision shall not be applicable to: (1) any
8 investment contract sold or offered for sale with, or as part of, that
9 interest, or (2) any person engaged in the business of selling,
10 distributing, or supplying water for irrigation purposes or domestic
11 use that is not a public utility except that the exemption is
12 applicable to any security of a mutual water company (other than
13 an investment contract as described in paragraph (1)) offered or
14 sold in connection with subdivided lands pursuant to Chapter 2
15 (commencing with Section 14310) of Part 7 of Division 3 of Title
16 1.

17 (g) Any mutual capital certificates or savings accounts, as
18 defined in the Savings Association Law, issued by a savings
19 association, as defined by subdivision (a) of Section 5102 of the
20 Financial Code, and holding a license or certificate of authority
21 then in force from the Commissioner of Business Oversight of this
22 state.

23 (h) Any security issued or guaranteed by any federal credit
24 union, or by any credit union organized and supervised, or
25 regulated, under the Credit Union Law.

26 (i) Any security issued or guaranteed by any railroad, other
27 common carrier, public utility, or public utility holding company
28 which is (1) subject to the jurisdiction of the Interstate Commerce
29 Commission or its successor or (2) a holding company registered
30 with the Securities and Exchange Commission under the Public
31 Utility Holding Company Act of 1935 or a subsidiary of that
32 company within the meaning of that act or (3) regulated in respect
33 of the issuance or guarantee of the security by a governmental
34 authority of the United States, of any state, of Canada or of any
35 Canadian province; and the security is subject to registration with
36 or authorization of issuance by that authority.

37 (j) Any security ~~(except evidences of indebtedness, whether~~
38 ~~interest bearing or not)~~ of an issuer (1) organized exclusively for
39 educational, benevolent, fraternal, religious, charitable, social, or
40 reformatory purposes and not for pecuniary profit, if no part of the

1 net earnings of the issuer inures to the benefit of any private
2 shareholder or individual, or (2) organized as a chamber of
3 commerce or trade or professional association. The fact that
4 amounts received from memberships or dues or both will or may
5 be used to construct or otherwise acquire facilities for use by
6 members of the nonprofit organization does not disqualify the
7 organization for this exemption. This exemption does not apply
8 to the securities of any nonprofit organization if any promoter
9 thereof expects or intends to make a profit directly or indirectly
10 from any business or activity associated with the organization or
11 operation of that nonprofit organization or from remuneration
12 received from that nonprofit organization.

13 (k) Any agreement, commonly known as a “life income
14 contract,” of an issuer (1) organized exclusively for educational,
15 benevolent, fraternal, religious, charitable, social, or reformatory
16 purposes and not for pecuniary profit and (2) which the
17 commissioner designates by rule or order, with a donor in
18 consideration of a donation of property to that issuer and providing
19 for the payment to the donor or persons designated by him or her
20 of income or specified periodic payments from the donated
21 property or other property for the life of the donor or those other
22 persons.

23 (l) Any note, draft, bill of exchange, or banker’s acceptance
24 which is freely transferable and of prime quality, arises out of a
25 current transaction or the proceeds of which have been or are to
26 be used for current transactions, and which evidences an obligation
27 to pay cash within nine months of the date of issuance, exclusive
28 of days of grace, or any renewal of that paper which is likewise
29 limited, or any guarantee of that paper or of that renewal, provided
30 that the paper is not offered to the public in amounts of less than
31 twenty-five thousand dollars (\$25,000) in the aggregate to any one
32 purchaser. In addition, the commissioner may, by rule or order,
33 exempt any issuer of any notes, drafts, bills of exchange or banker’s
34 acceptances from qualification of those securities when the
35 commissioner finds that the qualification is not necessary or
36 appropriate in the public interest or for the protection of investors.

37 (m) Any security issued by any corporation organized and
38 existing under the provisions of Chapter 1 (commencing with
39 Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus, or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus, or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus, or similar benefit plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange, if the exchange has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or approved for listing upon notice of issuance on a national securities exchange, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange shall be made by the commissioner upon the written request of the exchange if the commissioner finds that the exchange, in acting on applications for listing of common stock, substantially applies the minimum standards set forth in either subparagraph (A) or (B) of paragraph (1), and, in considering suspension or removal from listing, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars (\$750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a

1 minimum of 400 shareholders and daily trading volume in the
2 issue has been approximately 2,000 shares or more for the six
3 months preceding the date of application. In evaluating the
4 suitability of an issue for listing under this trading provision, the
5 exchange shall review the nature and frequency of that activity
6 and any other factors as it may determine to be relevant in
7 ascertaining whether the issue is suitable for trading. A security
8 that trades infrequently shall not be considered for listing under
9 this paragraph even though average daily volume amounts to 2,000
10 shares per day or more.

11 Companies whose securities are concentrated in a limited
12 geographical area, or whose securities are largely held in block by
13 institutional investors, normally may not be considered eligible
14 for listing unless the public distribution appreciably exceeds
15 500,000 shares.

16 (iv) Minimum price of three dollars (\$3) per share for a
17 reasonable period of time prior to the filing of a listing application;
18 provided, however, in certain instances an exchange may favorably
19 consider listing an issue selling for less than three dollars (\$3) per
20 share after considering all pertinent factors, including market
21 conditions in general, whether historically the issue has sold above
22 three dollars (\$3) per share, the applicant's capitalization, and the
23 number of outstanding and publicly held shares of the issue.

24 (v) An aggregate market value for publicly held shares of at
25 least three million dollars (\$3,000,000).

26 (B) (i) Shareholders' equity of at least four million dollars
27 (\$4,000,000).

28 (ii) Minimum public distribution set forth in clause (iii) of
29 subparagraph (A) of paragraph (1).

30 (iii) Operating history of at least three years.

31 (iv) An aggregate market value for publicly held shares of at
32 least fifteen million dollars (\$15,000,000).

33 (2) Criteria for consideration of suspension or removal from
34 listing:

35 (A) If a company that (A) has shareholders' equity of less than
36 one million dollars (\$1,000,000) has sustained net losses in each
37 of its two most recent fiscal years, or (B) has net tangible assets
38 of less than three million dollars (\$3,000,000) and has sustained
39 net losses in three of its four most recent fiscal years.

1 (B) If the number of shares publicly held (excluding the holdings
2 of officers, directors, controlling ~~shareholders~~, *shareholders* and
3 other concentrated or family holdings) is less than 150,000.

4 (C) If the total number of shareholders is less than 400 or if the
5 number of shareholders of lots of 100 shares or more is less than
6 300.

7 (D) If the aggregate market value of shares publicly held is less
8 than seven hundred fifty thousand dollars (\$750,000).

9 (E) If shares of common stock sell at a price of less than three
10 dollars (\$3) per share for a substantial period of time and the issuer
11 shall fail to effectuate a reverse stock split of the shares within a
12 reasonable period of time after being requested by the exchange
13 to take that action.

14 A national securities exchange, certified by rule or order of the
15 commissioner under this subdivision, shall file annual reports when
16 requested to do so by the commissioner. The annual reports shall
17 contain, by issuer: the variances granted to an exchange's listing
18 standards, including variances from corporate governance and
19 voting rights' standards, for any security of that issuer; the reasons
20 for the variances; a discussion of the review procedure instituted
21 by the exchange to determine the effect of the variances on
22 investors and whether the variances should be continued; and any
23 other information that the commissioner deems relevant. The
24 purpose of these reports is to assist the commissioner in
25 determining whether the quantitative and qualitative requirements
26 of this subdivision are substantially being met by the exchange in
27 general or with regard to any particular security.

28 The commissioner after appropriate notice and opportunity for
29 hearing in accordance with the provisions of the Administrative
30 Procedure Act, Chapter 5 (commencing with Section 11500) of
31 Part 1 of Division 3 of Title 2 of the Government Code, may, in
32 his or her discretion, by rule or order, decertify any exchange
33 previously certified that ceases substantially to apply the minimum
34 standards or criteria as set forth in paragraphs (1) and (2).

35 A rule or order of certification shall conclusively establish that
36 any security listed or approved for listing upon notice of issuance
37 on any exchange named in a rule or order of certification, and any
38 warrant or right to purchase or subscribe to that security, is exempt
39 under this subdivision until the adoption by the commissioner of
40 any rule or order decertifying the exchange.

1 (p) A promissory note secured by a lien on real property, which
2 is neither one of a series of notes of equal priority secured by
3 interests in the same real property nor a note in which beneficial
4 interests are sold to more than one person or entity.

5 (q) Any unincorporated interindemnity or reciprocal or
6 interinsurance contract, that qualifies under the provisions of
7 Section 1280.7 of the Insurance Code, between members of a
8 cooperative corporation, organized and operating under Part 2
9 (commencing with Section 12200) of Division 3 of Title 1, and
10 whose members consist only of physicians and surgeons licensed
11 in California, which contracts indemnify solely in respect to
12 medical malpractice claims against the members, and which do
13 not collect in advance of loss any moneys other than contributions
14 by each member to a collective reserve trust fund or for necessary
15 expenses of administration.

16 (1) Whenever it appears to the commissioner that any person
17 has engaged or is about to engage in any act or practice constituting
18 a violation of any provision of Section 1280.7 of the Insurance
19 Code, the commissioner may, in the commissioner's discretion,
20 bring an action in the name of the people of the State of California
21 in the superior court to enjoin the acts or practices or to enforce
22 compliance with Section 1280.7 of the Insurance Code. Upon a
23 proper showing a permanent or preliminary injunction, a restraining
24 order, or a writ of mandate shall be granted and a receiver or
25 conservator may be appointed for the defendant or the defendant's
26 assets.

27 (2) The commissioner may, in the commissioner's discretion,
28 (A) make public or private investigations within or outside of this
29 state as the commissioner deems necessary to determine whether
30 any person has violated or is about to violate any provision of
31 Section 1280.7 of the Insurance Code or to aid in the enforcement
32 of Section 1280.7, and (B) publish information concerning the
33 violation of Section 1280.7.

34 (3) For the purpose of any investigation or proceeding under
35 this section, the commissioner or any officer designated by the
36 commissioner may administer oaths and affirmations, subpoena
37 witnesses, compel their attendance, take evidence, and require the
38 production of any books, papers, correspondence, memoranda,
39 agreements, or other documents or records which the commissioner
40 deems relevant or material to the inquiry.

1 (4) In case of contumacy by, or refusal to obey a subpoena
2 issued to, any person, the superior court, upon application by the
3 commissioner, may issue to the person an order requiring the
4 person to appear before the commissioner, or the officer designated
5 by the commissioner, to produce documentary evidence, if so
6 ordered, or to give evidence touching the matter under investigation
7 or in question. Failure to obey the order of the court may be
8 punished by the court as a contempt.

9 (5) No person is excused from attending or testifying or from
10 producing any document or record before the commissioner or in
11 obedience to the subpoena of the commissioner or any officer
12 designated by the commissioner, or in any proceeding instituted
13 by the commissioner, on the ground that the testimony or evidence
14 (documentary or otherwise), required of the person may tend to
15 incriminate the person or subject the person to a penalty or
16 forfeiture, but no individual may be prosecuted or subjected to any
17 penalty or forfeiture for or on account of any transaction, matter,
18 or thing concerning which the person is compelled, after validly
19 claiming the privilege against self-incrimination, to testify or
20 produce evidence (documentary or otherwise), except that the
21 individual testifying is not exempt from prosecution and
22 punishment for perjury or contempt committed in testifying.

23 (6) The cost of any review, examination, audit, or investigation
24 made by the commissioner under Section 1280.7 of the Insurance
25 Code shall be paid to the commissioner by the person subject to
26 the review, examination, audit, or investigation, and the
27 commissioner may maintain an action for the recovery of these
28 costs in any court of competent jurisdiction. In determining the
29 cost, the commissioner may use the actual amount of the salary or
30 other compensation paid to the persons making the review,
31 examination, audit, or investigation plus the actual amount of
32 expenses including overhead reasonably incurred in the
33 performance of the work.

34 The recoverable cost of each review, examination, audit, or
35 investigation made by the commissioner under Section 1280.7 of
36 the Insurance Code shall not exceed twenty-five thousand dollars
37 (\$25,000), except that costs exceeding twenty-five thousand dollars
38 (\$25,000) shall be recoverable if the costs are necessary to prevent
39 a violation of any provision of Section 1280.7 of the Insurance
40 Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed one thousand dollars (\$1,000). This exemption does not apply to the shares or memberships of that corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of that corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans that meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which at the time of transfer to the pool is an authorized investment for the originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

1 (4) The security is not offered in amounts of less than
2 twenty-five thousand dollars (\$25,000) in the aggregate to any one
3 purchaser.

4 (5) The security is offered pursuant to a registration under the
5 Securities Act of 1933, or pursuant to an exemption under
6 Regulation A under that act, or in the opinion of counsel for the
7 issuer, is offered pursuant to an exemption under Section 4(2) of
8 that act.

9 (t) (1) Any security issued or guaranteed by and representing
10 an interest in or a direct obligation of an industrial loan company
11 incorporated under the laws of the state and authorized by the
12 Commissioner of Financial Institutions to engage in industrial loan
13 business.

14 (2) Any investment certificate in or issued by any industrial
15 loan company that is organized under the laws of a state of the
16 United States other than this state, that is insured by the Federal
17 Deposit Insurance Corporation, and that maintains a branch office
18 in this state.

19 SEC. 2. Section 25102 of the Corporations Code is amended
20 to read:

21 25102. The following transactions are exempted from the
22 provisions of Section 25110:

23 (a) Any offer (but not a sale) not involving any public offering
24 and the execution and delivery of any agreement for the sale of
25 securities pursuant to the offer if (1) the agreement contains
26 substantially the following provision: “The sale of the securities
27 that are the subject of this agreement has not been qualified with
28 the Commissioner of Corporations of the State of California and
29 the issuance of the securities or the payment or receipt of any part
30 of the consideration therefor prior to the qualification is unlawful,
31 unless the sale of securities is exempt from the qualification by
32 Section 25100, 25102, or 25105 of the California Corporations
33 Code. The rights of all parties to this agreement are expressly
34 conditioned upon the qualification being obtained, unless the sale
35 is so exempt”; and (2) no part of the purchase price is paid or
36 received and none of the securities are issued until the sale of the
37 securities is qualified under this law unless the sale of securities
38 is exempt from the qualification by this section, Section 25100,
39 or 25105.

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

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

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

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

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

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

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

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser

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

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

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

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

35 (h) Any offer or sale of voting common stock by a corporation
36 incorporated in any state if, immediately after the proposed sale
37 and issuance, there will be only one class of stock of the
38 corporation outstanding that is owned beneficially by no more than
39 35 persons, provided all of the following requirements have been
40 met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (1) The issuer is (A) a California corporation or foreign
29 corporation that, at the time of the filing of the notice required
30 under this subdivision, is subject to Section 2115, or (B) any other
31 form of business entity, including without limitation a partnership
32 or trust organized under the laws of this state. The exemption
33 provided by this subdivision is not available to a “blind pool”
34 issuer, as that term is defined by the commissioner, or to an
35 investment company subject to the Investment Company Act of
36 1940.

37 (2) Sales of securities are made only to qualified purchasers or
38 other persons the issuer reasonably believes, after reasonable
39 inquiry, to be qualified purchasers. A corporation, partnership, or
40 other organization specifically formed for the purpose of acquiring

1 the securities offered by the issuer in reliance upon this exemption
2 may be a qualified purchaser if each of the equity owners of the
3 corporation, partnership, or other organization is a qualified
4 purchaser. Qualified purchasers include the following:

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

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

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

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

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

35 Each natural person specified above, by reason of his or her
36 business or financial experience, or the business or financial
37 experience of his or her professional adviser, who is unaffiliated
38 with and who is not compensated, directly or indirectly, by the
39 issuer or any affiliate or selling agent of the issuer, can be
40 reasonably assumed to have the capacity to protect his or her

1 interests in connection with the transaction. The amount of the
2 investment of each natural person shall not exceed 10 percent of
3 the net worth, as determined by this subparagraph, of that natural
4 person.

5 (F) Any other purchaser designated as qualified by rule of the
6 commissioner.

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

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

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

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

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

37 (iii) The anticipated suitability standards for prospective
38 purchasers.

39 (iv) A statement that (I) no money or other consideration is
40 being solicited or will be accepted, (II) an indication of interest

1 made by a prospective purchaser involves no obligation or
2 commitment of any kind, and, if the issuer is required by paragraph
3 (4) to deliver a disclosure statement to prospective purchasers,
4 (III) no sales will be made or commitment to purchase accepted
5 until five business days after delivery of a disclosure statement
6 and subscription information to the prospective purchaser in
7 accordance with the requirements of this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

37 Offers and sales exempt pursuant to this subdivision shall be
38 deemed to be part of a single, discrete offering and are not subject
39 to integration with any other offering or sale, whether qualified

1 under Chapter 2 (commencing with Section 25110), or otherwise
2 exempt, or not subject to qualification.

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

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

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

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

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

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

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

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

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

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

33 (F) Any other purchaser designated as qualified by rule of the
34 commissioner.

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

39 (3) Each natural person purchaser, including a corporation,
40 partnership, or other organization specifically formed by natural

1 persons for the purpose of acquiring the securities offered by the
2 issuer, receives, at least five business days before securities
3 described in this subdivision are sold to, or a commitment to
4 purchase is accepted from, the purchaser, the following information
5 in writing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (O) The insurance policy premiums and terms of premium
33 payments.

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

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

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

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

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

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

(r) Any offer or sale of any security, that meets each of the following criteria:

(1) The aggregate amount of securities sold to all purchasers by the issuer pursuant to this subdivision within any 12-month period does not exceed five hundred thousand dollars (\$500,000).

(2) The aggregate amount of securities sold to any purchaser by the issuer under this subdivision, including any amount sold during the 12-month period preceding the date of the transaction, does not exceed the following:

(A) One thousand dollars (\$1,000), or a greater amount as the commissioner may provide by rule or order, if the investor is not an accredited investor, as defined in Section 230.501 of Title 17 of the Code of Federal Regulations.

(B) Five percent of the investor's net worth, if the investor is an accredited investor, as defined in Section 230.501 of Title 17 of the Code of Federal Regulations.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account, or a trust account if the purchaser

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

3 *(4) For purposes of this subdivision, spouses, together with any*
4 *custodian or trustee acting for the account of their minor children,*
5 *are counted as one person, and a partnership, corporation, or*
6 *other organization that was not specifically formed for the purpose*
7 *of purchasing the security offered in reliance upon this exemption,*
8 *is counted as one person.*

9 *(5) The commissioner shall by rule require the issuer to file a*
10 *notice of transaction under this subdivision. The issuer shall file*
11 *the notice of transactions and attach all documents required in*
12 *paragraph (7).*

13 *(6) The exemption from qualification afforded by this subdivision*
14 *is unavailable if an issuer fails to file the notice within a time*
15 *period specified by the commissioner by rule. Neither the filing of*
16 *the notice nor the failure by the commissioner to comment thereon*
17 *precludes the commissioner from taking any action that the*
18 *commissioner deems necessary or appropriate under this division*
19 *with respect to the offer and sale of the securities.*

20 *(7) The issuer provides to purchasers, and makes available to*
21 *potential purchasers the following:*

22 *(A) A cover sheet or heading containing all of the following*
23 *statements, in bold typeface no smaller than 12-point type:*

24 *(i) Investment in a small business is often risky. You should not*
25 *invest any funds in this offering unless you can afford to lose your*
26 *entire investment.*

27 *(ii) Potential purchasers should review information about the*
28 *enterprise and offering, and consider the terms and risks of this*
29 *offering before investing. After reviewing the financial information,*
30 *description of the business, activities, risk factors, and development*
31 *time line, potential purchasers should consider whether success*
32 *of the enterprise is realistic.*

33 *(iii) No government regulator is recommending these securities.*
34 *No government regulator has verified that this document is*
35 *accurate or determined that it is adequate. No government*
36 *regulator has recommended or given approval to, any person,*
37 *security, or transaction associated with this offering.*

38 *(B) The issuer's street address, telephone number, person to*
39 *contact with respect to the offering, type of securities offered,*
40 *financial terms of the offering, the minimum amount the issuer is*

1 *seeking to raise, a description of the business of the issuer, a*
2 *description of how the issuer plans to carry out its activities, a*
3 *budget for the use of proceeds of the offering, a list of the factors*
4 *that the issuer considers to be the most significant risks to an*
5 *investor, and a description in chronological order of the steps*
6 *management intends to take to achieve, maintain, or improve*
7 *profitability during the 36 months following receipt of the offering*
8 *proceeds.*

9 *(C) The income tax returns filed by the issuer for the most recent*
10 *completed year, if any.*

11 *(D) The financial statements of the issuer for the most recent*
12 *completed fiscal year, if the business has existed for one year or*
13 *longer, and the current fiscal year to date, prepared in accordance*
14 *with generally accepted accounting principles, and certified by*
15 *the principal executive officer of the issuer to be true and complete*
16 *in all material respects.*

17 *(E) A written statement of information about any material legal*
18 *proceedings involving the issuer or its officers and directors.*

19 *(8) This exemption cannot be used to raise funds for an*
20 *enterprise dependent upon the creation of a product or technology*
21 *for which no fully functional prototype has been made in advance*
22 *of the public offering of securities. Securities offerings made to*
23 *raise funds to produce a newly invented product must have a fully*
24 *functional prototype. The prototype must be demonstrated in person*
25 *to any potential investor upon request, or, to satisfy many requests*
26 *for demonstration, the issuer may schedule several demonstrations*
27 *throughout the offering and announce the dates and times in*
28 *advance to prospective purchasers along with the materials*
29 *described in paragraph (7).*

30 *(9) Issuers using this exemption may advertise the offering to*
31 *California investors only, unless the offering complies with the*
32 *securities laws of other jurisdictions. Issuers must take steps to*
33 *ensure that any public advertising indicates that the offering is*
34 *directed at California residents, or that any solicitations made to*
35 *nonresidents of California comply with applicable laws of other*
36 *individual states and the United States.*

37 *(10) The exemption from qualification afforded by this*
38 *subdivision is unavailable if an issuer or any officer, director,*
39 *partner, partial owner of 20 percent or more of the issuer, or*
40 *person in a managerial role of the issuer has been disqualified*

1 *from using any securities registration exemption under Section*
2 *230.506(d)(1) of Title 17 of the Code of Federal Regulations.*

3 *(s) Any offer or sale of any security in a transaction that meets*
4 *each of the following criteria:*

5 *(1) At least 75 percent of the amount raised through the offering*
6 *will be reserved or allocated to any of the following for agricultural*
7 *purposes: purchase of fee title to real property, lease of 30 years*
8 *or more of real property, purchase of an easement on real property,*
9 *construction of real property, or improvement to real property.*

10 *(2) The issuer is an agricultural enterprise that is*
11 *majority-controlled by one or more individuals who will actively*
12 *farm the agricultural land to be purchased, leased, or improved*
13 *and who plan to be actively engaged in the agricultural enterprise,*
14 *the issuer is a nonprofit public benefit corporation, or the issuer*
15 *is majority-controlled by a nonprofit public benefit corporation.*

16 *(3) The aggregate amount of securities sold to all purchasers*
17 *by the issuer pursuant to this subdivision within any 12-month*
18 *period does not exceed two million dollars (\$2,000,000).*

19 *(4) (A) The aggregate amount of the issuer's securities held by*
20 *any purchaser pursuant to this subdivision does not exceed one of*
21 *the following:*

22 *(i) Two thousand dollars (\$2,000).*

23 *(ii) Five thousand dollars (\$5,000), if the purchaser signs and*
24 *provides to the issuer a statement verifying that the purchaser has*
25 *a minimum annual gross income of one hundred thousand dollars*
26 *(\$100,000) or a minimum net worth of two hundred thousand*
27 *dollars (\$200,000).*

28 *(iii) No more than 5 percent of that investor's net worth if the*
29 *purchaser is an accredited investor, as defined in Section 230.501*
30 *of Title 17 of the Code of Federal Regulations.*

31 *(iv) A greater amount from any purchaser as the commissioner*
32 *may provide by rule or order.*

33 *(B) For purposes of this paragraph, net worth shall be*
34 *determined exclusive of home, home furnishings, and automobiles.*
35 *Other assets included in the computation of net worth may be*
36 *valued at fair market value.*

37 *(5) The issuer sets aside in a separate third-party escrow*
38 *account all funds raised as part of the offering, to be held in escrow*
39 *until the issuer has entered into a contract to purchase a property,*
40 *easement, or equipment, or to lease land in accordance with*

1 paragraph (1). If the issuer does not enter into such a contract
2 within two years of the effective date of the offering, the issuer
3 shall return all funds to the purchasers. This required use of an
4 escrow account shall not apply to purchases of farmland equipment
5 or easements where the good faith estimated cost of the equipment
6 or easement does not exceed one hundred thousand dollars
7 (\$100,000) and where the total amount of the funds the issuer
8 raises in any 12-month period does not exceed one hundred
9 thousand dollars (\$100,000).

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

14 (7) For purposes of this subdivision, spouses, together with any
15 custodian or trustee acting for the account of their minor children,
16 are counted as one person, and a partnership, corporation, or
17 other organization that was not specifically formed for the purpose
18 of purchasing the security offered in reliance upon this exemption,
19 is counted as one person.

20 (8) The commissioner shall by rule require the issuer to file a
21 notice of transaction under this subdivision. The issuer shall file
22 the notice of transaction and attach all documents required in
23 paragraph (10).

24 (9) The exemption from qualification afforded by this subdivision
25 is unavailable if an issuer fails to file the notice within a time
26 period specified by the commissioner by rule. Neither the filing of
27 the notice nor the failure by the commissioner to comment thereon
28 precludes the commissioner from taking any action that the
29 commissioner deems necessary or appropriate under this division
30 with respect to the offer and sale of the securities.

31 (10) The issuer provides to purchasers, and makes available to
32 potential purchasers, the following:

33 (A) A cover sheet or heading containing all of the following
34 statements, in bold typeface no smaller than 12-point type:

35 (i) Investment in a small business is often risky. You should not
36 invest any funds in this offering unless you can afford to lose your
37 entire investment.

38 (ii) Potential purchasers should review information about the
39 enterprise and offering, and consider the terms and risks of this
40 offering before investing. After reviewing the financial information,

1 *description of the business, activities, risk factors, and development*
2 *time line, potential purchasers should consider whether success*
3 *of the enterprise is realistic.*

4 *(iii) No government regulator is recommending these securities.*
5 *No government regulator has verified that this document is*
6 *accurate or determined that it is adequate. No government*
7 *regulator has recommended or given approval to any person,*
8 *security, or transaction associated with this offering.*

9 *(iv) Unless the issuer is exempt from the escrow account*
10 *requirement pursuant to paragraph (5) the company described in*
11 *this disclosure form is seeking to raise at least [insert minimum*
12 *amount sought by issuer]. Investors' funds will be placed into a*
13 *third-party escrow account until that minimum amount is raised.*
14 *If [insert name of issuer] does not raise [insert minimum amount*
15 *sought] by [insert date that is no greater than one year following*
16 *the start of the offering], your investment will be returned to you*
17 *within 30 days following that date. It is your responsibility to notify*
18 *the issuer if your address changes to ensure you receive any refund*
19 *due to you. Notification regarding a change in address may be*
20 *made by either of the following methods: [insert at least two*
21 *methods by which the issuer may be contacted regarding a change*
22 *in address].*

23 *(B) The issuer's street address, telephone number, person to*
24 *contact with respect to offering, type of securities offered, financial*
25 *terms of the offering, the maximum amount the issuer is seeking*
26 *to raise, a description of the business of the issuer, a description*
27 *of how the issuer plans to carry out its activities, a budget for the*
28 *use of proceeds of the offering, a list of the factors that the issuer*
29 *considers to be the most significant risks to an investor, and a*
30 *description of the steps management intends to take to achieve,*
31 *maintain, or improve profitability during the 36 months following*
32 *receipt of the offering proceeds.*

33 *(C) If the intended use of the proceeds of the offering is to*
34 *purchase real property, and if the particular property to be*
35 *purchased has been identified, a description and address of the*
36 *property to be purchased, an appraisal of the property completed*
37 *within the last year by a California licensed or certified appraiser,*
38 *and a description of all improvements to be made on the property*
39 *in order to make it viable for agricultural use.*

1 (D) If the intended use of the proceeds of the offering is to
2 purchase real property, and if the property to be purchased has
3 not been identified, a description of the size, location, estimated
4 costs, and characteristics of the property that the issuer is seeking.

5 (E) The income tax returns filed by the issuer for the most recent
6 completed year, if any.

7 (F) The financial statements of the issuer for the most recent
8 completed fiscal year, if any, and the current fiscal year to date,
9 prepared in accordance with generally accepted accounting
10 principles, and certified by the principal executive officer of the
11 issuer to be true and complete in all material respects.

12 (G) A written statement of information about any material legal
13 proceedings involving the company or its officers and directors.

14 (11) Issuers using this exemption may advertise the offering to
15 California investors only, unless the offering complies with the
16 securities laws of other jurisdictions. Issuers must take steps to
17 ensure that any public advertising indicates that the offering is
18 directed at California residents, or that any solicitations made to
19 nonresidents of California comply with applicable laws of other
20 individual states and the United States.

21 (12) The exemption from qualification afforded by this
22 subdivision is unavailable if an issuer or any officer, director,
23 partner, partial owner of 20 percent or more of the issuer, or
24 person in a managerial role of the issuer has been disqualified
25 from using any securities registration exemption under Section
26 230.506(d)(1) of Title 17 of the Code of Federal Regulations.

27 (t) Any offer or sale of any security in a transaction that meets
28 each of the following criteria:

29 (1) At least 75 percent of amounts raised through the offering
30 will be reserved or allocated to the purchase of solar photovoltaic
31 panels, wind turbines, equipment necessary for the generation,
32 storage, and transmission of energy generated by the solar panels
33 or wind turbines, or any labor necessary to install solar panels,
34 wind turbines, or any of the equipment necessary for the
35 generation, storage, and transmission of energy generated by solar
36 panels or wind turbines.

37 (2) The issuer meets any of the following qualifications:

38 (A) The issuer is a cooperative corporation or a nonprofit
39 mutual benefit corporation with one or more of the following
40 purposes:

1 (i) *Developing or operating facilities that produce solar or wind*
2 *energy for its members.*

3 (ii) *Selling or leasing solar photovoltaic panels or wind turbines*
4 *to its members or installing solar photovoltaic panels or wind*
5 *turbines for its members.*

6 (iii) *Allocating net metering credits among its members.*

7 (B) *The issuer is a nonprofit public benefit corporation that is*
8 *exempt from federal income taxation as an organization described*
9 *in Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue*
10 *Code and the issuer is purchasing solar panels or wind turbines*
11 *primarily to meet the energy needs of the corporation.*

12 (C) *The issuer is a cooperative corporation that is operated on*
13 *a cooperative basis in accordance with Subchapter T of the Internal*
14 *Revenue Code and the issuer is purchasing solar panels or wind*
15 *turbines primarily to meet the energy needs of the corporation.*

16 (D) *The issuer is a California nonprofit public benefit*
17 *corporation, mutual benefit corporation, or cooperative with the*
18 *purpose of developing and operating one or more facilities to*
19 *generate electricity within a single county and intended for*
20 *customers within that county, or within a similarly limited*
21 *geographic area approved by the commissioner.*

22 (E) *The issuer is an entity owned or entirely controlled by*
23 *tenants in multitenant housing, and the issuer has entered into a*
24 *contract with the owner of the property to install solar panels on*
25 *the property on which the multitenant housing is located.*

26 (3) *The aggregate amount of securities sold to all purchasers*
27 *by the issuer pursuant to this subdivision within any 12-month*
28 *period does not exceed two million dollars (\$2,000,000).*

29 (4) (A) *The aggregate amount of the issuer's securities held by*
30 *any purchaser pursuant to this subdivision does not exceed one of*
31 *the following:*

32 (i) *Two thousand dollars (\$2,000).*

33 (ii) *Five thousand dollars (\$5,000), if the purchaser signs and*
34 *provides to the issuer a statement verifying that the purchaser has*
35 *a minimum annual gross income of one hundred thousand dollars*
36 *(\$100,000) or a minimum net worth of two hundred thousand*
37 *dollars (\$200,000).*

38 (iii) *No more than 5 percent of that investor's net worth if the*
39 *purchaser is an accredited investor, as defined in Section 230.501*
40 *of Title 17 of the Code of Federal Regulations.*

1 (iv) A greater amount from any purchaser as the commissioner
2 may provide by rule or order.

3 (B) For purposes of this paragraph, net worth shall be
4 determined exclusive of home, home furnishings, and automobiles.
5 Other assets included in the computation of net worth may be
6 valued at fair market value.

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

11 (6) For purposes of this section, spouses, together with any
12 custodian or trustee acting for the account of their minor children,
13 are counted as one person, and a partnership, corporation, or
14 other organization that was not specifically formed for the purpose
15 of purchasing the security offered in reliance upon this exemption,
16 is counted as one person.

17 (7) The commissioner shall by rule require the issuer to file a
18 notice of transactions under this subdivision. The issuer shall file
19 the notice of transaction and attach all documents required in
20 paragraph (9).

21 (8) The exemption from qualification afforded by this subdivision
22 is unavailable if an issuer fails to file the notice within a time
23 period specified by the commissioner by rule. Neither the filing of
24 the notice nor the failure by the commissioner to comment thereon
25 precludes the commissioner from taking any action that the
26 commissioner deems necessary or appropriate under this division
27 with respect to the offer and sale of the securities.

28 (9) The issuer provides to purchasers, and makes available to
29 potential purchasers the following:

30 (A) A cover sheet or heading containing all of the following
31 statements, in bold typeface no smaller than 12-point type:

32 (i) Investment in a small business is often risky. You should not
33 invest any funds in this offering unless you can afford to lose your
34 entire investment.

35 (ii) Potential purchasers should review information about the
36 enterprise and offering, and consider the terms and risks of this
37 offering before investing. After reviewing the financial information,
38 description of the business, activities, risk factors, and development
39 time line, potential purchasers should consider whether success
40 of the enterprise is realistic.

1 (iii) No government regulator is recommending these securities.
2 No government regulator has verified that this document is
3 accurate or determined that it is adequate. No government
4 regulator has recommended or given approval to any person,
5 security, or transaction associated with this offering.

6 (iv) The company described in this disclosure form is seeking
7 to raise at least [insert minimum amount sought by issuer].
8 Investors' funds will be placed into a third-party escrow account
9 until that minimum amount is raised. If [insert name of issuer]
10 does not raise [insert minimum amount sought] by [insert date
11 that is no greater than one year following the start of the offering],
12 your investment will be returned to you within 30 days following
13 that date. It is your responsibility to notify the issuer if your address
14 changes, to ensure you receive any refund due to you. Notification
15 regarding a change in address may be made by either of the
16 following methods: [insert at least two methods by which the issuer
17 may be contacted regarding a change in address].

18 (B) The issuer's street address, telephone number, person to
19 contact with respect to offering, the minimum amount the issuer
20 is seeking to raise, type of securities offered, financial terms of the
21 offering, a description of the business of the issuer, a description
22 of how the issuer plans to carry out its activities, a budget for the
23 use of proceeds of the offering, a list of the factors that the issuer
24 considers to be the most significant risks to an investor, and a
25 description in chronological order of the steps management intends
26 to take to achieve, maintain, or improve profitability during the
27 36 months following receipt of the offering proceeds.

28 (C) The income tax returns filed by the issuer for the most
29 recently completed year, if any.

30 (D) The financial statements of the issuer for the most recent
31 completed fiscal year, if the enterprise has existed for one year or
32 longer, and the current fiscal year to date, prepared in accordance
33 with generally accepted accounting principles, and certified by
34 the principal executive officer of the issuer to be true and complete
35 in all material respects.

36 (E) A written statement of information about any material legal
37 proceedings involving the issuer or its officers and directors.

38 (10) The issuer sets aside in a separate third-party escrow
39 account all funds raised as part of the offering, to be held in escrow
40 until the time that the minimum offering amount is reached. If the

1 minimum offering amount is not reached within one year following
2 the effective date of the offering, the issuer shall return all funds
3 to investors.

4 (11) This exemption cannot be used to raise funds for an
5 enterprise dependent upon the creation of a product or technology
6 for which no fully functional prototype has been made in advance
7 of the public offering of securities. Securities offerings made to
8 produce a newly invented product must have a fully functional
9 prototype. The prototype must be demonstrated in person to any
10 potential investor upon request, or, to satisfy many requests for
11 demonstration, the issuer may schedule several demonstrations
12 throughout the offering and announce the dates and times in
13 advance to prospective purchasers along with the materials.

14 (12) Issuers using this exemption may advertise the offering to
15 California investors only, unless the offering complies with the
16 securities laws of other jurisdictions. Issuers must take steps to
17 ensure that any public advertising indicates that the offering is
18 directed at California residents, or that any solicitations made to
19 nonresidents of California comply with applicable laws of other
20 individual states and the United States.

21 (13) The exemption from qualification afforded by this
22 subdivision is unavailable if an issuer or any officer, director,
23 partner, partial owner of 20 percent or more of the issuer, or
24 person in a managerial role of the issuer has been disqualified
25 from using any securities registration exemption under Section
26 230.506(d)(1) of Title 17 of the Code of Federal Regulations.