

AMENDED IN ASSEMBLY APRIL 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2751**

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**Introduced by Assembly Member Brown**

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2751, as amended, 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~~ *nonprofit* 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~~ *nonprofit* 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, and a specified amount of the proceeds are used for agricultural purposes,~~

*as provided*; that the aggregate ~~mount~~ *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; \$2,000,000, and a specified amount of the proceeds are used to purchase solar photovoltaic panels, wind turbines, or other necessary equipment or labor.~~ *labor, as provided.* 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

1 Financial Code, which is subject to the supervision and regulation  
2 of the Commissioner of Business Oversight of this state.

3 (e) Any security (other than an interest in all or portions of a  
4 parcel or parcels of real property which are subdivided land or a  
5 subdivision or in a real estate development), the issuance of which  
6 is subject to authorization by the Insurance Commissioner, the  
7 Public Utilities Commission, or the Real Estate Commissioner of  
8 this state.

9 (f) Any security consisting of any interest in all or portions of  
10 a parcel or parcels of real property that are subdivided lands or a  
11 subdivision or in a real estate development; provided that the  
12 exemption in this subdivision shall not be applicable to: (1) any  
13 investment contract sold or offered for sale with, or as part of, that  
14 interest, or (2) any person engaged in the business of selling,  
15 distributing, or supplying water for irrigation purposes or domestic  
16 use that is not a public utility except that the exemption is  
17 applicable to any security of a mutual water company (other than  
18 an investment contract as described in paragraph (1)) offered or  
19 sold in connection with subdivided lands pursuant to Chapter 2  
20 (commencing with Section 14310) of Part 7 of Division 3 of Title  
21 1.

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

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

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

1 Canadian province; and the security is subject to registration with  
2 or authorization of issuance by that authority.

3 (j) Any security of an issuer (1) organized exclusively for  
4 educational, benevolent, fraternal, religious, charitable, social, or  
5 reformatory purposes and not for pecuniary profit, if no part of the  
6 net earnings of the issuer inures to the benefit of any private  
7 shareholder or individual, or (2) organized as a chamber of  
8 commerce or trade or professional association. The fact that  
9 amounts received from memberships or dues or both will or may  
10 be used to construct or otherwise acquire facilities for use by  
11 members of the nonprofit organization does not disqualify the  
12 organization for this exemption. This exemption does not apply  
13 to the securities of any nonprofit organization if any promoter  
14 thereof expects or intends to make a profit directly or indirectly  
15 from any business or activity associated with the organization or  
16 operation of that nonprofit organization or from remuneration  
17 received from that nonprofit organization.

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

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

1 the commissioner finds that the qualification is not necessary or  
2 appropriate in the public interest or for the protection of investors.

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

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

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

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

33 (1) Listing standards:

34 (A) (i) Shareholders' equity of at least four million dollars  
35 (\$4,000,000).

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

39 (iii) Minimum public distribution of 500,000 shares (exclusive  
40 of the holdings of officers, directors, controlling shareholders, and

1 other concentrated or family holdings), together with a minimum  
2 of 800 public holders or minimum public distribution of 1,000,000  
3 shares together with a minimum of 400 public holders. The  
4 exchange may also consider the listing of a company's securities  
5 if the company has a minimum of 500,000 shares publicly held, a  
6 minimum of 400 shareholders and daily trading volume in the  
7 issue has been approximately 2,000 shares or more for the six  
8 months preceding the date of application. In evaluating the  
9 suitability of an issue for listing under this trading provision, the  
10 exchange shall review the nature and frequency of that activity  
11 and any other factors as it may determine to be relevant in  
12 ascertaining whether the issue is suitable for trading. A security  
13 that trades infrequently shall not be considered for listing under  
14 this paragraph even though average daily volume amounts to 2,000  
15 shares per day or more.

16 Companies whose securities are concentrated in a limited  
17 geographical area, or whose securities are largely held in block by  
18 institutional investors, normally may not be considered eligible  
19 for listing unless the public distribution appreciably exceeds  
20 500,000 shares.

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

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

31 (B) (i) Shareholders' equity of at least four million dollars  
32 (\$4,000,000).

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

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

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

38 (2) Criteria for consideration of suspension or removal from  
39 listing:

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

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

9 (C) If the total number of shareholders is less than 400 or if the  
10 number of shareholders of lots of 100 shares or more is less than  
11 300.

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

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

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

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

1 A rule or order of certification shall conclusively establish that  
2 any security listed or approved for listing upon notice of issuance  
3 on any exchange named in a rule or order of certification, and any  
4 warrant or right to purchase or subscribe to that security, is exempt  
5 under this subdivision until the adoption by the commissioner of  
6 any rule or order decertifying the exchange.

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

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

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

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



1 (3) For the purpose of any investigation or proceeding under  
2 this section, the commissioner or any officer designated by the  
3 commissioner may administer oaths and affirmations, subpoena  
4 witnesses, compel their attendance, take evidence, and require the  
5 production of any books, papers, correspondence, memoranda,  
6 agreements, or other documents or records which the commissioner  
7 deems relevant or material to the inquiry.

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

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

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

1 The recoverable cost of each review, examination, audit, or  
2 investigation made by the commissioner under Section 1280.7 of  
3 the Insurance Code shall not exceed twenty-five thousand dollars  
4 (\$25,000), except that costs exceeding twenty-five thousand dollars  
5 (\$25,000) shall be recoverable if the costs are necessary to prevent  
6 a violation of any provision of Section 1280.7 of the Insurance  
7 Code.

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

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

32 (1) The pool consists of whole mortgage loans or participation  
33 interests in those loans, which loans were originated or acquired  
34 in the ordinary course of business by a national bank or federal  
35 savings association or federal savings bank having its principal  
36 office in this state, by a bank incorporated under the laws of this  
37 state or by a savings association as defined in subdivision (a) of  
38 Section 5102 of the Financial Code and which is subject to the  
39 supervision and regulation of the Commissioner of Financial  
40 Institutions, and each of which at the time of transfer to the pool

1 is an authorized investment for the originating or acquiring  
2 institution.

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

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

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

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

16 (t) (1) Any security issued or guaranteed by and representing  
17 an interest in or a direct obligation of an industrial loan company  
18 incorporated under the laws of the state and authorized by the  
19 Commissioner of Financial Institutions to engage in industrial loan  
20 business.

21 (2) Any investment certificate in or issued by any industrial  
22 loan company that is organized under the laws of a state of the  
23 United States other than this state, that is insured by the Federal  
24 Deposit Insurance Corporation, and that maintains a branch office  
25 in this state.

26 SEC. 2. Section 25102 of the Corporations Code is amended  
27 to read:

28 25102. The following transactions are exempted from the  
29 provisions of Section 25110:

30 (a) Any offer (but not a sale) not involving any public offering  
31 and the execution and delivery of any agreement for the sale of  
32 securities pursuant to the offer if (1) the agreement contains  
33 substantially the following provision: "The sale of the securities  
34 that are the subject of this agreement has not been qualified with  
35 the Commissioner of Corporations of the State of California and  
36 the issuance of the securities or the payment or receipt of any part  
37 of the consideration therefor prior to the qualification is unlawful,  
38 unless the sale of securities is exempt from the qualification by  
39 Section 25100, 25102, or 25105 of the California Corporations  
40 Code. The rights of all parties to this agreement are expressly

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

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

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

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

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

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

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

34 (2) All purchasers either have a preexisting personal or business  
35 relationship with the offer or any of its partners, officers, directors  
36 or controlling persons, or managers (as appointed or elected by  
37 the members) if the offeror is a limited liability company, or by  
38 reason of their business or financial experience or the business or  
39 financial experience of their professional advisers who are  
40 unaffiliated with and who are not compensated by the issuer or

1 any affiliate or selling agent of the issuer, directly or indirectly,  
2 could be reasonably assumed to have the capacity to protect their  
3 own interests in connection with the transaction.

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

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

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

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

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

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

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

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

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

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

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

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

(4) A notice in a form prescribed by rule of the commissioner, signed by an active member of the State Bar of California, is filed with or mailed for filing to the commissioner not later than 10 business days after receipt of consideration for the securities by the issuer. That notice shall contain an opinion of the member of

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

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

For the purposes of this subdivision, all securities held by spouses, whether or not jointly, shall be considered to be owned by one person, and all securities held by a corporation that has

1 issued stock pursuant to this exemption shall be considered to be  
2 held by the shareholders to whom it has issued the stock.

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

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

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

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

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

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



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

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

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

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

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

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

33 (1) The issuer is (A) a California corporation or foreign  
34 corporation that, at the time of the filing of the notice required  
35 under this subdivision, is subject to Section 2115, or (B) any other  
36 form of business entity, including without limitation a partnership  
37 or trust organized under the laws of this state. The exemption  
38 provided by this subdivision is not available to a “blind pool”  
39 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~~ than,  
16 the estimated life expectancy of the insured at the time the viatical  
17 or 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 ~~(r) Any offer or sale of any security, that meets each of the~~  
28 ~~following criteria:~~

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

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

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

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

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

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

14    ~~(5) The commissioner shall by rule require the issuer to file a~~  
15    ~~notice of transaction under this subdivision. The issuer shall file~~  
16    ~~the notice of transactions and attach all documents required in~~  
17    ~~paragraph (7).~~

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

25    ~~(7) The issuer provides to purchasers, and makes available to~~  
26    ~~potential purchasers the following:~~

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

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

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

38    ~~(iii) No government regulator is recommending these securities.~~  
39    ~~No government regulator has verified that this document is accurate~~  
40    ~~or determined that it is adequate. No government regulator has~~

1 recommended or given approval to, any person, security, or  
2 transaction associated with this offering.

3 (B) The issuer's street address, telephone number, person to  
4 contact with respect to the offering, type of securities offered,  
5 financial terms of the offering, the minimum amount the issuer is  
6 seeking to raise, a description of the business of the issuer, a  
7 description of how the issuer plans to carry out its activities, a  
8 budget for the use of proceeds of the offering, a list of the factors  
9 that the issuer considers to be the most significant risks to an  
10 investor, and a description in chronological order of the steps  
11 management intends to take to achieve, maintain, or improve  
12 profitability during the 36 months following receipt of the offering  
13 proceeds.

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

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

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

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

35 (9) Issuers using this exemption may advertise the offering to  
36 California investors only, unless the offering complies with the  
37 securities laws of other jurisdictions. Issuers must take steps to  
38 ensure that any public advertising indicates that the offering is  
39 directed at California residents, or that any solicitations made to

1 ~~nonresidents of California comply with applicable laws of other~~  
2 ~~individual states and the United States.~~

3 ~~(10) The exemption from qualification afforded by this~~  
4 ~~subdivision is unavailable if an issuer or any officer, director,~~  
5 ~~partner, partial owner of 20 percent or more of the issuer, or person~~  
6 ~~in a managerial role of the issuer has been disqualified from using~~  
7 ~~any securities registration exemption under Section 230.506(d)(1)~~  
8 ~~of Title 17 of the Code of Federal Regulations.~~

9 (s)

10 (r) Any offer or sale of any security in a transaction that meets  
11 each of the following criteria:

12 (1) At least 75 percent of the amount raised through the offering  
13 will be reserved or allocated to any of the following for agricultural  
14 purposes: purchase of fee title to real property, lease of 30 years  
15 or more of real property, purchase of an easement on real property,  
16 construction of real property, or improvement to real property.

17 (2) The issuer is an agricultural enterprise that is  
18 majority-controlled by one or more individuals who will actively  
19 farm the agricultural land to be purchased, leased, or improved  
20 and who plan to be actively engaged in the agricultural enterprise,  
21 the issuer is a nonprofit public benefit corporation, or the issuer is  
22 majority-controlled by a nonprofit public benefit corporation.

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

26 (4) (A) The aggregate amount of the issuer's securities held by  
27 any purchaser pursuant to this subdivision does not exceed one of  
28 the following:

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

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

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

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

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

5 (5) The issuer sets aside in a separate third-party escrow account  
6 all funds raised as part of the offering, to be held in escrow until  
7 the issuer has entered into a contract to purchase a property,  
8 easement, or equipment, or to lease land in accordance with  
9 paragraph (1). If the issuer does not enter into such a contract  
10 within two years of the effective date of the offering, the issuer  
11 shall return all funds to the purchasers. This required use of an  
12 escrow account shall not apply to purchases of farmland equipment  
13 or easements where the good faith estimated cost of the equipment  
14 or easement does not exceed one hundred thousand dollars  
15 (\$100,000) and where the total amount of the funds the issuer  
16 raises in any 12-month period does not exceed one hundred  
17 thousand dollars (\$100,000).

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

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

28 (8) The commissioner shall by rule require the issuer to file a  
29 notice of transaction under this subdivision. The issuer shall file  
30 the notice of transaction and attach all documents required in  
31 paragraph (10).

32 (9) The exemption from qualification afforded by this  
33 subdivision is unavailable if an issuer fails to file the notice within  
34 a time period specified by the commissioner by rule. Neither the  
35 filing of the notice nor the failure by the commissioner to comment  
36 thereon precludes the commissioner from taking any action that  
37 the commissioner deems necessary or appropriate under this  
38 division with respect to the offer and sale of the securities.

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

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

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

6 (ii) Potential purchasers should review information about the  
7 enterprise and offering, and consider the terms and risks of this  
8 offering before investing. After reviewing the financial information,  
9 description of the business, activities, risk factors, and development  
10 time line, potential purchasers should consider whether success of  
11 the enterprise is realistic.

12 (iii) No government regulator is recommending these securities.  
13 No government regulator has verified that this document is accurate  
14 or determined that it is adequate. No government regulator has  
15 recommended or given approval to any person, security, or  
16 transaction associated with this offering.

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

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

1 (C) If the intended use of the proceeds of the offering is to  
2 purchase real property, and if the particular property to be  
3 purchased has been identified, a description and address of the  
4 property to be purchased, an appraisal of the property completed  
5 within the last year by a California licensed or certified appraiser,  
6 and a description of all improvements to be made on the property  
7 in order to make it viable for agricultural use.

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

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

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

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

21 (11) Issuers using this exemption may advertise the offering to  
22 California investors only, unless the offering complies with the  
23 securities laws of other jurisdictions. Issuers must take steps to  
24 ensure that any public advertising indicates that the offering is  
25 directed at California residents, or that any solicitations made to  
26 nonresidents of California comply with applicable laws of other  
27 individual states and the United States.

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

34 (t)

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

37 (1) At least 75 percent of amounts raised through the offering  
38 will be reserved or allocated to the purchase of solar photovoltaic  
39 panels, wind turbines, equipment necessary for the generation,  
40 storage, and transmission of energy generated by the solar panels



1 or wind turbines, or any labor necessary to install solar panels,  
2 wind turbines, or any of the equipment necessary for the generation,  
3 storage, and transmission of energy generated by solar panels or  
4 wind turbines.

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

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

8 (i) Developing or operating facilities that produce solar or wind  
9 energy for its members.

10 (ii) Selling or leasing solar photovoltaic panels or wind turbines  
11 to its members or installing solar photovoltaic panels or wind  
12 turbines for its members.

13 (iii) Allocating net metering credits among its members.

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

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

23 (D) The issuer is a California nonprofit public benefit  
24 corporation, mutual benefit corporation, or cooperative with the  
25 purpose of developing and operating one or more facilities to  
26 generate electricity within a single county and intended for  
27 customers within that county, or within a similarly limited  
28 geographic area approved by the commissioner.

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

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

36 (4) (A) The aggregate amount of the issuer's securities held by  
37 any purchaser pursuant to this subdivision does not exceed one of  
38 the following:

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

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

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

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

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

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

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

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

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

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

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

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

4 (ii) Potential purchasers should review information about the  
5 enterprise and offering, and consider the terms and risks of this  
6 offering before investing. After reviewing the financial information,  
7 description of the business, activities, risk factors, and development  
8 time line, potential purchasers should consider whether success of  
9 the enterprise is realistic.

10 (iii) No government regulator is recommending these securities.  
11 No government regulator has verified that this document is accurate  
12 or determined that it is adequate. No government regulator has  
13 recommended or given approval to any person, security, or  
14 transaction associated with this offering.

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

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

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

1 (D) The financial statements of the issuer for the most recent  
2 completed fiscal year, if the enterprise has existed for one year or  
3 longer, and the current fiscal year to date, prepared in accordance  
4 with generally accepted accounting principles, and certified by the  
5 principal executive officer of the issuer to be true and complete in  
6 all material respects.

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

9 (10) The issuer sets aside in a separate third-party escrow  
10 account all funds raised as part of the offering, to be held in escrow  
11 until the time that the minimum offering amount is reached. If the  
12 minimum offering amount is not reached within one year following  
13 the effective date of the offering, the issuer shall return all funds  
14 to investors.

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

25 (12) Issuers using this exemption may advertise the offering to  
26 California investors only, unless the offering complies with the  
27 securities laws of other jurisdictions. Issuers must take steps to  
28 ensure that any public advertising indicates that the offering is  
29 directed at California residents, or that any solicitations made to  
30 nonresidents of California comply with applicable laws of other  
31 individual states and the United States.

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