

AMENDED IN SENATE APRIL 21, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 577

Introduced by Senator Hueso

February 26, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 577, as amended, Hueso. 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 shares or memberships issued by a consumer cooperative corporation, provided the aggregate investment of any shareholder or member does not exceed \$300.

This bill would increase the aggregate investment amount for the exemption for qualification of shares or memberships in a consumer cooperative corporation from \$300 to \$1,000. The bill would exempt from qualification the offer or sale of any security in a transaction that meets specified requirements that include, among others, that the aggregate amount sold to all investors within 12 months does not exceed \$500,000, or a percentage of the amounts raised by the offering be allocated to acquiring either an interest in real property used for agricultural purposes or to purchase solar photovoltaic panels, wind turbines, ~~and related equipment~~ *or other necessary equipment*. The bill would authorize the commissioner to by rule require specified issuers to file a notice of transaction, and if the issuer fails to file that notice,

to pay a specified fee to the commissioner. 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
- 31 is subject to authorization by the Insurance Commissioner, the

1 Public Utilities Commission, or the Real Estate Commissioner of
2 this state.

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

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

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

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

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

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

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

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

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

39 (n) Any beneficial interest in an employees’ pension,
40 profit-sharing, stock bonus or similar benefit plan which meets the

1 requirements for qualification under Section 401 of the federal
2 Internal Revenue Code or any statute amendatory thereof or
3 supplementary thereto. A determination letter from the Internal
4 Revenue Service stating that an employees' pension, profit-sharing,
5 stock bonus or similar benefit plan meets those requirements shall
6 be conclusive evidence that the plan is an employees' pension,
7 profit-sharing, stock bonus or similar benefit plan within the
8 meaning of the first sentence of this subdivision until the date the
9 determination letter is revoked in writing by the Internal Revenue
10 Service, regardless of whether or not the revocation is retroactive.

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

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

26 (1) Listing standards:

27 (A) (i) Shareholders' equity of at least four million dollars
28 (\$4,000,000).

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

32 (iii) Minimum public distribution of 500,000 shares (exclusive
33 of the holdings of officers, directors, controlling shareholders, and
34 other concentrated or family holdings), together with a minimum
35 of 800 public holders or minimum public distribution of 1,000,000
36 shares together with a minimum of 400 public holders. The
37 exchange may also consider the listing of a company's securities
38 if the company has a minimum of 500,000 shares publicly held, a
39 minimum of 400 shareholders and daily trading volume in the
40 issue has been approximately 2,000 shares or more for the six

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

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

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

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

24 (B) (i) Shareholders' equity of at least four million dollars
25 (\$4,000,000).

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

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

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

31 (2) Criteria for consideration of suspension or removal from
32 listing:

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

38 (ii) If the number of shares publicly held (excluding the holdings
39 of officers, directors, controlling shareholders and other
40 concentrated or family holdings) is less than 150,000.

1 (iii) If the total number of shareholders is less than 400 or if the
2 number of shareholders of lots of 100 shares or more is less than
3 300.

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

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

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

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

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

38 (p) A promissory note secured by a lien on real property, which
39 is neither one of a series of notes of equal priority secured by

1 interests in the same real property nor a note in which beneficial
2 interests are sold to more than one person or entity.

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

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

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

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

39 (4) In case of contumacy by, or refusal to obey a subpoena
40 issued to, any person, the superior court, upon application by the

1 commissioner, may issue to the person an order requiring the
2 person to appear before the commissioner, or the officer designated
3 by the commissioner, to produce documentary evidence, if so
4 ordered, or to give evidence touching the matter under investigation
5 or in question. Failure to obey the order of the court may be
6 punished by the court as a contempt.

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

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

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

39 (r) Any shares or memberships issued by any corporation
40 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 offeror 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, spouses (together
10 with any custodian or trustee acting for the account of their minor
11 children) are counted as one person and a partnership, corporation,
12 or other organization that was not specifically formed for the
13 purpose of purchasing the security offered in reliance upon this
14 exemption, is counted as one person. The commissioner shall by
15 rule require the issuer to file a notice of transactions under this
16 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
32 spouses, whether or not jointly, shall be considered to be owned
33 by one person, and all securities held by a corporation that has
34 issued stock pursuant to this exemption shall be considered to be
35 held by the shareholders to whom it has issued the stock.

36 All stock issued by a corporation pursuant to this subdivision as
37 it existed prior to the effective date of the amendments to this
38 section made during the 1996 portion of the 1995–96 Regular
39 Session that required the issuer to have stamped or printed
40 prominently on the face of the stock certificate a legend in a form

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

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

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

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

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

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

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

39 (2) The security is concurrently hypothecated to a bank in the
40 ordinary course of business to secure a loan made by the bank,

1 provided that each purchaser represents that it is purchasing for
2 its own account for investment and not with a view to or for sale
3 in connection with any distribution of the security.

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

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

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

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

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

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

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

33 Each natural person specified above, by reason of his or her
34 business or financial experience, or the business or financial
35 experience of his or her professional adviser, who is unaffiliated
36 with and who is not compensated, directly or indirectly, by the
37 issuer or any affiliate or selling agent of the issuer, can be
38 reasonably assumed to have the capacity to protect his or her
39 interests in connection with the transaction. The amount of the
40 investment of each natural person shall not exceed 10 percent of

1 the net worth, as determined by this subparagraph, of that natural
2 person.

3 (F) Any other purchaser designated as qualified by rule of the
4 commissioner.

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

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

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

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

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

35 (iii) The anticipated suitability standards for prospective
36 purchasers.

37 (iv) A statement that (I) no money or other consideration is
38 being solicited or will be accepted, (II) an indication of interest
39 made by a prospective purchaser involves no obligation or
40 commitment of any kind, and, if the issuer is required by paragraph

1 (4) to deliver a disclosure statement to prospective purchasers,
2 (III) no sales will be made or commitment to purchase accepted
3 until five business days after delivery of a disclosure statement
4 and subscription information to the prospective purchaser in
5 accordance with the requirements of this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) An offer or sale of nonredeemable securities to accredited investors (Section 28031) by a person licensed under the Capital Access Company Law (Division 3 (commencing with Section 28000) of Title 4), provided that all purchasers either (1) have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors, controlling persons, or managers (as appointed or elected by the members), or (2) 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. All nonredeemable securities shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by rule or order of the commissioner restricting transfer of the securities in the manner as the rule or order provides. The exemption under this subdivision shall not be available for any offering that is exempt or asserted to be exempt pursuant to Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11)) or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is conducted by means of any form of general solicitation or general advertising.

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

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

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

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

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

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

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

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

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

31 (F) Any other purchaser designated as qualified by rule of the
32 commissioner.

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

37 (3) Each natural person purchaser, including a corporation,
38 partnership, or other organization specifically formed by natural
39 persons for the purpose of acquiring the securities offered by the
40 issuer, receives, at least five business days before securities

described in this subdivision are sold to, or a commitment to purchase is accepted from, the purchaser, the following information in writing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (O) The insurance policy premiums and terms of premium
31 payments.

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

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

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

39 (S) A statement to the effect that any projected rate of return to
40 the purchaser from the purchase of a viatical or life settlement

1 contract or a fractionalized or pooled interest therein is based on
2 an estimated life expectancy for the person insured under the life
3 insurance policy; that the return on the purchase may vary
4 substantially from the expected rate of return based upon the actual
5 life expectancy of the insured that may be less than, equal to, or
6 may greatly exceed the estimated life expectancy; and that the rate
7 of return would be higher if the actual life expectancy were less
8 than, and lower if the actual life expectancy were greater than the
9 estimated life expectancy of the insured at the time the viatical or
10 life settlement contract was closed.

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

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

20 (r) Any offer or sale of any evidence of indebtedness, whether
21 secured or unsecured, and any guarantee thereof, that meets each
22 of the following criteria:

23 (1) 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 five hundred thousand dollars (\$500,000).

26 (2) The aggregate amount of securities sold to any purchaser
27 by the issuer, including any amount sold during the 12-month
28 period preceding the date of the transaction, does not exceed one
29 thousand dollars—(~~\$1000~~); (*\$1,000*), or a greater amount as the
30 commissioner may provide by rule or order, unless the purchaser
31 is an accredited investor, as defined in Section 230.501 of Title
32 17 of the Code of Federal Regulations. *The aggregate amount of*
33 *securities sold by the issuer to any purchaser who is an accredited*
34 *investor does not exceed 5 percent of that investor's net worth.*

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

39 (4) For purposes of this section, spouses, together with any
40 custodian or trustee acting for the account of their minor children,

1 are counted as one person, and a partnership, corporation, or other
2 organization that was not specifically formed for the purpose of
3 purchasing the security offered in reliance upon this exemption,
4 is counted as one person.

5 (5) The commissioner shall by rule require the issuer to file a
6 notice of transactions under this subdivision. The issuer shall file
7 the notice of transaction and attach all documents required in
8 paragraph (6). *The exemption from qualification afforded by this*
9 *subdivision is unavailable if an issuer fails to file the notice within*
10 *a time period specified by the commissioner by rule. Neither the*
11 *filing of the notice nor the failure by the commissioner to comment*
12 *thereon precludes the commissioner from taking any action that*
13 *the commissioner deems necessary or appropriate under this*
14 *division with respect to the offer and sale of the securities.*

15 (6) The issuer provides to purchasers, and makes available to
16 potential purchasers the following:

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

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

22 (ii) Potential purchasers should review information about the
23 enterprise and offering, and consider the terms and risks of this
24 offering before investing. After reviewing the financial information,
25 description of the business, activities, risk factors, and development
26 timeline, potential purchasers should consider whether success of
27 the enterprise is realistic.

28 (iii) No government regulator is recommending these securities.
29 No government regulator has verified that this document is accurate
30 or determined that it is adequate. The Commissioner of Business
31 Oversight has in no way passed upon the merits or qualifications
32 of, or recommended or given approval to, any person, security, or
33 transaction associated with this offering.

34 (iv) *The company described in this disclosure form is seeking*
35 *to raise at least [minimum amount sought by issuer]. Investors'*
36 *funds will be placed into a third party escrow account until that*
37 *minimum amount is raised. If [issuer] does not raise [minimum*
38 *amount sought] by [date that is no greater than one year following*
39 *the start of the offering], your investment will be returned to you*
40 *within 30 days following that date. It is your responsibility to notify*

1 *the issuer if your address changes, to ensure you receive any refund*
2 *due to you. Notification regarding a change in address may be*
3 *made by either of the following methods: [insert at least two*
4 *methods by which the issuer may be contacted regarding a change*
5 *in address].*

6 (B) The issuer's street address, telephone number, person to
7 contact with respect to offering, type of securities offered, financial
8 terms of the offering, the minimum amount the issuer is seeking
9 to raise, a description of the business of the issuer, a description
10 of how the issuer plans to carry out its activities, a budget for the
11 use of proceeds of the offering, a list of the factors that the issuer
12 considers to be the most significant risks to an investor, and a
13 description in chronological order of the steps management intends
14 to take to achieve, maintain, or improve profitability during the
15 36 months following receipt of the offering proceeds.

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

18 ~~(C)~~

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

25 (ii) If the issuer's total amount raised under this exemption
26 exceeds three thousand dollars (\$3,000), reviewed financials for
27 the most recently completed fiscal year shall be provided to all
28 prospective purchasers. If the enterprise has existed for less than
29 one year, reviewed financials of a partial year may be substituted
30 for the previous year's financial statements.

31 ~~(D)~~

32 (E) A written statement of information about any material legal
33 proceedings involving the ~~company~~ issuer or its officers and
34 directors.

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

(7)

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

(8)

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

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

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

(2) The issuer is an agricultural enterprise that is majority controlled by one or more individuals who are farmers and actively engaged in the agricultural enterprise or the issuer is controlled by a nonprofit ~~organization.~~ *public benefit corporation.*

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

(4) (A) The aggregate amount of the issuer's securities held by any purchaser pursuant to this subdivision does not exceed five thousand dollars (\$5,000), if the purchaser signs and provides to

1 the issuer a statement verifying that the purchaser has a minimum
2 annual gross income of ~~fifty thousand dollars (\$50,000)~~ *one*
3 *hundred thousand dollars (\$100,000)* or a minimum net worth of
4 ~~one two hundred thousand dollars (\$100,000)~~ *(\$200,000)*. The
5 aggregate amount of securities sold pursuant to this subdivision
6 to any purchaser who does not sign this statement shall not exceed
7 one thousand dollars (\$1,000).

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

12 (5) The issuer may receive a greater amount from any purchaser
13 as the commissioner may provide by rule or order, or as allowed
14 by law if the purchaser is an accredited investor, as defined in
15 Section 230.501 of Title 17 of the Code of Federal Regulations.
16 *The aggregate amount of securities sold by the issuer to any*
17 *purchaser who is an accredited investor does not exceed 5 percent*
18 *of that investor's net worth.*

19 (6) In the case of real property purchases of land, the issuer sets
20 aside in a separate third-party escrow account all funds raised as
21 part of the offering, to be held in escrow until the issuer has entered
22 into a contract to purchase a property. If the issuer does not enter
23 into a contract to purchase a property within two years of the
24 effective date of the offering, the issuer shall return all funds to
25 the purchasers.

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

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

36 (9) The commissioner shall by rule require the issuer to file a
37 notice of transactions under this subdivision. The issuer shall file
38 the notice of transaction and attach all documents required in
39 paragraph (10). *The exemption from qualification afforded by this*
40 *subdivision is unavailable if an issuer fails to file the notice within*

1 *a time period specified by the commissioner by rule. Neither the*
2 *filing of the notice nor the failure by the commissioner to comment*
3 *thereon precludes the commissioner from taking any action that*
4 *the commissioner deems necessary or appropriate under this*
5 *division with respect to the offer and sale of the securities.*

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

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

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

13 (ii) Potential purchasers should review information about the
14 enterprise and offering, and consider the terms and risks of this
15 offering before investing. After reviewing the financial information,
16 description of the business, activities, risk factors, and development
17 timeline, potential purchasers should consider whether success of
18 the enterprise is realistic.

19 (iii) No government regulator is recommending these securities.
20 No government regulator has verified that this document is accurate
21 or determined that it is adequate. The Commissioner of Business
22 Oversight has in no way passed upon the merits or qualifications
23 of, or recommended or given approval to, any person, security, or
24 transaction associated with this offering.

25 ~~(iv) Where the goal of the issuer in conducting the offering is~~
26 ~~to purchase farmland, the offering must state “The company~~
27 ~~described in this disclosure form is seeking to purchase farmland.”~~

28 ~~(v) If the sum of the investment commitments received by the~~
29 ~~company does not amount to a sum sufficient to purchase farmland~~
30 ~~by [insert date two years after beginning of offering], your~~
31 ~~investment in the company will be returned to you after 60 days~~
32 ~~to the most recent address provided.~~

33 *(iv) The company described in this disclosure form is seeking*
34 *to raise at least [minimum amount sought by issuer]. Investors’*
35 *funds will be placed into a third-party escrow account until that*
36 *minimum amount is raised. If [issuer] does not raise [minimum*
37 *amount sought] by [date that is no greater than one year following*
38 *the start of the offering], your investment will be returned to you*
39 *within 30 days following that date. It is your responsibility to notify*
40 *the issuer if your address changes, to ensure you receive any refund*

1 *due to you. Notification regarding a change in address may be*
2 *made by either of the following methods: [insert at least two*
3 *methods by which the issuer may be contacted regarding a change*
4 *in address].*

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

15 (C) If the property to be purchased has been identified, a
16 description and address of the property to be purchased, an
17 appraisal of the property completed within the last year *by a*
18 *California licensed or certified appraiser*, and a description of all
19 improvements to be made on the property in order to make it viable
20 for agricultural use.

21 (D) If the property to be purchased has not been identified, a
22 description of the size, location, estimated costs, and characteristics
23 of the property that the issuer is seeking.

24 (E) The income tax returns filed by the issuer for the most
25 recently completed year, if any.

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

32 (G) A written statement of information about any material legal
33 proceedings involving the ~~company~~ *issuer* or its officers and
34 directors.

35 ~~(11) This exemption cannot be used to raise funds for an~~
36 ~~enterprise dependent upon the creation of a product or technology~~
37 ~~for which no fully functional prototype has been made in advance~~
38 ~~of the public offering of securities. Securities offerings made to~~
39 ~~produce a newly invented product must have a fully functional~~
40 ~~prototype. The prototype must be demonstrated in person to any~~

1 ~~potential investor upon request, or, to satisfy many requests for~~
2 ~~demonstration, the issuer may schedule several demonstrations~~
3 ~~throughout the offering and announce the dates and times in~~
4 ~~advance to prospective purchasers along with the materials~~
5 ~~described in paragraph (10).~~

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

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

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

21 (1) At least 75 percent of amounts raised through the offering
22 will be reserved or allocated to the purchase of solar photovoltaic
23 ~~panels and related equipment or wind turbines and related~~
24 ~~equipment.~~ *panels, wind turbines, or equipment necessary for the*
25 *storage and transmission of energy generated by the solar panels*
26 *or wind turbines.*

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

28 (A) The issuer is a cooperative corporation or a nonprofit mutual
29 benefit corporation ~~with the purpose of developing and operating~~
30 ~~one or more facilities to generate electricity for its members to~~
31 ~~install solar panels or wind turbines for its members, either by~~
32 ~~selling or leasing panels to members, or to arrange or allocate net~~
33 ~~metering credits among members.~~ *one or more of the following*
34 *purposes:*

35 *(i) Developing, operating, or developing and operating facilities*
36 *that produce solar or wind energy for its members.*

37 *(ii) Selling or leasing solar photovoltaic panels or wind turbines*
38 *to its members or installing solar photovoltaic panels or wind*
39 *turbines for its members.*

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

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

6 (C) The issuer is a nonprofit public benefit corporation with the
7 purpose of developing and operating one or more facilities to
8 generate electricity in a single city and for residents of that city,
9 or within a similarly limited geographic area approved by the
10 commissioner.

11 (D) The issuer is an entity owned or entirely controlled by
12 tenants in multitenant housing, and the issuer has entered into a
13 contract with the owner of the property to install solar panels on
14 the property on which the multitenant housing is located.

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

18 (4) (A) The aggregate amount of the issuer's securities held by
19 any purchaser pursuant to this subdivision does not exceed five
20 thousand dollars (\$5,000), so long as the purchaser signs and
21 provides to the issuer a statement verifying that the purchaser has
22 a minimum annual gross income of ~~fifty thousand dollars (\$50,000)~~
23 *one hundred thousand dollars (\$100,000)* or a minimum net worth
24 of ~~one two hundred thousand dollars (\$100,000)~~ *(\$200,000)*. The
25 aggregate amount of securities sold to any purchaser who does not
26 sign this statement shall not exceed one thousand dollars (\$1,000).

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

31 (5) The issuer may receive a greater amount from any purchaser
32 as the commissioner may provide by rule or order, or as allowed
33 by law if the purchaser is an accredited investor, as defined in
34 Section 230.501 of Title 17 of the Code of Federal Regulations.
35 *The aggregate amount of securities sold by the issuer to any*
36 *purchaser who is an accredited investor does not exceed 5 percent*
37 *of that investor's net worth.*

38 (6) Each purchaser represents that the purchaser is purchasing
39 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 (7) For purposes of this section, 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 other
6 organization that was not specifically formed for the purpose of
7 purchasing the security offered in reliance upon this exemption,
8 is counted as one person.

9 (8) The commissioner shall by rule require the issuer to file a
10 notice of transactions under this subdivision. The issuer shall file
11 the notice of transaction and attach all documents required in
12 paragraph (9). *The exemption from qualification afforded by this*
13 *subdivision is unavailable if an issuer fails to file the notice within*
14 *a time period specified by the commissioner by rule. Neither the*
15 *filing of the notice nor the failure by the commissioner to comment*
16 *thereon precludes the commissioner from taking any action that*
17 *the commissioner deems necessary or appropriate under this*
18 *division with respect to the offer and sale of the securities.*

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

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

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

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

32 (iii) No government regulator is recommending these securities.
33 No government regulator has verified that this document is accurate
34 or determined that it is adequate. The Commissioner of Business
35 Oversight has in no way passed upon the merits or qualifications
36 of, or recommended or given approval to, any person, security, or
37 transaction associated with this offering.

38 (iv) *The company described in this disclosure form is seeking*
39 *to raise at least [minimum amount sought by issuer]. Investors'*
40 *funds will be placed into a third-party escrow account until that*

1 *minimum amount is raised. If [issuer] does not raise [minimum*
2 *amount sought] by [date that is no greater than one year following*
3 *the start of the offering], your investment will be returned to you*
4 *within 30 days following that date. It is your responsibility to notify*
5 *the issuer if your address changes, to ensure you receive any refund*
6 *due to you. Notification regarding a change in address may be*
7 *made by either of the following methods: [insert at least two*
8 *methods by which the issuer may be contacted regarding a change*
9 *in address].*

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

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

23 ~~(C)~~

24 (D) The financial statements of the issuer for the most recent
25 completed fiscal year, if the enterprise has existed for one year or
26 longer, and the current fiscal year to date, prepared in accordance
27 with generally accepted accounting principles, and certified by the
28 principal executive officer of the issuer to be true and complete in
29 all material respects.

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

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

38 ~~(10)~~

39 (11) This exemption cannot be used to raise funds for an
40 enterprise dependent upon the creation of a product or technology

1 for which no fully functional prototype has been made in advance
2 of the public offering of securities. Securities offerings made to
3 produce a newly invented product must have a fully functional
4 prototype. The prototype must be demonstrated in person to any
5 potential investor upon request, or, to satisfy many requests for
6 demonstration, the issuer may schedule several demonstrations
7 throughout the offering and announce the dates and times in
8 advance to prospective purchasers along with the materials
9 described in paragraph (8).

10 ~~(11)~~

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