

AMENDED IN ASSEMBLY APRIL 23, 1997

AMENDED IN ASSEMBLY APRIL 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 721

Introduced by Assembly Member Firestone

February 26, 1997

An act to amend Sections 25100, 25101, 25230, 25532, and 25608, *to amend the heading of Chapter 1 (commencing with Section 25100) of Part 2 of, and the heading of Part 2 (commencing with Section 25100) of, Division 1 of, Title 4 of,* and to add Sections 25009.5, 25100.1, 25101.1, 25102.1, 25230.1, and 25608.1 to, the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 721, as amended, Firestone. Securities: federal regulation.

(1) The California Corporate Securities Law of 1968 (hereafter California Securities Law) defines an investment adviser as a person who is compensated for advising other persons as to the value of securities or the advisability of investing, purchasing or selling securities, or who publishes evaluations of securities. It is unlawful to act as an investment adviser without obtaining a certificate from the Commissioner of Corporations.

This bill would define an investment adviser representative or associated person of an investment adviser, and would prohibit a person from engaging in certain activities on behalf

of the investment adviser unless the investment adviser and that person comply with the commissioner's rules. The bill would also exempt an investment adviser registered under the federal Investment Adviser's Act of 1940 from the requirement of obtaining a certificate from the commissioner.

(2) *The California Securities Law* requires the qualification of a security before it can be offered or sold in an issuer or nonissuer transaction in this state. The federal Capital Markets Efficiency Act of 1996 provides that no law, rule, regulation, or other administrative action of a state requiring qualification of a security may apply to a covered security, as defined by federal law.

Certain classes of securities are exempt from the state qualification requirement, including any security issued by an issuer registered as an open-end management company or unit investment trust, if certain requirements are met. In addition, a security issued by an issuer listed on a national securities exchange not certified by the commissioner, a security issued by an issuer of a security registered or exempt from registration under specified provisions of federal law, or a security registered under the Investment Company Act of 1940, if certain forms are filed with the commissioner are also exempt.

This bill would delete the above exemptions. The bill would also exempt from qualification a security that is ~~defined as a covered security by~~ *exempt from registration under* the federal Securities Act of 1933, a transaction involving a qualified purchaser, and the purchase or sale of a security exempt from registration under specified provisions of federal law, if certain requirements are met, including filing forms with the commissioner. The bill would impose fees for the filing of these forms.

(3) Existing law authorizes the commissioner to order an issuer to stop offering or selling a security that is subject to qualification and is not qualified.

This bill would additionally authorize the commissioner to order an issuer to stop offering or selling a security that must meet certain requirements in order to be exempt from qualification, if those requirements have not been met.

The bill would also make related and conforming changes.



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 25009.5 is added to the
2 Corporations Code, to read:

3 25009.5. “Investment adviser representative” or
4 “associated person of an investment adviser” means any
5 partner, officer, director of (or a person occupying a
6 similar status or performing similar functions) or other
7 individual, except clerical or ministerial personnel, who
8 is employed by or associated with, or subject to the
9 supervision and control of, an investment adviser that has
10 obtained a certificate or that is required to obtain a
11 certificate under this law, or who has a place of business
12 located in this state and is employed by or associated with,
13 or subject to the supervision and control of, a person
14 registered under Section 203 of the Investment Advisers
15 Act of 1940 or a person excluded from the definition of
16 “investment adviser” under Section 202(a)(11) of the
17 Investment Advisers Act of 1940; and who does any of the
18 following:

19 (a) Makes any recommendations or otherwise renders
20 advice regarding securities.

21 (b) Manages accounts or portfolios of clients.

22 (c) Determines which recommendation or advice
23 regarding securities should be given.

24 (d) Solicits, offers, or negotiates for the sale or sells
25 investment advisory services.

26 (e) Supervises employees who perform any of the
27 foregoing.

28 SEC. 2. *The heading of Part 2 (commencing with*
29 *Section 25100) of Division 1 of Title 4 of the Corporations*
30 *Code is amended to read:*

31



1 PART 2. QUALIFICATION OF AND FILING
2 REQUIREMENTS FOR THE SALE OF SECURITIES

3
4 SEC. 3. The heading of Chapter 1 (commencing with
5 Section 25100) of Part 2 of Division 1 of Title 4 of the
6 Corporations Code is amended to read:

7
8 CHAPTER 1. EXEMPTIONS AND CERTAIN SECURITIES AND
9 TRANSACTIONS NOT SUBJECT TO QUALIFICATION

10
11 SEC. 4. Section 25100 of the Corporations Code, as
12 amended by Chapter 1064 of the Statutes of 1996, is
13 amended to read:

14 25100. The following securities are exempted from
15 Sections 25110, 25120, and 25130:

16 (a) Any security (including a revenue obligation)
17 issued or guaranteed by the United States, any state, any
18 city, county, city and county, public district, public
19 authority, public corporation, public entity, or political
20 subdivision of a state or any agency or corporate or other
21 instrumentality of any one or more of the foregoing; or
22 any certificate of deposit for any of the foregoing.

23 (b) Any security issued or guaranteed by the
24 Dominion of Canada, any Canadian province, any
25 political subdivision or municipality of that province, or
26 by any other foreign government with which the United
27 States currently maintains diplomatic relations, if the
28 security is recognized as a valid obligation by the issuer
29 or guarantor; or any certificate of deposit for any of the
30 foregoing.

31 (c) Any security issued or guaranteed by and
32 representing an interest in or a direct obligation of a
33 national bank or a bank or trust company incorporated
34 under the laws of this state, and any security issued by a
35 bank to one or more other banks and representing an
36 interest in an asset of the issuing bank.

37 (d) Any security issued or guaranteed by a federal
38 savings association or federal savings bank or federal land
39 bank or joint land bank or national farm loan association
40 or by any savings association, as defined in subdivision (a)



1 of Section 5102 of the Financial Code, which is subject to
2 the supervision and regulation of the Commissioner of
3 Financial Institutions of this state.

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

11 (f) Any security consisting of any interest in all or
12 portions of a parcel or parcels of real property which are
13 subdivided lands or a subdivision or in a real estate
14 development; provided that the exemption in this
15 subdivision shall not be applicable to any investment
16 contract sold or offered for sale with, or as part of, any
17 such interest, or to any person engaged in the business of
18 selling, distributing, or supplying water for irrigation
19 purposes or domestic use which is not a public utility.

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

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

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



1 registration with or authorization of issuance by that
2 authority.

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

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

33 (l) Any note, draft, bill of exchange, or banker’s
34 acceptance which is freely transferable and of prime
35 quality, arises out of a current transaction or the proceeds
36 of which have been or are to be used for current
37 transactions, and which evidences an obligation to pay
38 cash within nine months of the date of issuance, exclusive
39 of days of grace, or any renewal of that paper which is
40 likewise limited, or any guarantee of that paper or of any



1 such renewal, provided that the paper is not offered to
2 the public in amounts of less than twenty-five thousand
3 dollars (\$25,000) in the aggregate to any one purchaser.
4 In addition, the commissioner may, by rule or order,
5 exempt any issuer of any notes, drafts, bills of exchange
6 or banker's acceptances from qualification of those
7 securities when the commissioner finds that the
8 qualification is not necessary or appropriate in the public
9 interest or for the protection of investors.

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

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

28 (o) Any security listed or approved for listing upon
29 notice of issuance on a national securities exchange or
30 designated or approved for designation upon notice of
31 issuance as a national market system security on an
32 interdealer quotation system by the National Association
33 of Securities Dealers, Inc., if the exchange or interdealer
34 quotation system has been certified by rule or order of the
35 commissioner and any warrant or right to purchase or
36 subscribe to the security. The exemption afforded by this
37 subdivision does not apply to securities listed or
38 designated, or approved for listing or designation upon
39 notice of issuance, in a rollup transaction unless the rollup



1 transaction is an eligible rollup transaction as defined in
2 Section 25014.7.

3 That certification of any exchange or system shall be
4 made by the commissioner upon the written request of
5 the exchange or system if the commissioner finds that the
6 exchange or system: (i) in acting on applications for
7 listing of common stock substantially applies the
8 minimum standards set forth in either alternative (A) or
9 (B) of paragraph (1), and (ii) in considering suspension
10 or removal from listing or designation, substantially
11 applies each of the criteria set forth in paragraph (2).

12 (1) Listing standards:

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

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

18 (iii) Minimum public distribution of 500,000 shares
19 (exclusive of the holdings of officers, directors,
20 controlling shareholders, and other concentrated or
21 family holdings), together with a minimum of 800 public
22 holders or minimum public distribution of 1,000,000
23 shares together with a minimum of 400 public holders.
24 The exchange or system may also consider the listing or
25 designation of a company's securities if the company has
26 a minimum of 500,000 shares publicly held, a minimum of
27 400 shareholders and daily trading volume in the issue has
28 been approximately 2,000 shares or more for the six
29 months preceding the date of application. In evaluating
30 the suitability of an issue for listing or designation under
31 this trading provision, the exchange or system shall
32 review the nature and frequency of that activity and any
33 other factors as it may determine to be relevant in
34 ascertaining whether the issue is suitable for trading. A
35 security which trades infrequently shall not be
36 considered for listing or designation under this paragraph
37 even though average daily volume amounts to 2,000
38 shares per day or more.

39 Companies whose securities are concentrated in a
40 limited geographical area, or whose securities are largely



1 held in block by institutional investors, normally may not
2 be considered eligible for listing or designation unless the
3 public distribution appreciably exceeds 500,000 shares.

4 (iv) Minimum price of three dollars (\$3) per share for
5 a reasonable period of time prior to the filing of a listing
6 or designation application; provided, however, in certain
7 instances an exchange or system may favorably consider
8 listing an issue selling for less than three dollars (\$3) per
9 share after considering all pertinent factors, including
10 market conditions in general, whether historically the
11 issue has sold above three dollars (\$3) per share, the
12 applicant's capitalization, and the number of outstanding
13 and publicly held shares of the issue.

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

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

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

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

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

23 (2) Criteria for consideration of suspension or removal
24 from listing:

25 (i) If a company which (A) has shareholders' equity of
26 less than one million dollars (\$1,000,000) has sustained net
27 losses in each of its two most recent fiscal years, or (B) has
28 net tangible assets of less than three million dollars
29 (\$3,000,000) and has sustained net losses in three of its
30 four most recent fiscal years.

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

35 (iii) If the total number of shareholders is less than 400
36 or if the number of shareholders of lots of 100 shares or
37 more is less than 300.

38 (iv) If the aggregate market value of shares publicly
39 held is less than seven hundred fifty thousand dollars
40 (\$750,000).



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

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

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

35 A rule or order of certification shall conclusively
36 establish that any security listed or approved for listing
37 upon notice of issuance on any exchange, or designated
38 or approved for designation upon issuance as a national
39 market system security on any interdealer quotation
40 system, named in a rule or order of certification, and any



1 warrant or right to purchase or subscribe to any such
2 security, is exempt under this subdivision until the
3 adoption by the commissioner of any rule or order
4 decertifying the exchange or interdealer quotation
5 system.

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

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

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

37 (2) The commissioner may, in the commissioner's
38 discretion, (A) make ~~such~~ public or private investigations
39 within or outside of this state as the commissioner deems
40 necessary to determine whether any person has violated



1 or is about to violate any provision of Section 1280.7 of the
2 Insurance Code or to aid in the enforcement of Section
3 1280.7, and (B) publish information concerning the
4 violation of Section 1280.7.

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

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

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



1 (6) The cost of any review, examination, audit, or
2 investigation made by the commissioner under Section
3 1280.7 of the Insurance Code shall be paid to the
4 commissioner by the person subject to the review,
5 examination, audit, or investigation, and the
6 commissioner may maintain an action for the recovery of
7 these costs in any court of competent jurisdiction. In
8 determining the cost, the commissioner may use the
9 actual amount of the salary or other compensation paid
10 to the persons making the review, examination, audit, or
11 investigation plus the actual amount of expenses
12 including overhead reasonably incurred in the
13 performance of the work.

14 The recoverable cost of each review, examination,
15 audit, or investigation made by the commissioner under
16 Section 1280.7 of the Insurance Code shall not exceed
17 twenty-five thousand dollars (\$25,000), except that costs
18 exceeding twenty-five thousand dollars (\$25,000) shall be
19 recoverable if the costs are necessary to prevent a
20 violation of any provision of Section 1280.7 of the
21 Insurance Code.

22 (r) Any shares or memberships issued by any
23 corporation organized and existing pursuant to the
24 provisions of Part 2 (commencing with Section 12200) of
25 Division 3 of Title 1, provided the aggregate investment
26 of any shareholder or member in shares or memberships
27 sold pursuant to this subdivision does not exceed three
28 hundred dollars (\$300). This exemption does not apply to
29 the shares or memberships of any such corporation if any
30 promoter thereof expects or intends to make a profit
31 directly or indirectly from any business or activity
32 associated with the corporation or the operation of the
33 corporation or from remuneration, other than reasonable
34 salary, received from the corporation. This exemption
35 does not apply to nonvoting shares or memberships of any
36 such corporation issued to any person who does not
37 possess, and who will not acquire in connection with the
38 issuance of nonvoting shares or memberships, voting
39 power (Section 12253) in the corporation. This
40 exemption also does not apply to shares or memberships



1 issued by a nonprofit cooperative corporation organized
2 to facilitate the creation of an unincorporated
3 interindemnity arrangement that provides
4 indemnification for medical malpractice to its physician
5 and surgeon members as set forth in subdivision (q).

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

9 (1) The pool consists of whole mortgage loans or
10 participation interests in those loans, which loans were
11 originated or acquired in the ordinary course of business
12 by a national bank or federal savings association or federal
13 savings bank having its principal office in this state, by a
14 bank incorporated under the laws of this state or by a
15 savings association as defined in subdivision (a) of Section
16 5102 of the Financial Code and which is subject to the
17 supervision and regulation of the Commissioner of
18 Financial Institutions, and each of which loans at the time
19 of transfer to the pool is an authorized investment for
20 such originating or acquiring institution.

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

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

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

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

34 (t) (1) Any security issued or guaranteed by and
35 representing an interest in or a direct obligation of an
36 industrial loan company incorporated under the laws of
37 the state and authorized by the Commissioner of
38 Financial Institutions to engage in industrial loan
39 business.



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

6 ~~SEC. 3.~~

7 *SEC. 5.* Section 25100.1 is added to the Corporations
8 Code, to read:

9 25100.1. The following securities are not subject to
10 Sections 25110, 25120, and 25130:

11 (a) A security defined as a “covered security”
12 pursuant to Section 18(b)(1) of the Securities Act of 1933
13 (15 U.S.C. 77r).

14 (b) A security issued by an investment company that
15 is registered or that has filed a registration statement
16 under the Investment Company Act of 1940 (15 U.S.C.
17 80a-1) and that is defined as a “covered security”
18 pursuant to Section 18(b)(2) of the Securities Act of 1933,
19 and all the following requirements are met:

20 (1) Prior to any offer or sale in this state there is filed
21 with or paid to the commissioner each of the following:

22 (A) A notice of intention to sell that has been executed
23 by the issuer and that includes the name and address of
24 the issuer and the name of the securities to be offered and
25 sold, and that a consent to service of process is either on
26 file with the commissioner or is attached to the notice.

27 (B) A copy of the current prospectus to be used in the
28 offer and sale of the security.

29 (C) Payment of the notice filing fee provided for in
30 subdivision (a) of Section 25608.1.

31 (2) If any offer or sale is to be made pursuant to Section
32 18(b)(2) of the Securities Act of 1933 and this subdivision
33 more the 12 months after the date the notice was filed
34 under this subdivision, the issuer shall file another notice
35 of intention to sell, a copy of the prospectus the issuer is
36 currently utilizing for the purpose of making that offer,
37 and pay the fee specified in subparagraph (C) of
38 paragraph (2).

39 ~~SEC. 4.~~



1 SEC. 6. Section 25101 of the Corporations Code is
2 amended to read:

3 25101. The following securities are exempt from the
4 provisions of Section 25130:

5 (a) Any security issued by a person that is the issuer of
6 any security listed on a national securities exchange, or
7 designated as a national market system security on an
8 interdealer quotation system by the National Association
9 of Securities Dealers, Inc., if the exchange or system is
10 certified by rule or order of the commissioner.

11 (b) The exemption provided by subdivision (a) does
12 not apply to securities offered pursuant to a registration
13 under the Securities Act of 1933 or pursuant to the
14 exemption afforded by Regulation A under that act if the
15 aggregate offering price of the securities offered
16 pursuant to that exemption exceeds fifty thousand dollars
17 (\$50,000).

18 ~~SEC. 5.~~

19 SEC. 7. Section 25101.1 is added to the Corporations
20 Code, to read:

21 25101.1. The following securities are not subject to
22 ~~Section Sections 25110, 25120, and 25130:~~

23 (a) A security that is ~~defined as a “covered security”~~
24 ~~pursuant to Section 18(b)(4)(A) of the Securities Act of~~
25 ~~1933 (15 U.S.C. 77r), is exempt from registration under~~
26 ~~offered or sold in a transaction that is exempt from~~
27 ~~registration under Section 4(1) of the Securities Act of~~
28 ~~1933 (15 U.S.C. 77r) pursuant to Section 18(b)(4)(A) of~~
29 that act, if the issuer, other than a foreign (other country)
30 issuer described in subdivision (b), of the security files the
31 required reports with the Securities and Exchange
32 Commission pursuant to Section 13 or 15(d) of the
33 Securities Exchange Act of 1934, (15 U.S.C. 78a et seq.),
34 and all the following requirements are met:

35 (1) An annual notice is filed *by the issuer* with the
36 commissioner prior to an offer in this state, along with any
37 documents filed with the Securities and Exchange
38 Commission in any annual or periodic reports that the
39 commissioner by rule or order deems appropriate.



1 (2) A consent to service of process under Section 25165
2 is filed with the notice required in paragraph (1).

3 ~~(3) Payment of the notice filing fee provided for in~~
4 ~~subdivision (b) of Section 25608.1.~~

5 (b) A security of a foreign (other country) issuer that
6 avails itself of the exemption from registration under
7 Section 12(g)(3) of the Securities Exchange Act of 1934
8 is subject to the qualification requirements of ~~Section~~
9 *Sections 25110, 25120, and 25130*, unless the issuer is a
10 reporting company under the Securities Exchange Act of
11 1934 and files the required reports under Section 13 or
12 15(d) of that act.

13 ~~SEC. 6.~~

14 *SEC. 8.* Section 25102.1 is added to the Corporations
15 Code, to read:

16 25102.1. The following transactions are not subject to
17 Sections 25110, 25120, and 25130:

18 (a) Any offer or sale of a security to a “qualified
19 purchaser” as that term is defined by rule of the Securities
20 and Exchange Commission pursuant to Section 18(b)(3)
21 of the Securities Act of 1933 (15 U.S.C. 77r), ~~if~~ *and* all the
22 following requirements are met:

23 (1) A notice is filed with the commissioner prior to an
24 offer in this state, along with any documents filed with the
25 Securities and Exchange Commission in annual or
26 periodic reports that the commissioner by rule or order
27 deems appropriate.

28 (2) A consent to service of process under Section 25165
29 is filed with the notice required by paragraph (1).

30 (3) Payment of a notice filing fee provided for in
31 subdivision ~~(e)~~ (b) of Section 25608.1.

32 (b) Any offer and sale of a security with respect to a
33 transaction that is exempt from registration under
34 *Sections 4(3) and 4(4) of the Securities Act of 1933*
35 pursuant to Section 18(b)(4)(A) and (B) of that act.

36 (c) (1) Any offer or sale of a security with respect to
37 a transaction that is exempt from registration under the
38 Securities Act of 1933 pursuant to Section 18(b)(4)(C) of
39 that act, ~~if~~ *and* all the following requirements are met:



1 (A) A notice is filed with the commissioner prior to an
2 offer in this state, along with any documents filed with the
3 Securities and Exchange Commission in annual or
4 periodic reports that the commissioner by rule or order
5 deems appropriate.

6 (B) A consent to service of process under Section
7 25165 is filed with the notice required by paragraph (1).

8 (C) Payment of the notice filing fee provided for in
9 subdivision-~~(d)~~ (c) of Section 25608.1.

10 (2) The requirements of subparagraphs (A), (B), and
11 (C) of paragraph (1) of this subdivision do not apply to
12 securities offered and sold to the class of investors or in the
13 transactions described in subdivisions (d), (g), (i), and
14 (k) of Section 25102, or to the class of investors or in the
15 transactions described in subdivisions (c), (d), (e), and
16 (f) of Section 25104.

17 (d) Any offer or sale of a security with respect to a
18 transaction that is exempt from registration under the
19 Securities Act of 1933 pursuant to Section 18(b)(4)(D) of
20 that act, ~~if~~ *and* all the following requirements are met:

21 (1) A notice in the form of a copy of the completed
22 Form D (17 C.F.R. 239.500) filed with the Securities and
23 Exchange Commission is filed with the commissioner
24 within 15 days of the first sale in this state, along with
25 documents filed with the Securities and Exchange
26 Commission in annual or periodic reports that the
27 commissioner by rule or order deems appropriate.

28 (2) A consent to service of process under Section 25165
29 is filed with the notice as required by paragraph (1).

30 (3) Payment of the notice filing fee provided for in
31 subdivision-~~(e)~~ (d) of Section 25608.1.

32 (e) Notwithstanding the language of subdivisions (a),
33 (b), (c), and (d) of this section, an issuer may file an
34 application for qualification pursuant to Sections 25111,
35 25112, 25113, 25121, 25131, or 25142.

36 ~~SEC. 7.~~

37 *SEC. 9.* Section 25230 of the Corporations Code is
38 amended to read:

39 25230. (a) It is unlawful for any investment adviser to
40 conduct ~~his or her~~ business as an investment adviser in



1 this state unless ~~he or she~~ *the investment adviser* has first
2 applied for and secured from the commissioner a
3 certificate, then in effect, authorizing ~~him or her to do so~~
4 ~~or unless he~~ *the investment adviser to do so or unless the*
5 *investment adviser* is exempted by the provisions of
6 Chapter 1 (commencing with Section 25200) of this part
7 *or unless the investment adviser is subject to Section*
8 *25230.1.*

9 (b) No person, on behalf of an investment adviser that
10 has obtained a certificate pursuant to Section 25231, may,
11 in this state: offer or negotiate for the sale of investment
12 advisory services of the investment adviser; determine
13 which recommendations shall be made to, make
14 recommendations to, or manage the accounts of, clients
15 of the investment adviser; or determine the reports or
16 analyses concerning securities to be published by the
17 investment adviser, unless the investment adviser and
18 that person have complied with rules that the
19 commissioner may adopt for the qualification and
20 employment of those persons.

21 ~~SEC. 8.~~

22 *SEC. 10.* Section 25230.1 is added to the Corporations
23 Code, to read:

24 25230.1. (a) A person that (1) is registered under
25 Section 203 of the Investment Advisers Act of 1940 as an
26 investment adviser or (2) is not registered under Section
27 203 of the Investment Advisers Act of 1940 because the
28 person is excepted from the definition of an investment
29 adviser under Section 202(a)(11) of that act, is not subject
30 to the requirement of obtaining a certificate under
31 Section 25230, *but may not conduct business in this state*
32 *unless the person first complies with subdivision (b).* An
33 investment adviser representative that has a place of
34 business in this state is required to obtain a certificate
35 pursuant to Section 25231.

36 (b) A person subject to subdivision (a) shall:

37 (1) File with the commissioner an annual notice, along
38 with documents filed with the Securities and Exchange
39 Commission pursuant to the securities laws that the



1 commissioner by rule or order deems appropriate, and a
2 consent to service of process under Section 25240.

3 (2) Pay the notice filing fee provided for in subdivision
4 ~~(f)~~ (e) of Section 25608.1.

5 (c) No investment adviser representative, on behalf of
6 an investment adviser subject to subdivision (a) may, in
7 this state: offer or negotiate for the sale of investment
8 advisory services of the investment adviser; determine
9 which recommendations shall be made to, make
10 recommendations to, or manage the accounts of, clients
11 of the investment adviser; or determine the reports or
12 analysis concerning securities to be published by the
13 investment adviser, unless the investment adviser
14 representative has complied with rules that the
15 commissioner may adopt for the qualification and
16 employment of investment adviser representatives.

17 (d) Subdivision (a) does not prohibit the
18 commissioner from investigating and bringing
19 enforcement actions with respect to fraud or deceit,
20 including and without limitation, fraud or deceit under
21 Sections 25235 and 25238 and the rules of the
22 commissioner adopted thereunder, against an
23 investment adviser or an investment adviser
24 representative.

25 ~~SEC. 9.~~

26 *SEC. 11.* Section 25532 of the Corporations Code is
27 amended to read:

28 25532. (a) If, in the opinion of the commissioner, (1)
29 the sale of a security is subject to qualification under this
30 law and it is being or has been offered or sold without first
31 being qualified, the commissioner may order the issuer or
32 offeror of the security to desist and refrain from the
33 further offer or sale of the security until qualification has
34 been made under this law or (2) the sale of a security is
35 subject to the requirements of Section 25100.1, 25101.1, or
36 25102.1 and the security is being or has been offered or
37 sold without first meeting the requirements of those
38 sections, the commissioner may order the issuer or offerer
39 of that security to desist and refrain from the further offer



1 or sale of the security until those requirements have been
2 met.

3 (b) If, in the opinion of the commissioner, a person is
4 acting as a broker-dealer or investment adviser, or
5 engaging in broker-dealer or investment adviser
6 activities, in violation of Section 25210, 25230 or 25230.1,
7 the commissioner may order that person to desist and
8 refrain from the activity until the person has been
9 appropriately licensed *or the required filing has been*
10 *made* under this law.

11 (c) If, in the opinion of the commissioner, a person has
12 violated or is violating Section 25401, the commissioner
13 may order that person to *desist and* refrain from the
14 violation.

15 (d) If, after an order has been made under subdivision
16 (a), (b), or (c), a request for hearing is filed in writing
17 within one year of the date of service of the order by the
18 person to whom the order was directed, a hearing shall be
19 held in accordance with provisions of the Administrative
20 Procedure Act, Chapter 5 (commencing with Section
21 11500) of Part 1 of Division 3 of Title 2 of the Government
22 Code, and the commissioner shall have all of the powers
23 granted under that chapter. Unless the hearing is
24 commenced within 15 business days after the request is
25 filed (or the person affected consents to a later date), the
26 order is rescinded.

27 If that person fails to file a written request for a hearing
28 within one year from the date of service of the order, the
29 order shall be deemed a final order of the commissioner
30 and is not subject to review by any court or agency,
31 notwithstanding Section 25609.

32 ~~SEC. 10.~~

33 *SEC. 12.* Section 25608 of the Corporations Code is
34 amended to read:

35 25608. (a) The commissioner shall charge and collect
36 the fees fixed in this section. All fees charged and
37 collected under this section shall be transmitted to the
38 Treasurer at least weekly, accompanied by a detailed
39 statement thereof and shall be credited to the State
40 Corporations Fund.



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

4 (c) The fee for filing a notice pursuant to paragraph
5 (5) of subdivision (h) of Section 25102 and the fee for
6 filing a notice pursuant to paragraph (4) of subdivision (f)
7 of Section 25102, in addition to the fee prescribed in those
8 paragraphs, if applicable, shall be determined based on
9 the value of the securities proposed to be sold in the
10 transaction for which the notice is filed and in accordance
11 with subdivision (g), and shall be as follows:
12

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

20
21 (d) The fee for filing an application for designation of
22 an issuer pursuant to subdivision (k) of Section 25100 is
23 fifty dollars (\$50).

24 (e) The fee for filing an application for qualification of
25 the sale of securities by notification under Section 25112
26 or by permit under paragraph (1) of subdivision (b) of
27 Section 25113 (except applications for qualification by
28 permit of the sale of any guarantee of any security, the
29 fees for which applications are fixed in subdivision (k))
30 is two hundred dollars (\$200) plus one-fifth of 1 percent
31 of the aggregate value of the securities sought to be sold
32 in this state up to a maximum aggregate fee of two
33 thousand five hundred dollars (\$2,500).

34 The fee for filing a small company application for
35 qualification of the sale of securities by permit under
36 paragraph (2) of subdivision (b) of Section 25113 is two
37 thousand five hundred dollars (\$2,500). In the case where
38 the costs of processing a small company application
39 exceed the filing fee, an additional fee shall be charged,
40 not to exceed one thousand dollars (\$1,000), over and



1 above the filing fee based on the costs of the salary or
2 other compensation paid to persons processing the
3 application plus overhead costs reasonably incurred in
4 the performance of the work. In determining the costs,
5 the commissioner may use the estimated average hourly
6 cost for all persons processing applications for the fiscal
7 year.

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

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

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

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

26 (3) The value of a warrant or right to purchase or
27 subscribe to another security of the same or another issuer
28 shall be an amount equal to the consideration to be paid
29 for that warrant or right plus an amount equal to the
30 consideration to be paid upon purchase of the additional
31 securities, provided that if the latter amount is not
32 determinable at the time of qualification, that amount
33 shall then be the value of the additional securities as
34 determined by the commissioner.

35 (4) In the case of a share dividend where the
36 shareholders are given an option to accept either cash or
37 additional shares of common stock, the value of the
38 securities to be sold shall be the maximum amount of cash
39 that would be payable in the event that all shareholders
40 elected to accept cash.



- 1 (h) The fee for filing an application for qualification of
2 the sale of securities by permit under Section 25121 is:
- 3 (1) Two hundred dollars (\$200) in connection with
4 any change (including any stock split or reverse stock
5 split or stock dividend, except a stock dividend where the
6 shareholders are given an option to accept either cash or
7 additional shares of common stock) in the rights,
8 preferences, privileges, or restrictions of or on
9 outstanding securities.
- 10 (2) Two hundred dollars (\$200) plus one-fifth of 1
11 percent of the value, as alleged in the application, or the
12 actual value, as determined by the commissioner, of the
13 consideration to be received in exchange therefor, up to
14 a maximum aggregate fee of two thousand five hundred
15 dollars (\$2,500), in any exchange of securities by the
16 issuer with its existing security holders exclusively, or in
17 any exchange in connection with any merger or
18 consolidation or purchase of corporate assets in
19 consideration of the issuance of securities.
- 20 (i) The fee for filing an application for qualification of
21 the sale of securities by notification under Section 25131
22 shall be one hundred dollars (\$100).
- 23 (j) The fee for an application for the removal of any
24 condition under Section 25141 is fifty dollars (\$50).
- 25 (k) The fee for filing any application for a permit to
26 execute or issue any guarantee of any security is fifty
27 dollars (\$50).
- 28 (l) The fee for acting as escrow holder for securities
29 under Section 25149 is fifty dollars (\$50). In addition, a fee
30 of two dollars and fifty cents (\$2.50) shall be paid for the
31 deposit with the commissioner of each new certificate or
32 other document resulting from a transfer in escrow.
- 33 (m) The fee for filing an application for an order (1)
34 consenting to the transfer in escrow of securities or (2)
35 consenting to the transfer of securities subject to any
36 condition imposed by the commissioner requiring the
37 commissioner's consent to the transfer is twenty dollars
38 (\$20) for each transfer.
- 39 (n) The filing fee for an amendment to an application
40 filed after the effective date of the qualification of the sale



1 of securities is fifty dollars (\$50) plus any additional fee
2 that would have been required to be paid with the
3 original application for qualification of the sale of
4 securities under this section if the matters set forth in the
5 amendment had been included in the original
6 application.

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

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

24 (3) On or before the 30th day of May in each year, the
25 commissioner shall notify each broker-dealer by mail of
26 the amount assessed and levied against it and that amount
27 shall be paid within 20 days thereafter. If payment is not
28 made within 20 days, the commissioner shall assess and
29 collect a penalty in addition to the assessment, of 1
30 percent of the assessment for each month or part of a
31 month that the payment is delayed or withheld.

32 (4) In the levying and collection of the assessment, a
33 broker-dealer shall not be assessed for, nor be permitted
34 to pay, less than seventy-five dollars (\$75) per year.

35 (5) In determining the amount assessed, the
36 commissioner shall consider all appropriations from the
37 State Corporations Fund for the support of the
38 broker-dealer program under this division and all
39 reimbursements applicable to the administration of the
40 broker-dealer program under this division.



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

15 (p) The commissioner shall charge a fee of twenty-five
16 dollars (\$25) for the filing of a notice or report required
17 by rule adopted pursuant to subdivision (b) of Section
18 25210 or subdivision (b) of Section 25230.

19 (q) The fee for filing an application for an investment
20 adviser under Section 25231 is one hundred twenty-five
21 dollars (\$125), and payment of this amount shall keep the
22 certificate, if granted, in effect during the calendar year
23 during which it is granted. Every investment adviser who
24 has secured from the commissioner a certificate shall, in
25 order to keep the certificate in effect for an additional
26 period, pay a renewal fee of one hundred twenty-five
27 dollars (\$125) on or before the 15th day of December
28 preceding the additional period.

29 (r) The fee for any examination, audit, or investigation
30 is the amount of the salary or other compensation paid to
31 the persons making the examination, audit, or
32 investigation plus the amount of expenses including
33 overhead reasonably incurred in the performance of the
34 work. In determining the costs associated with an
35 examination, audit, or investigation, the commissioner
36 may use the estimated average hourly cost for all persons
37 performing examinations, audits, or investigations for the
38 fiscal year.

39 (s) The fee for any hearing held by the commissioner
40 pursuant to Section 25142 shall be the sum determined by



1 the commissioner to cover the actual expense of noticing
2 and holding the hearing.

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

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

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

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

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

27 (y) The fee for filing a notice of transaction under
28 subdivision (o) of Section 25102 shall be the fee for filing
29 an application for qualification of the sale of securities by
30 permit under paragraph (1) of subdivision (b) of Section
31 25113 as set forth in subdivision (e) of this section.

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

35 ~~SEC. 11.~~

36 *SEC. 13.* Section 25608.1 is added to the Corporations
37 Code, to read:

38 25608.1. (a) The fee for an investment company
39 filing a notice pursuant to subdivision (b) of Section
40 25100.1 is two thousand five hundred dollars (\$2,500).



1 ~~(b) The fee for an issuer filing a notice pursuant to~~
2 ~~subdivision (a) of Section 25101.1 is three hundred dollars~~
3 ~~(\$300).~~
4 ~~(e)~~The fee for an issuer filing a notice pursuant to
5 subdivision (a) of Section 25102.1 is six hundred dollars
6 (\$600).
7 ~~(d)~~
8 (c) The fee for an issuer filing a notice pursuant to
9 subdivision (c) of Section 25102.1 is two thousand five
10 hundred dollars (\$2,500).
11 ~~(e)~~
12 (d) The fee for an issuer filing a notice pursuant to
13 subdivision (d) of Section 25102.1 is three hundred dollars
14 (\$300).
15 ~~(f)~~
16 (e) The fee for an investment adviser filing a notice
17 pursuant to subdivision (b) of Section 25230.1 is one
18 hundred twenty-five dollars (\$125) and the fee for filing
19 a notice or report required by rule adopted pursuant to
20 subdivision (c) of Section 25230.1 is twenty-five dollars
21 (\$25).

