

Assembly Bill No. 991

Passed the Assembly May 11, 2009

Chief Clerk of the Assembly

Passed the Senate June 24, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 301.5, 301.7, 1300, 1301, 1502.1, 2115, 2117.1, 25014.7, 25100, 25101, 25117, 25211, 25219, 25231, and 25247 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 991, Silva. Corporations: NASDAQ: national securities exchange.

Existing law regulates the operations of corporations, including, without limitation, elections of boards of directors and qualification with the Commissioner of Corporations of securities offerings in specified transactions, based on, among other things, whether a security is traded on a national securities exchange or is listed on the National Market System of the NASDAQ Stock Market. Existing law governing broker-dealers, investment advisers, and investment adviser representatives references the National Association of Securities Dealers.

This bill would change references to the NASDAQ Stock Market to reflect existing federal law designating that market as a national securities exchange. The bill would change references to the American Stock Exchange to reflect its current name, the NYSE Amex. The bill would also change references to the National Association of Securities Dealers to reflect its current name, the Financial Industry Regulatory Authority, and make other technical and conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 301.5 of the Corporations Code is amended to read:

301.5. (a) A listed corporation may, by amendment of its articles or bylaws, adopt provisions to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. After the issuance of shares, a corporation that is not a listed corporation may, by amendment of its articles or bylaws, adopt provisions to be effective when the corporation becomes a listed corporation to

divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. An article or bylaw amendment providing for division of the board of directors into classes, or any change in the number of classes, or the elimination of cumulative voting may only be adopted by the approval of the board and the outstanding shares (Section 152) voting as a single class, notwithstanding Section 903.

(b) If the board of directors is divided into two classes pursuant to subdivision (a), the authorized number of directors shall be no less than six and one-half of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. If the board of directors is divided into three classes, the authorized number of directors shall be no less than nine and one-third of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. Directors of a listed corporation may be elected by classes at a meeting of shareholders at which an amendment to the articles or bylaws described in subdivision (a) is approved, but the extended terms for directors are contingent on that approval, and in the case of an amendment to the articles, the filing of any necessary amendment to the articles pursuant to Section 905 or 910.

(c) If directors for more than one class are to be elected by the shareholders at any one meeting of shareholders and the election is by cumulative voting pursuant to Section 708, votes may be cumulated only for directors to be elected within each class.

(d) For purposes of this section, a “listed corporation” means a corporation with outstanding shares listed on the New York Stock Exchange, the NYSE Amex, the NASDAQ Global Market, or the NASDAQ Capital Market.

(e) Subject to subdivision (h), if a listed corporation having a board of directors divided into classes pursuant to subdivision (a) ceases to be a listed corporation for any reason, unless the articles of incorporation or bylaws of the corporation provide for the elimination of classes of directors at an earlier date or dates, the board of directors of the corporation shall cease to be divided into classes as to each class of directors on the date of the expiration of the term of the directors in that class and the term of each director serving at the time the corporation ceases to be a listed corporation (and the term of each director elected to fill a vacancy

resulting from the death, resignation, or removal of any of those directors) shall continue until its expiration as if the corporation had not ceased to be a listed corporation.

(f) Subject to subdivision (h), if a listed corporation having a provision in its articles or bylaws eliminating cumulative voting pursuant to subdivision (a) or permitting noncumulative voting in the election of directors pursuant to that subdivision, or both, ceases to be a listed corporation for any reason, the shareholders shall be entitled to cumulate their votes pursuant to Section 708 at any election of directors occurring while the corporation is not a listed corporation notwithstanding that provision in its articles of incorporation or bylaws.

(g) Subject to subdivision (i), if a corporation that is not a listed corporation adopts amendments to its articles of incorporation or bylaws to divide its board of directors into classes or to eliminate cumulative voting, or both, pursuant to subdivision (a) and then becomes a listed corporation, unless the articles of incorporation or bylaws provide for those provisions to become effective at some other time and, in cases where classes of directors are provided for, identify the directors who, or the directorships that, are to be in each class or the method by which those directors or directorships are to be identified, the provisions shall become effective for the next election of directors after the corporation becomes a listed corporation at which all directors are to be elected.

(h) If a corporation ceases to be a listed corporation on or after the record date for a meeting of shareholders and prior to the conclusion of the meeting, including the conclusion of the meeting after an adjournment or postponement that does not require or result in the setting of a new record date, then, solely for purposes of subdivisions (e) and (f), the corporation shall not be deemed to have ceased to be a listed corporation until the conclusion of the meeting of shareholders.

(i) If a corporation becomes a listed corporation on or after the record date for a meeting of shareholders and prior to the conclusion of the meeting, including the conclusion of the meeting after an adjournment or postponement that does not require or result in the setting of a new record date, then, solely for purposes of subdivision (g), the corporation shall not be deemed to have become a listed corporation until the conclusion of the meeting of shareholders.

(j) If an article amendment referred to in subdivision (a) is adopted by a listed corporation, the certificate of amendment shall include a statement of the facts showing that the corporation is a listed corporation within the meaning of subdivision (d). If an article or bylaw amendment referred to in subdivision (a) is adopted by a corporation which is not a listed corporation, the provision, as adopted, shall include the following statement or the substantial equivalent: “This provision shall become effective only when the corporation becomes a listed corporation within the meaning of Section 301.5 of the Corporations Code.”

SEC. 2. Section 301.7 of the Corporations Code is amended to read:

301.7. (a) A listed corporation engaged in business limited to the operation and maintenance of a recreation venture having golf and tennis facilities and ancillary dining and beverage services may, by amendment of its articles or bylaws, adopt provisions allowing division of its board of directors into two classes, with one-half of the directors or as close an approximation as possible to be elected at each annual meeting of shareholders, provided that the corporation’s bylaws or articles limit each holder of the securities to no more than five shares and require some of those holders to occupy dwellings immediately contiguous to the real property of the corporation. An article or bylaw amendment providing for division of the board of directors into classes may only be adopted by the approval of the board and the outstanding shares (Section 152) voting as a single class, notwithstanding Section 903. Directors of a listed corporation that meet these conditions may be elected by classes at a meeting of shareholders at which an amendment to the articles or bylaws described in this paragraph is approved, but the extended terms for directors are contingent on that approval, and in the case of an amendment to the articles, the filing of any necessary amendment to the articles pursuant to Section 905 or 910.

(b) For purposes of this section, a “listed corporation” means a corporation described in subdivision (d) of Section 301.5.

(c) If an article amendment referred to in subdivision (a) is adopted by a listed corporation, the certificate of amendment shall include a statement of the facts showing that the corporation is a listed corporation within the meaning of subdivision (b).

SEC. 3. Section 1300 of the Corporations Code is amended to read:

1300. (a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201, each shareholder of the corporation entitled to vote on the transaction and each shareholder of a subsidiary corporation in a short-form merger may, by complying with this chapter, require the corporation in which the shareholder holds shares to purchase for cash at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization or short-form merger, excluding any appreciation or depreciation in consequence of the proposed action, but adjusted for any stock split, reverse stock split, or share dividend which becomes effective thereafter.

(b) As used in this chapter, “dissenting shares” means shares which come within all of the following descriptions:

(1) Which were not immediately prior to the reorganization or short-form merger listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303 and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; and provided, further, that this provision does not apply to any class of shares if demands for payment are filed with respect to 5 percent or more of the outstanding shares of that class.

(2) Which were outstanding on the date for the determination of shareholders entitled to vote on the reorganization and (A) were not voted in favor of the reorganization or, (B) if described in paragraph (1) (without regard to the provisos in that paragraph), were voted against the reorganization, or were held of record on the effective date of a short-form merger; provided, however, that subparagraph (A) rather than subparagraph (B) of this paragraph applies in any case where the approval required by Section 1201 is sought by written consent rather than at a meeting.

(3) Which the dissenting shareholder has demanded that the corporation purchase at their fair market value, in accordance with Section 1301.

(4) Which the dissenting shareholder has submitted for endorsement, in accordance with Section 1302.

(c) As used in this chapter, “dissenting shareholder” means the recordholder of dissenting shares and includes a transferee of record.

SEC. 4. Section 1301 of the Corporations Code is amended to read:

1301. (a) If, in the case of a reorganization, any shareholders of a corporation have a right under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, to require the corporation to purchase their shares for cash, that corporation shall mail to each such shareholder a notice of the approval of the reorganization by its outstanding shares (Section 152) within 10 days after the date of that approval, accompanied by a copy of Sections 1300, 1302, 1303, and 1304 and this section, a statement of the price determined by the corporation to represent the fair market value of the dissenting shares, and a brief description of the procedure to be followed if the shareholder desires to exercise the shareholder’s right under those sections. The statement of price constitutes an offer by the corporation to purchase at the price stated any dissenting shares as defined in subdivision (b) of Section 1300, unless they lose their status as dissenting shares under Section 1309.

(b) Any shareholder who has a right to require the corporation to purchase the shareholder’s shares for cash under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, and who desires the corporation to purchase shares shall make written demand upon the corporation for the purchase of those shares and payment to the shareholder in cash of their fair market value. The demand is not effective for any purpose unless it is received by the corporation or any transfer agent thereof (1) in the case of shares described subdivision (b) of Section 1300 (without regard to the provisos in that paragraph), not later than the date of the shareholders’ meeting to vote upon the reorganization, or (2) in any other case within 30 days after the date on which the notice of the approval by the outstanding shares

pursuant to subdivision (a) or the notice pursuant to subdivision (i) of Section 1110 was mailed to the shareholder.

(c) The demand shall state the number and class of the shares held of record by the shareholder which the shareholder demands that the corporation purchase and shall contain a statement of what that shareholder claims to be the fair market value of those shares as of the day before the announcement of the proposed reorganization or short-form merger. The statement of fair market value constitutes an offer by the shareholder to sell the shares at that price.

SEC. 5. Section 1502.1 of the Corporations Code is amended to read:

1502.1. (a) In addition to the statement required pursuant to Section 1502, every publicly traded corporation shall file annually, within 150 days after the end of its fiscal year, a statement, on a form prescribed by the Secretary of State, that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements.

(2) A description of other services, if any, performed for the corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loan, made to any member of the board of directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly-situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the corporation, its executive officers, or members of the board of directors of the corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the 10 years preceding the date of the statement, if the conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) "Publicly traded corporation" means a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the OTC Bulletin Board, or on the electronic service operated by Pink OTC Markets Inc.

(2) "Executive officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) "Compensation" as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to

the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) “Loan” as used in paragraph (5) of subdivision (a) excludes an advance for expenses permitted under subdivision (d) of Section 315, the corporation’s payment of life insurance premiums permitted under subdivision (e) of Section 315, and an advance of expenses permitted under Section 317.

(c) This statement shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.

(d) A corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SEC. 6. Section 2115 of the Corporations Code is amended to read:

2115. (a) A foreign corporation (other than a foreign association or foreign nonprofit corporation but including a foreign parent corporation even though it does not itself transact intrastate business) is subject to the requirements of subdivision (b) commencing on the date specified in subdivision (d) and continuing until the date specified in subdivision (e) if:

(1) The average of the property factor, the payroll factor, and the sales factor (as defined in Sections 25129, 25132, and 25134 of the Revenue and Taxation Code) with respect to it is more than 50 percent during its latest full income year and

(2) more than one-half of its outstanding voting securities are held of record by persons having addresses in this state appearing on the books of the corporation on the record date for the latest meeting of shareholders held during its latest full income year or, if no meeting was held during that year, on the last day of the latest full income year. The property factor, payroll factor, and sales factor shall be those used in computing the portion of its income allocable to this state in its franchise tax return or, with respect to corporations the allocation of whose income is governed by special formulas or that are not required to file separate or any tax returns, which would have been so used if they were governed by this

three-factor formula. The determination of these factors with respect to any parent corporation shall be made on a consolidated basis, including in a unitary computation (after elimination of intercompany transactions) the property, payroll, and sales of the parent and all of its subsidiaries in which it owns directly or indirectly more than 50 percent of the outstanding shares entitled to vote for the election of directors, but deducting a percentage of the property, payroll, and sales of any subsidiary equal to the percentage minority ownership, if any, in the subsidiary. For the purpose of this subdivision, any securities held to the knowledge of the issuer in the names of broker-dealers, nominees for broker-dealers (including clearing corporations), or banks, associations, or other entities holding securities in a nominee name or otherwise on behalf of a beneficial owner (collectively “nominee holders”), shall not be considered outstanding. However, if the foreign corporation requests all nominee holders to certify, with respect to all beneficial owners for whom securities are held, the number of shares held for those beneficial owners having addresses (as shown on the records of the nominee holder) in this state and outside of this state, then all shares so certified shall be considered outstanding and held of record by persons having addresses either in this state or outside of this state as so certified, provided that the certification so provided shall be retained with the record of shareholders and made available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record. A current list of beneficial owners of a foreign corporation’s securities provided to the corporation by one or more nominee holders or their agent pursuant to the requirements of Rule 14b-1(b)(3) or 14b-2(b)(3) as adopted on January 6, 1992, promulgated under the Securities Exchange Act of 1934, shall constitute an acceptable certification with respect to beneficial owners for the purposes of this subdivision.

(b) Except as provided in subdivision (c), the following chapters and sections of this division shall apply to a foreign corporation as defined in subdivision (a) (to the exclusion of the law of the jurisdiction in which it is incorporated):

Chapter 1 (general provisions and definitions), to the extent applicable to the following provisions;

Section 301 (annual election of directors);

Section 303 (removal of directors without cause);

Section 304 (removal of directors by court proceedings);

Section 305, subdivision (c) (filling of director vacancies where less than a majority in office elected by shareholders);

Section 309 (directors' standard of care);

Section 316 (excluding paragraph (3) of subdivision (a) and paragraph (3) of subdivision (f)) (liability of directors for unlawful distributions);

Section 317 (indemnification of directors, officers, and others);

Sections 500 to 505, inclusive (limitations on corporate distributions in cash or property);

Section 506 (liability of shareholder who receives unlawful distribution);

Section 600, subdivisions (b) and (c) (requirement for annual shareholders' meeting and remedy if same not timely held);

Section 708, subdivisions (a), (b), and (c) (shareholder's right to cumulate votes at any election of directors);

Section 710 (supermajority vote requirement);

Section 1001, subdivision (d) (limitations on sale of assets);

Section 1101 (provisions following subdivision (e)) (limitations on mergers);

Section 1151 (first sentence only) (limitations on conversions);

Section 1152 (requirements of conversions);

Chapter 12 (commencing with Section 1200) (reorganizations);

Chapter 13 (commencing with Section 1300) (dissenters' rights);

Sections 1500 and 1501 (records and reports);

Section 1508 (action by Attorney General);

Chapter 16 (commencing with Section 1600) (rights of inspection).

(c) This section does not apply to any corporation (1) with outstanding securities listed on the New York Stock Exchange, the NYSE Amex, the NASDAQ Global Market, or the NASDAQ Capital Market, or (2) if all of its voting shares (other than directors' qualifying shares) are owned directly or indirectly by a corporation or corporations not subject to this section.

(d) For purposes of subdivision (a), the requirements of subdivision (b) shall become applicable to a foreign corporation only upon the first day of the first income year of the corporation (1) commencing on or after the 135th day of the income year immediately following the latest income year with respect to which the tests referred to in subdivision (a) have been met or (2)

commencing on or after the entry of a final order by a court of competent jurisdiction declaring that those tests have been met.

(e) For purposes of subdivision (a), the requirements of subdivision (b) shall cease to be applicable to a foreign corporation (1) at the end of the first income year of the corporation immediately following the latest income year with respect to which at least one of the tests referred to in subdivision (a) is not met or (2) at the end of the income year of the corporation during which a final order has been entered by a court of competent jurisdiction declaring that one of those tests is not met, provided that a contrary order has not been entered before the end of the income year.

(f) Any foreign corporation that is subject to the requirements of subdivision (b) shall advise any shareholder of record, any officer, director, employee, or other agent (within the meaning of Section 317) and any creditor of the corporation in writing, within 30 days of receipt of written request for that information, whether or not it is subject to subdivision (b) at the time the request is received. Any party who obtains a final determination by a court of competent jurisdiction that the corporation failed to provide to the party information required to be provided by this subdivision or provided the party information of the kind required to be provided by this subdivision that was incorrect, then the court, in its discretion, shall have the power to include in its judgment recovery by the party from the corporation of all court costs and reasonable attorneys' fees incurred in that legal proceeding to the extent they relate to obtaining that final determination.

SEC. 7. Section 2117.1 of the Corporations Code is amended to read:

2117.1. (a) In addition to the statement required pursuant to Section 2117, every publicly traded foreign corporation shall file annually, within 150 days after the end of its fiscal year, on a form prescribed by the Secretary of State, a statement that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the publicly traded foreign corporation's annual financial statements.

(2) A description of other services, if any, performed for the publicly traded foreign corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent

auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the foreign corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the publicly traded foreign corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the foreign corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loans, made to any member of the board of directors by the publicly traded foreign corporation during the foreign corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the foreign corporation, its executive officers, or members of the board of directors of the foreign corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the publicly traded foreign corporation was convicted of fraud during the 10 years preceding the date of the statement, which conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment

or final order that was not overturned on appeal during the five years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) “Publicly traded foreign corporation” means a foreign corporation, as defined in Section 171, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the OTC Bulletin Board, or on the electronic service operated by Pink OTC Markets Inc.

(2) “Executive officer” means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) “Compensation” as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) “Loan” as used in paragraph (5) of subdivision (a) excludes an advance for expenses, the foreign corporation’s payment of life insurance premiums, and an advance of litigation expenses, in each instance as permitted according to the applicable law of the state or place of incorporation or organization of the foreign corporation.

(c) This statement shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.

(d) A foreign corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SEC. 8. Section 25014.7 of the Corporations Code is amended to read:

25014.7. (a) “Eligible rollup transaction” means a rollup transaction in which the new securities issued are listed or approved for listing on a national securities exchange which has been

certified by the commissioner under subdivision (o) of Section 25100, if the exchange requires as a condition to listing or designation that the rollup transaction be conducted in accordance with procedures to protect the rights of limited partners.

(b) The rights of limited partners will be presumed to be protected if the rollup transaction provides for the right of dissenting limited partners:

(1) To receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the limited partnership and which value the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing. Compensation to dissenting limited partners of rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely tradeable securities; provided, however, that:

(A) Rollups which utilize debt instruments as compensation provide for a trustee and an indenture to protect the rights of the debt holders and provide a rate of interest based upon, but not less than, the then applicable federal rate as determined in accordance with Section 1274 of the Internal Revenue Code of 1986.

(B) Rollups which utilize unsecured debt instruments as compensation, in addition to the requirements of subparagraph (A), limit total leverage to 70 percent of the appraised value of the assets.

(C) All debt securities have a term no greater than seven years and provide for prepayment with 80 percent of the net proceeds of any sale or refinancing of the assets previously owned by the entity or any part thereof.

(D) Freely tradeable securities utilized as compensation to dissenting limited partners must be issued by an issuer whose securities are listed on a national securities exchange that has been certified for at least one year prior to the transaction, and the number of securities to be received in return for limited partnership interests must be determined by an appraisal of limited partnership assets, conducted in a manner consistent with this paragraph, in relation to the average last sale price of the freely tradeable securities in the 20-day period following the transaction. If the issuer of the freely tradeable securities is affiliated with the sponsor

or general partner, newly issued securities to be utilized as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For the purposes of the preceding sentence, a sponsor or general partner is “affiliated” with the issuer of the freely tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the rollup transaction or the purchase of the general partner’s interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this section.

(2) To receive or retain a security with substantially the same terms and conditions as the security originally held, provided that the receipt or retention of that security is not a step in a series of subsequent transactions that directly or indirectly through acquisition or otherwise involves future combinations or reorganizations of one or more rollup participants. Securities received or retained will be considered to have the same terms and conditions as the security originally held if:

(A) There is no material adverse change to dissenting limited partners’ rights, including, but not limited to, rights with respect to voting, the business plan, or the investment, distribution, management compensation and liquidation policies of the limited partnership or resulting entity.

(B) The dissenting limited partners receive the same preferences, privileges, and priorities as they had pursuant to the security originally held.

The rights set forth in paragraphs (1) and (2) are the only rights of dissenting limited partners to which the presumption under this subdivision applies. A general partner or sponsor shall file an application for qualification pursuant to Section 25110 or Section 25120 with respect to any other rights proposed to be offered to dissenting limited partners.

At the time a registration statement is filed with the Securities and Exchange Commission with respect to an eligible rollup transaction, a general partner or sponsor shall notify, to the maximum extent permitted by the federal securities laws, each limited partner who has an address in this state by certified mail of the following: That a registration statement has been filed with

the Securities and Exchange Commission with respect to a rollup transaction; that the general partner or sponsor claims an exemption from the review process under the law by virtue of Section 25014.7, which defines “eligible rollup transaction”; that the general partner or sponsor has the burden of proof under the law that the transaction meets the definition of eligible rollup transaction; and that the commissioner does not recommend or endorse the transaction.

(c) The rights of limited partners shall be presumed not to be protected if the general partner:

(1) Converts an equity interest in the limited partnerships subject to a rollup for which consideration was not paid and which was not otherwise provided for in the limited partnership agreement and disclosed to limited partners, into a voting interest in the new entity, provided, however, an interest originally obtained in order to comply with the provisions of Internal Revenue Service Revenue Proclamation 89-12 may be converted.

(2) Fails to follow the valuation provisions in the limited partnership agreements of the subject limited partners when valuing their limited partnership interests.

(3) Utilizes a future value of their equity interest rather than the current value of their equity interest, as determined by an appraisal conducted in a manner consistent with paragraph (1) of subdivision (b), when determining their interest in the new entity.

(d) The rights of limited partners shall be presumed not to be protected as to voting rights, if:

(1) The voting rights in the entity resulting from a rollup do not generally follow the original voting rights of the limited partnerships participating in the rollup transaction.

(2) A majority of the interest in an entity resulting from a rollup transaction may not, without concurrence by the sponsor, general partners, board of directors or trustee, depending on the form of entity, vote to:

(A) Amend the limited partnership agreement, articles of incorporation or bylaws, or indenture.

(B) Dissolve the entity.

(C) Remove management and elect new management.

(D) Approve or disapprove the sale of substantially all of the assets of the entity.

(3) The general partner or sponsor proposing a rollup is not required to provide each person whose equity interest is subject to the rollup transaction with a document which instructs the person on the proper procedure for voting against or dissenting from the rollup transaction.

(4) The general partner or sponsor does not utilize an independent third party to receive and tabulate all votes and dissents, and require that the third party make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs.

(e) The rights of limited partners shall be presumed not to be protected as to transaction costs if:

(1) Limited partners bear an unfair portion of the transaction costs of a proposed rollup transaction that is rejected. For purposes of this provision, transaction costs are defined as the costs of printing and mailing the proxy, prospectus, or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business, or solicitation expenses.

(2) Transaction costs of a rejected rollup transaction are not apportioned between general and limited partners of the subject limited partnerships according to the final vote on the proposed transaction as follows:

(A) The general partner or sponsor bears all rollup transaction costs in proportion to the number of votes to reject the rollup transaction.

(B) Limited partners bear transaction costs in proportion to the number of votes to approve the rollup transaction.

(3) The dissenting limited partnership is required to pay any of the costs of the rollup transaction and the general partner or sponsor is not required to pay the rollup transaction costs on behalf of the dissenting limited partnerships in a rollup in which one or more limited partnerships determines not to approve the transaction, but where the rollup transaction is consummated with respect to one or more approving limited partnerships.

(f) The rights of limited partners shall be presumed not to be protected as to fees of general partners and sponsors, if:

(1) General partners and sponsors are not prevented from receiving both unearned management fees discounted to a present value, if those fees were not previously provided for in the limited partnership agreement and disclosed to limited partners, and new asset-based fees.

(2) Property management fees and other management fees are not appropriate, not reasonable and greater than what would be paid to third parties for performing similar services.

(3) Changes in fees which are substantial and adverse to limited partners are not approved by an independent committee according to the facts and circumstances of each transaction.

(g) A general partner or sponsor proposing a rollup transaction shall pay all solicitation expenses related to the transaction, including all preparatory work related thereto, in the event the rollup transaction is not approved. For purposes of this section, “solicitation expenses” include direct marketing expenses such as telephone calls, broker-dealer factsheets, legal and other fees related to the solicitation, as well as direct solicitation compensation to brokers and dealers.

(h) A broker or dealer may not receive compensation for soliciting votes or tenders from limited partners in connection with a rollup transaction unless that compensation:

(1) Is payable and equal in amount regardless of whether the limited partner votes affirmatively or negatively in the proposed rollup.

(2) In the aggregate, does not exceed 2 percent of the exchange value of the newly created securities.

(3) Is paid regardless of whether the limited partners reject the proposed rollup transaction.

(i) As used in this section, the following terms have the following meanings:

(1) “Limited partnership” includes any entity determined to be a “partnership” pursuant to Section 14(h)(4)(B) of the Securities Exchange Act of 1934 or such other entity having a substantially economically equivalent form of ownership instrument.

(2) “Dissenting limited partner” means a holder or a beneficial interest in a limited partnership that is the subject of a rollup transaction who casts a vote against the rollup transaction, except

that for purposes of an exchange or tender offer dissenting limited partner means any person who files a dissent from the terms of the transaction with the party responsible for tabulating the votes or tenders, to be received in connection with the transaction during the period in which the offer is outstanding.

(3) “Management fee” means a fee paid to the sponsor, general partner, their affiliates, or other persons for management and administration of the limited partnership.

SEC. 9. Section 25100 of the Corporations Code is amended to read:

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

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

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

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

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

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Listing standards:

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

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

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

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

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

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

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

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

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

(iii) Operating history of at least three years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2

(commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars (\$300). 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).

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

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

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

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

SEC. 10. Section 25101 of the Corporations Code is amended to read:

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

(a) Any security issued by a person that is the issuer of any security listed on a national securities exchange, if the exchange is certified by rule or order of the commissioner.

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

SEC. 11. Section 25117 of the Corporations Code is amended to read:

25117. (a) An evidence of indebtedness, and the purchasers or holders thereof, shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution if (1) the evidence of indebtedness is rated or provisionally rated by Standard & Poor's Corporation as AAA, AA, A, BBB, or investment grade commercial paper, or by Moody's Investors Service, Inc. as Aaa, Aa, A, Baa, or investment grade commercial paper, including any

such ratings with “+” or “—” designation or other variations that occur within these ratings, or has a rating or a provisional rating by another nationally recognized rating agency or system, which rating and agency or system have been certified by rule or order of the commissioner, or (2) the issuer thereof either (A) has any security listed or approved for listing upon notice of issuance on a national securities exchange, if the exchange has been certified by the commissioner, pursuant to subdivision (o) of Section 25100, or (B) meets each of the following requirements:

(i) The issuer is a corporation which is subject to Section 13 of the Securities Exchange Act of 1934.

(ii) The issuer had total shareholders’ equity of at least one million dollars (\$1,000,000) at the end of its most recent fiscal year, and had consolidated net income, after all charges, including taxes and extraordinary losses, and excluding extraordinary gains, of at least five hundred thousand dollars (\$500,000) for three of its last four fiscal years, including its most recent fiscal year. The determination of total shareholders’ equity and net income shall be determined in conformity with generally accepted accounting principles applicable to that fiscal year or years, on a consolidated basis, or (3) the evidence of indebtedness is issued by any corporation all of the outstanding shares of which are owned by an issuer which meets the requirements of subparagraph (A) or (B) of paragraph (2).

(b) This section creates and authorizes a class of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

(c) Any evidence of indebtedness issued in compliance with this section shall be entitled to the benefits of the usury exemption contained in this section regardless of whether subsequent to its issuance the evidence of indebtedness is determined by a court of competent jurisdiction to be a “security.”

SEC. 12. Section 25211 of the Corporations Code is amended to read:

25211. (a) The application for a certificate as a broker-dealer shall be accompanied by the consent to service of process specified in Section 25240 and, unless filed pursuant to subdivision (b), shall contain such information in such detail relating to the applicant and any persons associated with him or her as the commissioner may by rule require.

(b) A broker-dealer registered under the Securities Exchange Act of 1934 who is a member of the New York Stock Exchange, the NYSE Amex, the NYSE Arca, or the Financial Industry Regulatory Authority, and who has not had any certificate as a broker-dealer, investment adviser or agent denied or revoked under this law or any predecessor statute, may be licensed by notification pursuant to this subdivision by filing with the commissioner an application setting forth the following information in such form and detail as the commissioner may by rule require:

(1) Such information as is necessary to identify the broker-dealer and its offices in this state, and the location of its records and principal office.

(2) Such information as is necessary to establish that the broker-dealer meets the requirements for licensure by notification under this subdivision.

(3) The consent to service of process specified in Section 25240.

(4) Such information as the commissioner may require as to the jurisdictions in which the broker-dealer is licensed or registered and as to the nature of the business conducted by the broker-dealer.

(c) Unless a proceeding has been instituted under Section 25212, a certificate under subdivision (b) shall become effective on the third business day after the application is filed with the commissioner or upon the day the certificate is issued, whichever first occurs. However, the commissioner may by order delay effectiveness for a period not exceeding 15 business days (or for an additional period with the consent of the applicant) if the commissioner believes that the delay is necessary in the public interest to determine if a proceeding should be instituted under Section 25212. The commissioner may by rule or order waive that provision of subdivision (b) which precludes application thereunder by a person who has had a certificate denied or revoked under this law or any predecessor statute if the commissioner finds the waiver to be in the public interest. The commissioner, after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may by rule or order disqualify a self-regulatory organization specified in subdivision (b) from the provisions thereof. The commissioner may by rule establish standards or criteria pursuant to which disqualification may be

made and he or she may disqualify upon a finding that the self-regulatory organization fails substantially to comply with those standards or criteria. Disqualification by the commissioner shall not affect a certificate which has become effective pursuant to this subdivision prior to the effective date of that rule or order of disqualification but each person licensed pursuant to subdivision (b) upon the basis of membership in that organization shall, within 90 days after the effective date of that rule or order, or such additional time as the commissioner may allow, file with the commissioner a complete and current application in the form required pursuant to subdivision (a). If a broker-dealer licensed pursuant to subdivision (b) ceases to meet the qualifications for licensing pursuant to that subdivision, he or she shall, within 10 days after that event, file with the commissioner a complete and current application in the form required pursuant to subdivision (a).

(d) An application for a certificate as a broker-dealer, with respect to a broker-dealer to be formed or organized, may be made by a licensed broker-dealer to which the broker-dealer to be formed or organized is to be the successor. The application shall contain such information in such detail relating to the applicant and to the successor and any person associated with the applicant or the successor as the commissioner may by rule require. The application shall become effective and the successor may transact business as a broker-dealer 30 days after the receipt of the application by the commissioner or within such shorter period of time as the commissioner may determine, unless an order has been entered under Section 25212 denying a certificate to the successor or a proceeding looking toward an order has been instituted under that section. The certificate shall terminate on the 45th day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules as the commissioner may prescribe, adopt the application as its own and file the consent to service of process specified in Section 25240.

SEC. 13. Section 25219 of the Corporations Code is amended to read:

25219. Notwithstanding any other provision of this division, if in his or her opinion the public interest and the protection of investors so require, the commissioner is authorized summarily to suspend all over-the-counter trading in this state by broker-dealers

and agents in any security or summarily to suspend all trading on a national securities exchange located in this state in any security (provided, in the case of trading on that exchange, that the security is not listed on any national securities exchange located outside this state on which trading has not been suspended) for a period not exceeding 90 days, and for successive periods of 90 days. No broker-dealer or agent shall effect any transaction (other than an unsolicited brokerage transaction effected on a national securities exchange located outside this state) in, or induce or attempt to induce the purchase or sale of, any security in this state in which trading is in any manner suspended under this section, except in performance of a contract previously entered into.

SEC. 14. Section 25231 of the Corporations Code is amended to read:

25231. (a) Any investment adviser, or any person who contemplates becoming an investment adviser, may apply for a certificate to act as an investment adviser by filing with the commissioner an application. The application shall be accompanied by the consent to service of process specified in Section 25240 and shall contain information, in such form and detail, as the commissioner may by rule prescribe.

(b) Unless otherwise provided by rule or order of the commissioner, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the commissioner pursuant to this title shall be filed electronically with and transmitted to the Web-based Investment Adviser Registration Depository operated by the Financial Industry Regulatory Authority.

SEC. 15. Section 25247 of the Corporations Code is amended to read:

25247. (a) Upon written or oral request, the commissioner shall make available to any person the information specified in Section 6254.12 of the Government Code and made available through the Public Disclosure Program of the Financial Industry Regulatory Authority with respect to any broker-dealer or agent licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of a broker-dealer. Any information disclosed pursuant to this subdivision shall constitute a public record.

Notwithstanding any other provisions of law, the commissioner may disclose either orally or in writing that information pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Corporations, the Commissioner of Corporations, or any officer, agent, or employee of the state or of the Department of Corporations for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(b) Any broker-dealer or agent licensed or regulated under this part shall upon request deliver a written notice to any client when a new account is opened stating that information about the license status or disciplinary record of a broker-dealer or an agent may be obtained from the Department of Corporations, or from any other source that provides substantially similar information.

(c) The notice provided under subdivision (b) shall contain the office location or telephone number where the information may be obtained.

(d) A broker-dealer or agent shall be exempt from providing the notice required under subdivision (b) if a person who does not have a financial relationship with the broker-dealer or agent, requests only general operational information such as the nature of the broker-dealer's or agent's business, office location, hours of operation, basic services, and fees, but does not solicit advice regarding investments or other services offered.

(e) Upon written or oral request, the commissioner shall make available to any person the disciplinary records maintained on the Investment Adviser Registration Depository and made available through the Investment Advisor Public Disclosure Web site with respect to any investment adviser, investment adviser representative, or associated person of an investment adviser licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of an investment adviser. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provision of law, the commissioner may disclose that information either orally or in writing pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Corporations, the Commissioner of

Corporations, or any officer, agent, or employee of the state or of the Department of Corporations for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(f) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national, uniform application adopted or approved for use by the Securities and Exchange Commission, the North American Securities Administrators Association, or the Financial Industry Regulatory Authority that is required for participation in the Central Registration Depository or the Investment Adviser Registration Depository.

(g) This section shall not require the disclosure of criminal history record information maintained by the Federal Bureau of Investigation pursuant to Section 534 of Title 28 of the United States Code, and the rules thereunder, or information not otherwise subject to disclosure under the Information Practices Act of 1977.

Approved _____, 2009

Governor