

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JULY 6, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2081

Introduced by Assembly Member Allen
(Principal coauthor: Assembly Member V. Manuel Pérez)

February 23, 2012

An act to amend, *repeal, and add* Section 25102 of the Corporations Code, relating to securities transactions, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2081, as amended, Allen. Securities transactions: qualification requirements: exemptions.

Existing law, the Corporate Securities Law of 1968, requires certain securities offered or sold in this state to be qualified through application filed with the Commissioner of Corporations, or to be exempt from the qualification requirements. Existing law exempts offers and sales of securities in specified transactions including, but not limited to, offers made to no more than 35 persons, excluding accredited investors, as defined by reference to Regulation D promulgated under the federal Securities Act of 1933, as amended, to include specified minimum net worth and income requirements for prospective investors.

This bill would, *until January 1, 2016*, exempt from qualification offerings or sales of securities using a general solicitation or general

advertising, provided the transaction meets specified requirements, including a requirement that the sales are made to accredited investors and the aggregate offering price of securities, as defined by reference to Regulation D, does not exceed \$1,000,000, less the aggregate offering price for all securities sold within 12 months, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 25102 of the Corporations Code is
2 amended to read:

3 25102. The following transactions are exempted from the
4 provisions of Section 25110:

5 (a) Any offer (but not a sale) not involving any public offering
6 and the execution and delivery of any agreement for the sale of
7 securities pursuant to the offer if (1) the agreement contains
8 substantially the following provision: "The sale of the securities
9 that are the subject of this agreement has not been qualified with
10 the Commissioner of Corporations of the State of California and
11 the issuance of the securities or the payment or receipt of any part
12 of the consideration therefor prior to the qualification is unlawful,
13 unless the sale of securities is exempt from the qualification by
14 Section 25100, 25102, or 25105 of the California Corporations
15 Code. The rights of all parties to this agreement are expressly
16 conditioned upon the qualification being obtained, unless the sale
17 is so exempt"; and (2) no part of the purchase price is paid or
18 received and none of the securities are issued until the sale of the
19 securities is qualified under this law unless the sale of securities
20 is exempt from the qualification by this section, Section 25100,
21 or 25105.

22 (b) Any offer (but not a sale) of a security for which a
23 registration statement has been filed under the Securities Act of
24 1933 but has not yet become effective, or for which an offering
25 statement under Regulation A has been filed but has not yet been
26 qualified, if no stop order or refusal order is in effect and no public
27 proceeding or examination looking toward an order is pending

1 under Section 8 of the act and no order under Section 25140 or
2 subdivision (a) of Section 25143 is in effect under this law.

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

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

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

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

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

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

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

36 (4) The offer and sale of the security is not accomplished by
37 the publication of any advertisement. The number of purchasers
38 referred to above is exclusive of any described in subdivision (i),
39 any officer, director, or affiliate of the issuer, or manager (as
40 appointed or elected by the members) if the issuer is a limited

1 liability company, and any other purchaser who the commissioner
2 designates by rule. For purposes of this section, a husband and
3 wife (together with any custodian or trustee acting for the account
4 of their minor children) are counted as one person and a
5 partnership, corporation, or other organization that was not
6 specifically formed for the purpose of purchasing the security
7 offered in reliance upon this exemption, is counted as one person.
8 The commissioner may by rule require the issuer to file a notice
9 of transactions under this subdivision.

10 The failure to file the notice or the failure to file the notice within
11 the time specified by the rule of the commissioner shall not affect
12 the availability of this exemption. An issuer who fails to file the
13 notice as provided by rule of the commissioner shall, within 15
14 business days after discovery of the failure to file the notice or
15 after demand by the commissioner, whichever occurs first, file the
16 notice and pay to the commissioner a fee equal to the fee payable
17 had the transaction been qualified under Section 25110.

18 (g) Any offer or sale of conditional sale agreements, equipment
19 trust certificates, or certificates of interest or participation therein
20 or partial assignments thereof, covering the purchase of railroad
21 rolling stock or equipment or the purchase of motor vehicles,
22 aircraft, or parts thereof, in a transaction not involving any public
23 offering.

24 (h) Any offer or sale of voting common stock by a corporation
25 incorporated in any state if, immediately after the proposed sale
26 and issuance, there will be only one class of stock of the
27 corporation outstanding that is owned beneficially by no more than
28 35 persons, provided all of the following requirements have been
29 met:

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

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

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

1 enterprise immediately prior to the proposed issuance was in the
2 same proportions as the shares of stock are to be issued.

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

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

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

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

19 (4) A notice in a form prescribed by rule of the commissioner,
20 signed by an active member of the State Bar of California, is filed
21 with or mailed for filing to the commissioner not later than 10
22 business days after receipt of consideration for the securities by
23 the issuer. That notice shall contain an opinion of the member of
24 the State Bar of California that the exemption provided by this
25 subdivision is available for the offer and sale of the securities. The
26 failure to file the notice as required by this subdivision and the
27 rules of the commissioner shall not affect the availability of this
28 exemption. An issuer who fails to file the notice within the time
29 specified by this subdivision shall, within 15 business days after
30 discovery of the failure to file the notice or after demand by the
31 commissioner, whichever occurs first, file the notice and pay to
32 the commissioner a fee equal to the fee payable had the transaction
33 been qualified under Section 25110. The notice, except when filed
34 on behalf of a California corporation, shall be accompanied by an
35 irrevocable consent, in the form that the commissioner by rule
36 prescribes, appointing the commissioner or his or her successor in
37 office to be the issuer's attorney to receive service of any lawful
38 process in any noncriminal suit, action, or proceeding against it
39 or its successor that arises under this law or any rule or order
40 hereunder after the consent has been filed, with the same force and

1 validity as if served personally on the issuer. An issuer on whose
2 behalf a consent has been filed in connection with a previous
3 qualification or exemption from qualification under this law (or
4 application for a permit under any prior law if the application or
5 notice under this law states that the consent is still effective) need
6 not file another. Service may be made by leaving a copy of the
7 process in the office of the commissioner, but it is not effective
8 unless (A) the plaintiff, who may be the commissioner in a suit,
9 action, or proceeding instituted by him or her, forthwith sends
10 notice of the service and a copy of the process by registered or
11 certified mail to the defendant or respondent at its last address on
12 file with the commissioner, and (B) the plaintiff's affidavit of
13 compliance with this section is filed in the case on or before the
14 return day of the process, if any, or within the further time as the
15 court allows.

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

20 For the purposes of this subdivision, all securities held by a
21 husband and wife, whether or not jointly, shall be considered to
22 be owned by one person, and all securities held by a corporation
23 that has issued stock pursuant to this exemption shall be considered
24 to be held by the shareholders to whom it has issued the stock.

25 All stock issued by a corporation pursuant to this subdivision as
26 it existed prior to the effective date of the amendments to this
27 section made during the 1996 portion of the 1995–96 Regular
28 Session that required the issuer to have stamped or printed
29 prominently on the face of the stock certificate a legend in a form
30 prescribed by rule of the commissioner restricting transfer of the
31 stock in a manner provided for by that rule shall not be subject to
32 the transfer restriction legend requirement and, by operation of
33 law, the corporation is authorized to remove that transfer restriction
34 legend from the certificates of those shares of stock issued by the
35 corporation pursuant to this subdivision as it existed prior to the
36 effective date of the amendments to this section made during the
37 1996 portion of the 1995–96 Regular Session.

38 (i) Any offer or sale (1) to a bank, savings and loan association,
39 trust company, insurance company, investment company registered
40 under the Investment Company Act of 1940, pension or

profit-sharing trust (other than a pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or individual retirement account), or other institutional investor or governmental agency or instrumentality that the commissioner may designate by rule, whether the purchaser is acting for itself or as trustee, or (2) to any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of the corporation that after the offer and sale will own directly or indirectly 100 percent of the outstanding capital stock of the issuer, provided the purchaser represents that it is purchasing for its own account (or for the trust account) for investment and not with a view to or for sale in connection with any distribution of the security.

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

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

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

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

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

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

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

(l) Any offer or sale of an option, warrant, put, call, or straddle, and any guarantee of any of these securities, by a person who is not the issuer of the security subject to the right, if the transaction,

1 had it involved an offer or sale of the security subject to the right
2 by the person, would not have violated Section 25110 or 25130.

3 (m) Any offer or sale of a stock to a pension, profit-sharing,
4 stock bonus, or employee stock ownership plan, provided that (1)
5 the plan meets the requirements for qualification under Section
6 401 of the Internal Revenue Code, and (2) the employees are not
7 required or permitted individually to make any contributions to
8 the plan. The exemption provided by this subdivision shall not be
9 affected by whether the stock is contributed to the plan, purchased
10 from the issuer with contributions by the issuer or an affiliate of
11 the issuer, or purchased from the issuer with funds borrowed from
12 the issuer, an affiliate of the issuer, or any other lender.

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

16 (1) The issuer is (A) a California corporation or foreign
17 corporation that, at the time of the filing of the notice required
18 under this subdivision, is subject to Section 2115, or (B) any other
19 form of business entity, including without limitation a partnership
20 or trust organized under the laws of this state. The exemption
21 provided by this subdivision is not available to a “blind pool”
22 issuer, as that term is defined by the commissioner, or to an
23 investment company subject to the Investment Company Act of
24 1940.

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

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

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

37 (C) A pension or profit-sharing trust of the issuer, a
38 self-employed individual retirement plan, or an individual
39 retirement account, if the investment decisions made on behalf of

1 the trust, plan, or account are made solely by persons who are
2 qualified purchasers.

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

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

24 Each natural person specified above, by reason of his or her
25 business or financial experience, or the business or financial
26 experience of his or her professional adviser, who is unaffiliated
27 with and who is not compensated, directly or indirectly, by the
28 issuer or any affiliate or selling agent of the issuer, can be
29 reasonably assumed to have the capacity to protect his or her
30 interests in connection with the transaction. The amount of the
31 investment of each natural person shall not exceed 10 percent of
32 the net worth, as determined by this subparagraph, of that natural
33 person.

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

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

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

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

- (i) The name of the issuer of the securities.
- (ii) The full title of the security to be issued.
- (iii) The anticipated suitability standards for prospective purchasers.
- (iv) A statement that (I) no money or other consideration is being solicited or will be accepted, (II) an indication of interest made by a prospective purchaser involves no obligation or commitment of any kind, and, if the issuer is required by paragraph (4) to deliver a disclosure statement to prospective purchasers, (III) no sales will be made or commitment to purchase accepted until five business days after delivery of a disclosure statement and subscription information to the prospective purchaser in accordance with the requirements of this subdivision.
- (v) Any other information required by rule of the commissioner.
- (vi) The following legend: "For more complete information about (Name of Issuer) and (Full Title of Security), send for

1 additional information from (Name and Address) by sending this
2 coupon or calling (Telephone Number).”

3 (B) The general announcement of proposed offering referred
4 to in subparagraph (A) may also set forth the following
5 information:

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

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

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

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

13 (D) Dissemination of the general announcement of proposed
14 offering to persons who are not qualified purchasers, without more,
15 shall not disqualify the issuer from claiming the exemption under
16 this subdivision.

17 (6) No telephone solicitation shall be permitted until the issuer
18 has determined that the prospective purchaser to be solicited is a
19 qualified purchaser.

20 (7) The issuer files a notice of transaction under this subdivision
21 both (A) concurrent with the publication of a general announcement
22 of proposed offering or at the time of the initial offer of the
23 securities, whichever occurs first, accompanied by a filing fee, and
24 (B) within 10 business days following the close or abandonment
25 of the offering, but in no case more than 210 days from the date
26 of filing the first notice. The first notice of transaction under
27 subparagraph (A) shall contain an undertaking, in a form acceptable
28 to the commissioner, to deliver any disclosure statement required
29 by paragraph (4) to be delivered to prospective purchasers, and
30 any supplement thereto, to the commissioner within 10 days of
31 the commissioner’s request for the information. The exemption
32 from qualification afforded by this subdivision is unavailable if
33 an issuer fails to file the first notice required under subparagraph
34 (A) or to pay the filing fee. The commissioner has the authority
35 to assess an administrative penalty of up to one thousand dollars
36 (\$1,000) against an issuer that fails to deliver the disclosure
37 statement required to be delivered to the commissioner upon the
38 commissioner’s request within the time period set forth above.
39 Neither the filing of the disclosure statement nor the failure by the
40 commissioner to comment thereon precludes the commissioner

1 from taking any action deemed necessary or appropriate under this
2 division with respect to the offer and sale of the securities.

3 (o) An offer or sale of any security issued by a corporation or
4 limited liability company pursuant to a purchase plan or agreement,
5 or issued pursuant to an option plan or agreement, where the
6 security at the time of issuance or grant is exempt from registration
7 under the Securities Act of 1933, as amended, pursuant to Rule
8 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions
9 of which are hereby incorporated by reference into this section,
10 provided that (1) the terms of any purchase plan or agreement shall
11 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of
12 Title 10 of the California Code of Regulations, (2) the terms of
13 any option plan or agreement shall comply with Sections
14 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the
15 California Code of Regulations, and (3) the issuer files a notice of
16 transaction in accordance with rules adopted by the commissioner
17 no later than 30 days after the initial issuance of any security under
18 that plan, accompanied by a filing fee as prescribed by subdivision
19 (y) of Section 25608. The failure to file the notice of transaction
20 within the time specified in this subdivision shall not affect the
21 availability of this exemption. An issuer that fails to file the notice
22 shall, within 15 business days after discovery of the failure to file
23 the notice or after demand by the commissioner, whichever occurs
24 first, file the notice and pay the commissioner a fee equal to the
25 maximum aggregate fee payable had the transaction been qualified
26 under Section 25110.

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

32 (p) An offer or sale of nonredeemable securities to accredited
33 investors (Section 28031) by a person licensed under the Capital
34 Access Company Law (Division 3 (commencing with Section
35 28000) of Title 4), provided that all purchasers either (1) have a
36 preexisting personal or business relationship with the offeror or
37 any of its partners, officers, directors, controlling persons, or
38 managers (as appointed or elected by the members), or (2) by
39 reason of their business or financial experience or the business or
40 financial experience of their professional advisers who are

unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction. All nonredeemable securities shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by rule or order of the commissioner restricting transfer of the securities in the manner as the rule or order provides. The exemption under this subdivision shall not be available for any offering that is exempt or asserted to be exempt pursuant to Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11)) or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is conducted by means of any form of general solicitation or general advertising.

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

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

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

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

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

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

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

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

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

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

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

(3) Each natural person purchaser, including a corporation, partnership, or other organization specifically formed by natural persons for the purpose of acquiring the securities offered by the issuer, receives, at least five business days before securities described in this subdivision are sold to, or a commitment to purchase is accepted from, the purchaser, the following information in writing:

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

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

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

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

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

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

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign country governmental agency or administrator, or of any state, federal, or foreign country court of competent jurisdiction (i) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans; (ii) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans; (iii) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property; or (iv) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subparagraph does not apply

1 to any order, judgment, or decree that has been vacated, overturned,
2 or is more than 10 years old.

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

5 (I) The name, address, and telephone number of the issuing
6 insurance company, and the name, address, and telephone number
7 of the state or foreign country regulator of the insurance company.

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

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

11 (L) If a group insurance policy, the name, address, and telephone
12 number of the group, and, if applicable, the material terms and
13 conditions of converting the policy to an individual policy,
14 including the amount of increased premiums.

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

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

20 (O) The insurance policy premiums and terms of premium
21 payments.

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

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

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

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

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

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

10 (r) (1) (A) Any offer of a security by an issuer using any form
11 of general solicitation or general advertising as specified in Rule
12 502(c) of Regulation D under the Securities Act of 1933 (17 C.F.R.
13 230.502(c)), except as provided in subparagraph (B).

14 (B) Any offer of a security made by means of an unsolicited
15 telephone call to a person's residence or cellular telephone, unless
16 the issuer and the caller take reasonable steps, prior to the
17 unsolicited telephone call, to verify that the person is an accredited
18 investor, as defined in Rule 501 of Regulation D promulgated
19 under the Securities Act of 1933, as amended (17 C.F.R. 230.501),
20 and the transaction meets all the requirements of this subdivision.

21 (2) The aggregate offering price for an offering of securities
22 under this subdivision, as defined in Rule 501(c) of Regulation D
23 under the Securities Act of 1933 (17 C.F.R. 230.501(c)), shall not
24 exceed one million dollars (\$1,000,000), less the aggregate offering
25 price for all securities sold within 12 months before the start of
26 and during the offering of securities pursuant to the exemption
27 under this subdivision.

28 (3) (A) Prior to selling any security to a person solicited
29 pursuant to this subdivision, an issuer shall obtain from that person
30 a completed offeree questionnaire in a form adopted by the
31 commissioner.

32 (B) *An issuer shall not solely rely on the questionnaire in making*
33 *the determination of whether the person is an accredited investor*
34 *and the offering is suitable to that person.*

35 (C) *The issuer shall maintain the confidentiality of any and all*
36 *information in the questionnaire and not otherwise sell, distribute,*
37 *or use the information in that questionnaire for any purpose other*
38 *than to assist in establishing the suitability of that investor for that*
39 *particular offering. A violation of this paragraph shall result in*

1 *disqualification of the offering and from the future use of this*
2 *exemption under this subdivision by the issuer.*

3 (4) Sales of securities shall be made only to a person who is, or
4 with respect to whom the issuer has taken reasonable steps to verify
5 is, an accredited investor immediately prior to the sale.

6 (5) The issuer has taken reasonable steps to verify that,
7 immediately prior to the sale, the offering is suitable for the person,
8 based on the person's financial status, objectives, investment
9 experience, time horizon, risk tolerance, and any other information
10 the issuer deems relevant to determine whether the offering is
11 suitable to the person. The issuer shall maintain, for a period of
12 four years, documentation sufficient to establish the basis for its
13 determination of suitability.

14 (6) (A) *The issuer shall provide to the person, in writing, at a*
15 *minimum, the following: (i) information detailing its business, its*
16 *properties, its competition, the identity of its officers and directors*
17 *and their compensation, material transactions between the*
18 *company and its officers and directors, material legal proceedings*
19 *involving the company or its officers and directors, the plan for*
20 *distributing the securities, and the intended use of the proceeds of*
21 *the offering; (ii) disclosures of all risk factors associated with the*
22 *offering, including, but not limited to, lack of business operating*
23 *history, adverse economic conditions in a particular industry, lack*
24 *of a market for the securities offered, and dependence upon key*
25 *personnel, and (iii) a statement detailing the financial condition*
26 *of the issuer and supporting documentation.*

27 (B) *Upon providing this information to the investor, there shall*
28 *be a mandatory 24-hour waiting period before a sale may be made*
29 *and the investor shall have the right to void the contract within*
30 *the first 72 hours of the sale.*

31 ~~(6)~~

32 (7) If the person is a natural person, the amount of consideration
33 paid by the purchaser does not exceed ~~10~~ 5 percent of his or her
34 net worth, or joint net worth with the purchaser's spouse or
35 domestic partner, immediately prior to the investment, and each
36 investor's investment in the offering, together with all previous
37 offerings under this subdivision made during the previous 12
38 months, does not exceed ~~10~~ 5 percent of his or her net worth. "Net
39 worth" shall be determined as specified in Rule 501(a) of
40 Regulation D promulgated by the Securities and Exchange

1 Commission under the Securities Act of 1933, as amended (17
2 C.F.R. 230.501(a)).

3 ~~(7)~~

4 (8) The issuer can reasonably assume that the person has the
5 capacity to protect his or her interests in connection with the
6 offering due to his or her business or financial experience, or the
7 business or financial experience of his or her professional adviser,
8 who is unaffiliated with and not compensated, directly or indirectly,
9 by the issuer or any affiliate or selling agent of the issuer.

10 ~~(8)~~

11 (9) The issuer believes in good faith that the offer and sale are
12 exempt from registration under Section 5 of the Securities Act of
13 1933 (15 U.S.C. Sec. 77e) pursuant to Section 3(a)(11) of the act
14 (15 U.S.C. Sec. 77c(a)(11)), or the rules and regulations adopted
15 by the Securities and Exchange Commission under Section 3(b)
16 or Section 4(2) of the act (15 U.S.C. Sec. 77d(2)).

17 ~~(9)~~

18 (10) The issuer specifies in all advertisements, communications,
19 sales literature, or other information that is publicly disseminated
20 in connection with the offering, including by means of electronic
21 transmission or broadcast media, that the securities will be sold to
22 accredited investors only. ~~For purposes of this subdivision,~~
23 ~~“publicly disseminated” means communicated to 100 or more~~
24 ~~persons or otherwise communicated, used, or circulated in a public~~
25 ~~manner, and the offering is exempt from the qualification~~
26 ~~requirements of Section 25110 under the exemption provided for~~
27 ~~in this subdivision.~~

28 ~~(10)~~

29 (11) The issuer places a legend on the cover page of each
30 disclosure document proposed to be used in connection with the
31 offering or on the cover page of the subscription agreement
32 advising that the securities described in the disclosure document
33 or subscription agreement will be sold to accredited investors only,
34 *and the offering is exempted from the qualification requirements*
35 *of Section 25110 under the exemption provided for in this*
36 *subdivision.*

37 ~~(11)~~

38 (12) Dissemination of information regarding the proposed
39 offering to a person who is not an accredited investor shall not
40 disqualify the offering from the exemption under this subdivision.

1 (13) *An issuer shall maintain a copy of any advertisement or*
2 *solicitation, and any other offering material, for four years.*

3 ~~(12)~~

4 (14) *The issuer shall file with the commissioner a notice*
5 *pursuant to Section 25102.1 and pay the fee specified in*
6 *subdivision (c) of Section 25608.1 within 15 days after the first*
7 *sale of the securities in this state. Upon filing of this notice, the*
8 *issuer shall also pay a five-dollar (\$5) fee to be deposited in the*
9 *Victims of Corporate Fraud Compensation Fund.*

10 (15) (A) *A person who purchases securities in an offering that*
11 *fails to meet all the terms and conditions of this subdivision may*
12 *bring an action under Sections 25503, 25504, and 25504.1 for*
13 *rescission of the purchase and any other remedy provided in those*
14 *sections.*

15 (B) *Any purchaser of a security pursuant to this subdivision*
16 *may bring an action against anyone who employs, directly or*
17 *indirectly, any device, scheme, or other artifice to defraud in*
18 *connection with the offer, purchase, or sale of any security issued*
19 *under this subdivision.*

20 (C) *A person who purchases securities in an offering under this*
21 *subdivision that fails to meet all the terms and conditions of this*
22 *subdivision may also bring an action to seek any other remedies*
23 *available at law.*

24 (D) *In any action by a purchaser under this subdivision, the*
25 *issuer shall have the burden of proof to demonstrate that the*
26 *requirements of the exemption under this subdivision were met.*

27 (E) *The court shall award attorney's fees and costs to a*
28 *prevailing purchaser in any such action and may award treble or*
29 *punitive damages.*

30 ~~(13) A person who purchases securities in an offering that fails~~
31 ~~to meet all of the terms and conditions of this subdivision may~~
32 ~~bring an action under Sections 25503, 25504, and 25504.1 for~~
33 ~~recession of the purchase. In addition to the other remedies~~
34 ~~provided in those sections, the court shall award attorney's fees~~
35 ~~and costs to a prevailing purchaser in any such action.~~

36 ~~(14)~~

37 (16) *The exemption is not available for an offering by an issuer*
38 *who is (A) an investment company as defined in Section 3(a)(1)*
39 *of the Investment Company Act of 1940 (15 U.S.C. Sec. 80a et*

1 seq.), or (B) a development stage company as referred to in Rule
2 504(a)(3) under the Securities Act of 1933.

3 ~~(15)~~

4 (17) The exemption under this subdivision is not available to
5 an issuer if any of the following apply to the issuer or its
6 predecessors, affiliates, directors, officers, general partners,
7 beneficial owners of 10 percent or more of any classification of
8 its equity securities, promoters presently connected with the issuer
9 in any capacity, or any underwriter of the securities to be offered,
10 or any of the underwriter's partners, directors, or officers:

11 (A) Within the ~~five~~ 10 years immediately prior to the first offer
12 of the security, the person has filed a registration statement that is
13 the subject of a currently effective stop order entered by any state
14 securities administrator or the Securities and Exchange
15 Commission.

16 ~~(B) Within the five years immediately prior to the first offer of~~
17 ~~the security, the~~ The person has been convicted of any criminal
18 offense involving fraud, deceit, or any offense concerning the
19 offer, purchase, or sale of any security, *or is subject to any order,*
20 *judgment, or decree of any court of competent jurisdiction*
21 *involving the commission of elder or dependent adult financial*
22 *abuse.*

23 (C) The person is currently subject to a state or federal
24 administrative enforcement order or judgment entered within the
25 ~~five~~ 10 years immediately prior to the first offer of the security
26 finding fraud or deceit in connection with the purchase or sale of
27 any security.

28 (D) The person is currently subject to any order, judgment, or
29 decree of any court of competent jurisdiction, entered within the
30 ~~five~~ 10 years immediately prior to the first offer of the security,
31 temporarily, preliminarily, or permanently restraining or enjoining
32 the person from engaging in or continuing to engage in any conduct
33 or practice involving fraud or deceit in connection with the
34 purchase or sale of any security, except if any of the following
35 apply:

36 (i) The person is licensed or registered to conduct
37 securities-related business in the state in which the order, judgment,
38 or decree described in subparagraph (A), (B), (C), or (D) was
39 entered against the person.

(ii) Before the first offer of securities is made in reliance upon the exemption under this subdivision, the state securities administrator, the court, or the regulatory authority that entered the order, judgment, or decree removes, reverses, or vacates the order, judgment, or decree.

(iii) The issuer, exercising reasonable care and based on a factual inquiry, establishes that it could not have known of the existence of circumstances described in subparagraph (A), (B), (C), or (D).

(18) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 2. Section 25102 is added to the Corporations Code, to read:

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

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

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

1 under Section 8 of the act and no order under Section 25140 or
2 subdivision (a) of Section 25143 is in effect under this law.

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

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

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

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

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

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

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

36 (4) The offer and sale of the security is not accomplished by the
37 publication of any advertisement. The number of purchasers
38 referred to above is exclusive of any described in subdivision (i),
39 any officer, director, or affiliate of the issuer, or manager (as
40 appointed or elected by the members) if the issuer is a limited

1 liability company, and any other purchaser who the commissioner
2 designates by rule. For purposes of this section, a husband and
3 wife (together with any custodian or trustee acting for the account
4 of their minor children) are counted as one person and a
5 partnership, corporation, or other organization that was not
6 specifically formed for the purpose of purchasing the security
7 offered in reliance upon this exemption, is counted as one person.
8 The commissioner may by rule require the issuer to file a notice
9 of transactions under this subdivision.

10 The failure to file the notice or the failure to file the notice within
11 the time specified by the rule of the commissioner shall not affect
12 the availability of this exemption. An issuer who fails to file the
13 notice as provided by rule of the commissioner shall, within 15
14 business days after discovery of the failure to file the notice or
15 after demand by the commissioner, whichever occurs first, file the
16 notice and pay to the commissioner a fee equal to the fee payable
17 had the transaction been qualified under Section 25110.

18 (g) Any offer or sale of conditional sale agreements, equipment
19 trust certificates, or certificates of interest or participation therein
20 or partial assignments thereof, covering the purchase of railroad
21 rolling stock or equipment or the purchase of motor vehicles,
22 aircraft, or parts thereof, in a transaction not involving any public
23 offering.

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

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

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

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

1 *enterprise immediately prior to the proposed issuance was in the*
2 *same proportions as the shares of stock are to be issued.*

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

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

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

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

19 *(4) A notice in a form prescribed by rule of the commissioner,*
20 *signed by an active member of the State Bar of California, is filed*
21 *with or mailed for filing to the commissioner not later than 10*
22 *business days after receipt of consideration for the securities by*
23 *the issuer. That notice shall contain an opinion of the member of*
24 *the State Bar of California that the exemption provided by this*
25 *subdivision is available for the offer and sale of the securities. The*
26 *failure to file the notice as required by this subdivision and the*
27 *rules of the commissioner shall not affect the availability of this*
28 *exemption. An issuer who fails to file the notice within the time*
29 *specified by this subdivision shall, within 15 business days after*
30 *discovery of the failure to file the notice or after demand by the*
31 *commissioner, whichever occurs first, file the notice and pay to*
32 *the commissioner a fee equal to the fee payable had the transaction*
33 *been qualified under Section 25110. The notice, except when filed*
34 *on behalf of a California corporation, shall be accompanied by*
35 *an irrevocable consent, in the form that the commissioner by rule*
36 *prescribes, appointing the commissioner or his or her successor*
37 *in office to be the issuer's attorney to receive service of any lawful*
38 *process in any noncriminal suit, action, or proceeding against it*
39 *or its successor that arises under this law or any rule or order*
40 *hereunder after the consent has been filed, with the same force*

1 and validity as if served personally on the issuer. An issuer on
2 whose behalf a consent has been filed in connection with a previous
3 qualification or exemption from qualification under this law (or
4 application for a permit under any prior law if the application or
5 notice under this law states that the consent is still effective) need
6 not file another. Service may be made by leaving a copy of the
7 process in the office of the commissioner, but it is not effective
8 unless (A) the plaintiff, who may be the commissioner in a suit,
9 action, or proceeding instituted by him or her, forthwith sends
10 notice of the service and a copy of the process by registered or
11 certified mail to the defendant or respondent at its last address on
12 file with the commissioner, and (B) the plaintiff's affidavit of
13 compliance with this section is filed in the case on or before the
14 return day of the process, if any, or within the further time as the
15 court allows.

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

20 For the purposes of this subdivision, all securities held by a
21 husband and wife, whether or not jointly, shall be considered to
22 be owned by one person, and all securities held by a corporation
23 that has issued stock pursuant to this exemption shall be considered
24 to be held by the shareholders to whom it has issued the stock.

25 All stock issued by a corporation pursuant to this subdivision
26 as it existed prior to the effective date of the amendments to this
27 section made during the 1996 portion of the 1995–96 Regular
28 Session that required the issuer to have stamped or printed
29 prominently on the face of the stock certificate a legend in a form
30 prescribed by rule of the commissioner restricting transfer of the
31 stock in a manner provided for by that rule shall not be subject to
32 the transfer restriction legend requirement and, by operation of
33 law, the corporation is authorized to remove that transfer
34 restriction legend from the certificates of those shares of stock
35 issued by the corporation pursuant to this subdivision as it existed
36 prior to the effective date of the amendments to this section made
37 during the 1996 portion of the 1995–96 Regular Session.

38 (i) Any offer or sale (1) to a bank, savings and loan association,
39 trust company, insurance company, investment company registered
40 under the Investment Company Act of 1940, pension or

1 *profit-sharing trust (other than a pension or profit-sharing trust*
2 *of the issuer, a self-employed individual retirement plan, or*
3 *individual retirement account), or other institutional investor or*
4 *governmental agency or instrumentality that the commissioner*
5 *may designate by rule, whether the purchaser is acting for itself*
6 *or as trustee, or (2) to any corporation with outstanding securities*
7 *registered under Section 12 of the Securities Exchange Act of 1934*
8 *or any wholly owned subsidiary of the corporation that after the*
9 *offer and sale will own directly or indirectly 100 percent of the*
10 *outstanding capital stock of the issuer, provided the purchaser*
11 *represents that it is purchasing for its own account (or for the trust*
12 *account) for investment and not with a view to or for sale in*
13 *connection with any distribution of the security.*

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

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

18 *(A) Are and have been during the preceding two years engaged*
19 *primarily in the business of drilling for, producing, or refining oil*
20 *or gas (or whose corporate predecessor, in the case of a*
21 *corporation, has been so engaged).*

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

23 *(C) Have been found by the commissioner upon written*
24 *application to be substantially engaged in the business of drilling*
25 *for, producing, or refining oil or gas so as not to require the*
26 *protection provided by this law (which finding shall be effective*
27 *until rescinded).*

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

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

37 *(l) Any offer or sale of an option, warrant, put, call, or straddle,*
38 *and any guarantee of any of these securities, by a person who is*
39 *not the issuer of the security subject to the right, if the transaction,*

1 *had it involved an offer or sale of the security subject to the right*
2 *by the person, would not have violated Section 25110 or 25130.*

3 *(m) Any offer or sale of a stock to a pension, profit-sharing,*
4 *stock bonus, or employee stock ownership plan, provided that (1)*
5 *the plan meets the requirements for qualification under Section*
6 *401 of the Internal Revenue Code, and (2) the employees are not*
7 *required or permitted individually to make any contributions to*
8 *the plan. The exemption provided by this subdivision shall not be*
9 *affected by whether the stock is contributed to the plan, purchased*
10 *from the issuer with contributions by the issuer or an affiliate of*
11 *the issuer, or purchased from the issuer with funds borrowed from*
12 *the issuer, an affiliate of the issuer, or any other lender.*

13 *(n) Any offer or sale of any security in a transaction, other than*
14 *an offer or sale of a security in a rollup transaction, that meets all*
15 *of the following criteria:*

16 *(1) The issuer is (A) a California corporation or foreign*
17 *corporation that, at the time of the filing of the notice required*
18 *under this subdivision, is subject to Section 2115, or (B) any other*
19 *form of business entity, including without limitation a partnership*
20 *or trust organized under the laws of this state. The exemption*
21 *provided by this subdivision is not available to a “blind pool”*
22 *issuer, as that term is defined by the commissioner, or to an*
23 *investment company subject to the Investment Company Act of*
24 *1940.*

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

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

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

37 *(C) A pension or profit-sharing trust of the issuer, a*
38 *self-employed individual retirement plan, or an individual*
39 *retirement account, if the investment decisions made on behalf of*

1 the trust, plan, or account are made solely by persons who are
2 qualified purchasers.

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

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

24 Each natural person specified above, by reason of his or her
25 business or financial experience, or the business or financial
26 experience of his or her professional adviser, who is unaffiliated
27 with and who is not compensated, directly or indirectly, by the
28 issuer or any affiliate or selling agent of the issuer, can be
29 reasonably assumed to have the capacity to protect his or her
30 interests in connection with the transaction. The amount of the
31 investment of each natural person shall not exceed 10 percent of
32 the net worth, as determined by this subparagraph, of that natural
33 person.

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

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

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

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

- (i) The name of the issuer of the securities.
- (ii) The full title of the security to be issued.
- (iii) The anticipated suitability standards for prospective purchasers.
- (iv) A statement that (I) no money or other consideration is being solicited or will be accepted, (II) an indication of interest made by a prospective purchaser involves no obligation or commitment of any kind, and, if the issuer is required by paragraph (4) to deliver a disclosure statement to prospective purchasers, (III) no sales will be made or commitment to purchase accepted until five business days after delivery of a disclosure statement and subscription information to the prospective purchaser in accordance with the requirements of this subdivision.
- (v) Any other information required by rule of the commissioner.

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

5 (B) The general announcement of proposed offering referred
6 to in subparagraph (A) may also set forth the following
7 information:

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

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

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

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

15 (D) Dissemination of the general announcement of proposed
16 offering to persons who are not qualified purchasers, without more,
17 shall not disqualify the issuer from claiming the exemption under
18 this subdivision.

19 (6) No telephone solicitation shall be permitted until the issuer
20 has determined that the prospective purchaser to be solicited is a
21 qualified purchaser.

22 (7) The issuer files a notice of transaction under this subdivision
23 both (A) concurrent with the publication of a general
24 announcement of proposed offering or at the time of the initial
25 offer of the securities, whichever occurs first, accompanied by a
26 filing fee, and (B) within 10 business days following the close or
27 abandonment of the offering, but in no case more than 210 days
28 from the date of filing the first notice. The first notice of transaction
29 under subparagraph (A) shall contain an undertaking, in a form
30 acceptable to the commissioner, to deliver any disclosure statement
31 required by paragraph (4) to be delivered to prospective
32 purchasers, and any supplement thereto, to the commissioner
33 within 10 days of the commissioner's request for the information.
34 The exemption from qualification afforded by this subdivision is
35 unavailable if an issuer fails to file the first notice required under
36 subparagraph (A) or to pay the filing fee. The commissioner has
37 the authority to assess an administrative penalty of up to one
38 thousand dollars (\$1,000) against an issuer that fails to deliver
39 the disclosure statement required to be delivered to the
40 commissioner upon the commissioner's request within the time

1 period set forth above. Neither the filing of the disclosure statement
2 nor the failure by the commissioner to comment thereon precludes
3 the commissioner from taking any action deemed necessary or
4 appropriate under this division with respect to the offer and sale
5 of the securities.

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

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

35 (p) An offer or sale of nonredeemable securities to accredited
36 investors (Section 28031) by a person licensed under the Capital
37 Access Company Law (Division 3 (commencing with Section
38 28000) of Title 4), provided that all purchasers either (1) have a
39 preexisting personal or business relationship with the offeror or
40 any of its partners, officers, directors, controlling persons, or

1 managers (as appointed or elected by the members), or (2) by
2 reason of their business or financial experience or the business or
3 financial experience of their professional advisers who are
4 unaffiliated with and who are not compensated by the issuer or
5 any affiliate or selling agent of the issuer, directly or indirectly,
6 could be reasonably assumed to have the capacity to protect their
7 own interests in connection with the transaction. All
8 nonredeemable securities shall be evidenced by certificates that
9 shall have stamped or printed prominently on their face a legend
10 in a form to be prescribed by rule or order of the commissioner
11 restricting transfer of the securities in the manner as the rule or
12 order provides. The exemption under this subdivision shall not be
13 available for any offering that is exempt or asserted to be exempt
14 pursuant to Section 3(a)(11) of the Securities Act of 1933 (15
15 U.S.C. Sec. 77c(a)(11)) or Rule 147 (17 C.F.R. 230.147)
16 thereunder or otherwise is conducted by means of any form of
17 general solicitation or general advertising.

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

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

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

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

34 (C) A pension or profit-sharing trust of the issuer, a
35 self-employed individual retirement plan, or an individual
36 retirement account, if the investment decisions made on behalf of
37 the trust, plan, or account are made solely by persons who are
38 qualified purchasers.

39 (D) An organization described in Section 501(c)(3) of the
40 Internal Revenue Code, corporation, Massachusetts or similar

1 business trust, or partnership, each with total assets in excess of
2 five million dollars (\$5,000,000) according to its most recent
3 audited financial statements.

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

15 Each natural person specified above, by reason of his or her
16 business or financial experience, or the business or financial
17 experience of his or her professional adviser, who is unaffiliated
18 with and who is not compensated, directly or indirectly, by the
19 issuer or any affiliate or selling agent of the issuer, can be
20 reasonably assumed to have the capacity to protect his or her
21 interests in connection with the transaction.

22 The amount of the investment of each natural person shall not
23 exceed 10 percent of the net worth, as determined by this
24 subdivision, of that natural person.

25 (F) Any other purchaser designated as qualified by rule of the
26 commissioner.

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

31 (3) Each natural person purchaser, including a corporation,
32 partnership, or other organization specifically formed by natural
33 persons for the purpose of acquiring the securities offered by the
34 issuer, receives, at least five business days before securities
35 described in this subdivision are sold to, or a commitment to
36 purchase is accepted from, the purchaser, the following information
37 in writing:

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

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

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

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

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

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

21 (G) A description of any order, judgment, or decree that is final
22 as to the issuing entity of any state, federal, or foreign country
23 governmental agency or administrator, or of any state, federal, or
24 foreign country court of competent jurisdiction (i) revoking,
25 suspending, denying, or censuring for cause any license, permit,
26 or other authority of the issuer or of any director, officer, partner,
27 member, trustee, or person owning or controlling, directly or
28 indirectly, 10 percent or more of the outstanding interest or equity
29 securities of the issuer, to engage in the securities, commodities,
30 franchise, insurance, real estate, or lending business or in the offer
31 or sale of securities, commodities, franchises, insurance, real
32 estate, or loans; (ii) permanently restraining, enjoining, barring,
33 suspending, or censuring any such person from engaging in or
34 continuing any conduct, practice, or employment in connection
35 with the offer or sale of securities, commodities, franchises,
36 insurance, real estate, or loans; (iii) convicting any such person
37 of, or pleading nolo contendere by any such person to, any felony
38 or misdemeanor involving a security, commodity, franchise,
39 insurance, real estate, or loan, or any aspect of the securities,
40 commodities, franchise, insurance, real estate, or lending business,

1 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
2 conversion, or misappropriation of property; or (iv) holding any
3 such person liable in a civil action involving breach of a fiduciary
4 duty, fraud, deceit, embezzlement, fraudulent conversion, or
5 misappropriation of property. This subparagraph does not apply
6 to any order, judgment, or decree that has been vacated,
7 overturned, or is more than 10 years old.

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

10 (I) The name, address, and telephone number of the issuing
11 insurance company, and the name, address, and telephone number
12 of the state or foreign country regulator of the insurance company.

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

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

16 (L) If a group insurance policy, the name, address, and
17 telephone number of the group, and, if applicable, the material
18 terms and conditions of converting the policy to an individual
19 policy, including the amount of increased premiums.

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

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

25 (O) The insurance policy premiums and terms of premium
26 payments.

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

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

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

34 (S) A statement to the effect that any projected rate of return to
35 the purchaser from the purchase of a viatical or life settlement
36 contract or a fractionalized or pooled interest therein is based on
37 an estimated life expectancy for the person insured under the life
38 insurance policy; that the return on the purchase may vary
39 substantially from the expected rate of return based upon the actual
40 life expectancy of the insured that may be less than, equal to, or

1 may greatly exceed the estimated life expectancy; and that the rate
2 of return would be higher if the actual life expectancy were less
3 than, and lower if the actual life expectancy were greater than,
4 the estimated life expectancy of the insured at the time the viatical
5 or life settlement contract was closed.

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

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

15 (r) This section shall become operative on January 1, 2016.

16 ~~SEC. 2.~~

17 SEC. 3. This act is an urgency statute necessary for the
18 immediate preservation of the public peace, health, or safety within
19 the meaning of Article IV of the Constitution and shall go into
20 immediate effect. The facts constituting the necessity are:

21 The Chair of the Securities and Exchange Commission
22 announced on June 28, 2012, that the commission will fail to meet
23 the July 4, 2012, deadline for rulemaking to implement the federal
24 Jumpstart Our Business Startups Act (JOBS Act, Public Law
25 112-106). The JOBS Act seeks, in somewhat similar fashion to
26 this act, to increase access to capital for small businesses. Because
27 the delay in rulemaking by the commission leaves small businesses
28 without a viable new method of accessing investment funding
29 needed at the present time for startup and growth stages, which is
30 a problem addressed by this act, it is necessary that this act take
31 effect immediately.