

ASSEMBLY BILL

No. 991

Introduced by Assembly Member Silva

February 27, 2009

An act to amend Sections 301.5, 1300, 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, as introduced, 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 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.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

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

3 301.5. (a) A listed corporation may, by amendment of its
4 articles or bylaws, adopt provisions to divide the board of directors
5 into two or three classes to serve for terms of two or three years
6 respectively, or to eliminate cumulative voting, or both. After the
7 issuance of shares, a corporation—~~which~~ *that* is not a listed
8 corporation may, by amendment of its articles or bylaws, adopt
9 provisions to be effective when the corporation becomes a listed
10 corporation to divide the board of directors into two or three classes
11 to serve for terms of two or three years respectively, or to eliminate
12 cumulative voting, or both. An article or bylaw amendment
13 providing for division of the board of directors into classes, or any
14 change in the number of classes, or the elimination of cumulative
15 voting may only be adopted by the approval of the board and the
16 outstanding shares (Section 152) voting as a single class,
17 notwithstanding Section 903.

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

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

36 (d) For purposes of this section, a “listed corporation” means
37 ~~any of the following:~~

1 ~~(1) A~~ a corporation with outstanding shares listed on the New
2 York Stock Exchange ~~or~~, the American Stock Exchange, *or the*
3 *NASDAQ Global Market*.

4 ~~(2) A corporation with outstanding securities listed on the~~
5 ~~National Market System of the Nasdaq Stock Market (or any~~
6 ~~successor to that entity).~~

7 (e) Subject to subdivision (h), if a listed corporation having a
8 board of directors divided into classes pursuant to subdivision (a)
9 ceases to be a listed corporation for any reason, unless the articles
10 of incorporation or bylaws of the corporation provide for the
11 elimination of classes of directors at an earlier date or dates, the
12 board of directors of the corporation shall cease to be divided into
13 classes as to each class of directors on the date of the expiration
14 of the term of the directors in that class and the term of each
15 director serving at the time the corporation ceases to be a listed
16 corporation (and the term of each director elected to fill a vacancy
17 resulting from the death, resignation, or removal of any of those
18 directors) shall continue until its expiration as if the corporation
19 had not ceased to be a listed corporation.

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

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

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

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

17 (j) If an article amendment referred to in subdivision (a) is
18 adopted by a listed corporation, the certificate of amendment shall
19 include a statement of the facts showing that the corporation is a
20 listed corporation within the meaning of subdivision (d). If an
21 article or bylaw amendment referred to in subdivision (a) is adopted
22 by a corporation which is not a listed corporation, the provision,
23 as adopted, shall include the following statement or the substantial
24 equivalent: "This provision shall become effective only when the
25 corporation becomes a listed corporation within the meaning of
26 Section 301.5 of the Corporations Code."

27 SEC. 2. Section 1300 of the Corporations Code is amended to
28 read:

29 1300. (a) If the approval of the outstanding shares (Section
30 152) of a corporation is required for a reorganization under
31 subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201,
32 each shareholder of the corporation entitled to vote on the
33 transaction and each shareholder of a subsidiary corporation in a
34 short-form merger may, by complying with this chapter, require
35 the corporation in which the shareholder holds shares to purchase
36 for cash at their fair market value the shares owned by the
37 shareholder which are dissenting shares as defined in subdivision
38 (b). The fair market value shall be determined as of the day before
39 the first announcement of the terms of the proposed reorganization
40 or short-form merger, excluding any appreciation or depreciation

1 in consequence of the proposed action, but adjusted for any stock
2 split, reverse stock split, or share dividend which becomes effective
3 thereafter.

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

6 (1) Which were not immediately prior to the reorganization or
7 short-form merger ~~either (A) listed on any national securities~~
8 ~~exchange certified by the Commissioner of Corporations under~~
9 ~~subdivision (o) of Section 25100 or (B) listed on the National~~
10 ~~Market System of the NASDAQ Stock Market, and the notice of~~
11 ~~meeting of shareholders to act upon the reorganization summarizes~~
12 ~~this section and Sections 1301, 1302, 1303 and 1304; provided,~~
13 ~~however, that this provision does not apply to any shares with~~
14 ~~respect to which there exists any restriction on transfer imposed~~
15 ~~by the corporation or by any law or regulation; and provided,~~
16 ~~further, that this provision does not apply to any class of shares~~
17 ~~described in subparagraph (A) or (B) if demands for payment are~~
18 ~~filed with respect to 5 percent or more of the outstanding shares~~
19 ~~of that class.~~

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

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

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

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

38 SEC. 3. Section 1502.1 of the Corporations Code is amended
39 to read:

1 1502.1. (a) In addition to the statement required pursuant to
2 Section 1502, every publicly traded corporation shall file annually,
3 within 150 days after the end of its fiscal year, a statement, on a
4 form prescribed by the Secretary of State, that includes all of the
5 following information:
6 (1) The name of the independent auditor that prepared the most
7 recent auditor’s report on the corporation’s annual financial
8 statements.
9 (2) A description of other services, if any, performed for the
10 corporation during its two most recent fiscal years and the period
11 between the end of its most recent fiscal year and the date of the
12 statement by the foregoing independent auditor, by its parent
13 corporation, or by a subsidiary or corporate affiliate of the
14 independent auditor or its parent corporation.
15 (3) The name of the independent auditor employed by the
16 corporation on the date of the statement, if different from the
17 independent auditor listed pursuant to paragraph (1).
18 (4) The compensation for the most recent fiscal year of the
19 corporation paid to each member of the board of directors and paid
20 to each of the five most highly compensated executive officers of
21 the corporation who are not members of the board of directors,
22 including the number of any shares issued, options for shares
23 granted, and similar equity-based compensation granted to each
24 of those persons. If the chief executive officer is not among the
25 five most highly compensated executive officers of the corporation,
26 the compensation paid to the chief executive officer shall also be
27 included.
28 (5) A description of any loan, including the amount and terms
29 of the loan, made to any member of the board of directors by the
30 corporation during the corporation’s two most recent fiscal years
31 at an interest rate lower than the interest rate available from
32 unaffiliated commercial lenders generally to a similarly-situated
33 borrower.
34 (6) A statement indicating whether an order for relief has been
35 entered in a bankruptcy case with respect to the corporation, its
36 executive officers, or members of the board of directors of the
37 corporation during the 10 years preceding the date of the statement.
38 (7) A statement indicating whether any member of the board of
39 directors or executive officer of the corporation was convicted of

1 fraud during the 10 years preceding the date of the statement, if
2 the conviction has not been overturned or expunged.

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

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

14 (1) "Publicly traded corporation" means a corporation, as
15 defined in Section 162, that is an issuer as defined in Section 3 of
16 the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec.
17 78c), and has at least one class of securities listed or admitted for
18 trading on a national securities exchange, ~~on the National or~~
19 ~~Small-Cap Markets of the NASDAQ Stock Market,~~ on the
20 ~~OTC Bulletin~~ *OTC Bulletin* Board, or on the electronic service
21 operated by Pink Sheets, LLC.

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

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

34 (4) "Loan" as used in paragraph (5) of subdivision (a) excludes
35 an advance for expenses permitted under subdivision (d) of Section
36 315, the corporation's payment of life insurance premiums
37 permitted under subdivision (e) of Section 315, and an advance of
38 expenses permitted under Section 317.

39 (c) This statement shall be available and open to the public for
40 inspection. The Secretary of State, ~~not later than December 31,~~

1 2004, shall provide access to all information contained in this
2 statement by means of an online database.

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

7 SEC. 4. Section 2115 of the Corporations Code is amended to
8 read:

9 2115. (a) A foreign corporation (other than a foreign
10 association or foreign nonprofit corporation but including a foreign
11 parent corporation even though it does not itself transact intrastate
12 business) is subject to the requirements of subdivision (b)
13 commencing on the date specified in subdivision (d) and continuing
14 until the date specified in subdivision (e) if:

15 (1) The average of the property factor, the payroll factor, and
16 the sales factor (as defined in Sections 25129, 25132, and 25134
17 of the Revenue and Taxation Code) with respect to it is more than
18 50 percent during its latest full income year and

19 (2) more than one-half of its outstanding voting securities are
20 held of record by persons having addresses in this state appearing
21 on the books of the corporation on the record date for the latest
22 meeting of shareholders held during its latest full income year or,
23 if no meeting was held during that year, on the last day of the latest
24 full income year. The property factor, payroll factor, and sales
25 factor shall be those used in computing the portion of its income
26 allocable to this state in its franchise tax return or, with respect to
27 corporations the allocation of whose income is governed by special
28 formulas or that are not required to file separate or any tax returns,
29 which would have been so used if they were governed by this
30 three-factor formula. The determination of these factors with
31 respect to any parent corporation shall be made on a consolidated
32 basis, including in a unitary computation (after elimination of
33 intercompany transactions) the property, payroll, and sales of the
34 parent and all of its subsidiaries in which it owns directly or
35 indirectly more than 50 percent of the outstanding shares entitled
36 to vote for the election of directors, but deducting a percentage of
37 the property, payroll, and sales of any subsidiary equal to the
38 percentage minority ownership, if any, in the subsidiary. For the
39 purpose of this subdivision, any securities held to the knowledge
40 of the issuer in the names of broker-dealers, nominees for

1 broker-dealers (including clearing corporations), or banks,
2 associations, or other entities holding securities in a nominee name
3 or otherwise on behalf of a beneficial owner (collectively “nominee
4 holders”), shall not be considered outstanding. However, if the
5 foreign corporation requests all nominee holders to certify, with
6 respect to all beneficial owners for whom securities are held, the
7 number of shares held for those beneficial owners having addresses
8 (as shown on the records of the nominee holder) in this state and
9 outside of this state, then all shares so certified shall be considered
10 outstanding and held of record by persons having addresses either
11 in this state or outside of this state as so certified, provided that
12 the certification so provided shall be retained with the record of
13 shareholders and made available for inspection and copying in the
14 same manner as is provided in Section 1600 with respect to that
15 record. A current list of beneficial owners of a foreign corporation’s
16 securities provided to the corporation by one or more nominee
17 holders or their agent pursuant to the requirements of Rule
18 14b-1(b)(3) or 14b-2(b)(3) as adopted on January 6, 1992,
19 promulgated under the Securities Exchange Act of 1934, shall
20 constitute an acceptable certification with respect to beneficial
21 owners for the purposes of this subdivision.

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

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

28 Section 301 (annual election of directors);

29 Section 303 (removal of directors without cause);

30 Section 304 (removal of directors by court proceedings);

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

33 Section 309 (directors’ standard of care);

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

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

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

1 Section 506 (liability of shareholder who receives unlawful
2 distribution);
3 Section 600, subdivisions (b) and (c) (requirement for annual
4 shareholders' meeting and remedy if same not timely held);
5 Section 708, subdivisions (a), (b), and (c) (shareholder's right
6 to cumulate votes at any election of directors);
7 Section 710 (supermajority vote requirement);
8 Section 1001, subdivision (d) (limitations on sale of assets);
9 Section 1101 (provisions following subdivision (e)) (limitations
10 on mergers);
11 Section 1151 (first sentence only) (limitations on conversions);
12 Section 1152 (requirements of conversions);
13 Chapter 12 (commencing with Section 1200) (reorganizations);
14 Chapter 13 (commencing with Section 1300) (dissenters' rights);
15 Sections 1500 and 1501 (records and reports);
16 Section 1508 (action by Attorney General);
17 Chapter 16 (commencing with Section 1600) (rights of
18 inspection).
19 (c) This section does not apply to any corporation (1) with
20 outstanding securities listed on the New York Stock Exchange, ~~or~~
21 the American Stock Exchange, *or the NASDAQ Global Market,*
22 ~~or (2) with outstanding securities designated as qualified for trading~~
23 ~~on the Nasdaq National Market (or any successor thereto) of the~~
24 ~~Nasdaq Stock Market operated by the Nasdaq Stock Market Inc.,~~
25 ~~or (3) if all of its voting shares (other than directors' qualifying~~
26 ~~shares) are owned directly or indirectly by a corporation or~~
27 ~~corporations not subject to this section.~~
28 (d) For purposes of subdivision (a), the requirements of
29 subdivision (b) shall become applicable to a foreign corporation
30 only upon the first day of the first income year of the corporation
31 (1) commencing on or after the 135th day of the income year
32 immediately following the latest income year with respect to which
33 the tests referred to in subdivision (a) have been met or (2)
34 commencing on or after the entry of a final order by a court of
35 competent jurisdiction declaring that those tests have been met.
36 (e) For purposes of subdivision (a), the requirements of
37 subdivision (b) shall cease to be applicable to a foreign corporation
38 (1) at the end of the first income year of the corporation
39 immediately following the latest income year with respect to which
40 at least one of the tests referred to in subdivision (a) is not met or

1 (2) at the end of the income year of the corporation during which
2 a final order has been entered by a court of competent jurisdiction
3 declaring that one of those tests is not met, provided that a contrary
4 order has not been entered before the end of the income year.

5 (f) Any foreign corporation that is subject to the requirements
6 of subdivision (b) shall advise any shareholder of record, any
7 officer, director, employee, or other agent (within the meaning of
8 Section 317) and any creditor of the corporation in writing, within
9 30 days of receipt of written request for that information, whether
10 or not it is subject to subdivision (b) at the time the request is
11 received. Any party who obtains a final determination by a court
12 of competent jurisdiction that the corporation failed to provide to
13 the party information required to be provided by this subdivision
14 or provided the party information of the kind required to be
15 provided by this subdivision that was incorrect, then the court, in
16 its discretion, shall have the power to include in its judgment
17 recovery by the party from the corporation of all court costs and
18 reasonable attorneys' fees incurred in that legal proceeding to the
19 extent they relate to obtaining that final determination.

20 SEC. 5. Section 2117.1 of the Corporations Code is amended
21 to read:

22 2117.1. (a) In addition to the statement required pursuant to
23 Section 2117, every publicly traded foreign corporation shall file
24 annually, within 150 days after the end of its fiscal year, on a form
25 prescribed by the Secretary of State, a statement that includes all
26 of the following information:

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

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

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

39 (4) The compensation for the most recent fiscal year of the
40 publicly traded foreign corporation paid to each member of the

1 board of directors and paid to each of the five most highly
2 compensated executive officers of the foreign corporation who are
3 not members of the board of directors, including the number of
4 any shares issued, options for shares granted, and similar
5 equity-based compensation granted to each of those persons. If
6 the chief executive officer is not among the five most highly
7 compensated executive officers of the corporation, the
8 compensation paid to the chief executive officer shall also be
9 included.

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

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

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

26 (8) A description of any material pending legal proceedings,
27 other than ordinary routine litigation incidental to the business, to
28 which the corporation or any of its subsidiaries is a party or of
29 which any of their property is the subject, as specified by Item 103
30 of Regulation S-K of the Securities Exchange Commission (Section
31 229.103 of Title 12 of the Code of Federal Regulations). A
32 description of any material legal proceeding during which the
33 corporation was found legally liable by entry of a final judgment
34 or final order that was not overturned on appeal during the five
35 years preceding the date of the statement.

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

37 (1) "Publicly traded foreign corporation" means a foreign
38 corporation, as defined in Section 171, that is an issuer as defined
39 in Section 3 of the Securities Exchange Act of 1934, as amended
40 (15 U.S.C. Sec. 78c), and has at least one class of securities listed

1 or admitted for trading on a national securities exchange, ~~on the~~
2 ~~National or Small-Cap Markets of the NASDAQ Stock Market,~~
3 ~~Inc.~~, on the ~~OTC-Bulletin~~ *OTC Bulletin* Board, or on the electronic
4 service operated by Pink Sheets; LLC.

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

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

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

22 (c) This statement shall be available and open to the public for
23 inspection. The Secretary of State, ~~not later than December 31,~~
24 ~~2004,~~ shall provide access to all information contained in this
25 statement by means of an online database.

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

30 SEC. 6. Section 25014.7 of the Corporations Code is amended
31 to read:

32 25014.7. (a) “Eligible rollup transaction” means a rollup
33 transaction in which the new securities issued are ~~either~~ listed or
34 approved for listing on a national securities exchange ~~or on the~~
35 ~~National Market System of the Nasdaq Stock Market (or any~~
36 ~~successor to that entity), where the national securities exchange~~
37 ~~and the Nasdaq Stock Market (or its successor) have~~ *which has*
38 been certified by the commissioner under subdivision (o) of Section
39 25100, if the exchange ~~or Nasdaq Stock Market (or its successor)~~
40 requires as a condition to listing or designation that the rollup

1 transaction be conducted in accordance with procedures to protect
2 the rights of limited partners.

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

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

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

21 (B) Rollups which utilize unsecured debt instruments as
22 compensation, in addition to the requirements of subparagraph (A)
23 ~~of paragraph (1)~~, limit total leverage to 70 percent of the appraised
24 value of the assets.

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

29 (D) Freely tradeable securities utilized as compensation to
30 dissenting limited partners must be issued by an issuer whose
31 securities are listed on a ~~certified~~ national securities exchange ~~or~~
32 ~~listed on the National Market System of the Nasdaq Market System~~
33 ~~(or its successor), if so that has been certified;~~ for at least one year
34 prior to the transaction, and the number of securities to be received
35 in return for limited partnership interests must be determined by
36 an appraisal of limited partnership assets, conducted in a manner
37 consistent with *this* paragraph ~~(1)~~ of subdivision ~~(b)~~, in relation to
38 the average last sale price of the freely tradeable securities in the
39 20-day period following the transaction. If the issuer of the freely
40 tradeable securities is affiliated with the sponsor or general partner,

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

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

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

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

29 The rights set forth in paragraphs (1) and (2) are the only rights
30 of dissenting limited partners to which the presumption under *this*
31 subdivision ~~(b)~~ applies. A general partner or sponsor shall file an
32 application for qualification pursuant to Section 25110 or Section
33 25120 with respect to any other rights proposed to be offered to
34 dissenting limited partners.

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

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

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

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

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

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

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

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

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

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

36 (B) Dissolve the entity.

37 (C) Remove management and elect new management.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 SEC. 7. Section 25100 of the Corporations Code is amended
10 to read:

11 25100. The following securities are exempted from Sections
12 25110, 25120, and 25130:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (1) Listing standards:

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

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

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

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

17 Companies whose securities are concentrated in a limited
18 geographical area, or whose securities are largely held in block by
19 institutional investors, normally may not be considered eligible
20 for listing unless the public distribution appreciably exceeds
21 500,000 shares.

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

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

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

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

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

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

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

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

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

11 (iii) If the total number of shareholders is less than 400 or if the
12 number of shareholders of lots of 100 shares or more is less than
13 300.

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

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

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

37 The commissioner after appropriate notice and opportunity for
38 hearing in accordance with the provisions of the Administrative
39 Procedure Act, Chapter 5 (commencing with Section 11500) of
40 Part 1 of Division 3 of Title 2 of the Government Code, may, in

1 his or her discretion, by rule or order, decertify any exchange or
2 ~~Nasdaq Stock Market (or its successor)~~ previously certified that
3 ceases substantially to apply the minimum standards or criteria as
4 set forth in paragraphs (1) and (2).

5 A rule or order of certification shall conclusively establish that
6 any security listed or approved for listing upon notice of issuance
7 on any exchange, or listed on the National Market System of the
8 ~~Nasdaq Stock Market (or its successor)~~, named in a rule or order
9 of certification, and any warrant or right to purchase or subscribe
10 to that security, is exempt under this subdivision until the adoption
11 by the commissioner of any rule or order decertifying the exchange
12 ~~or the Nasdaq Stock Market (or its successor)~~.

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

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

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

39 (2) The commissioner may, in the commissioner's discretion,
40 (A) make public or private investigations within or outside of this

1 state as the commissioner deems necessary to determine whether
2 any person has violated or is about to violate any provision of
3 Section 1280.7 of the Insurance Code or to aid in the enforcement
4 of Section 1280.7, and (B) publish information concerning the
5 violation of Section 1280.7.

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

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

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

35 (6) The cost of any review, examination, audit, or investigation
36 made by the commissioner under Section 1280.7 of the Insurance
37 Code shall be paid to the commissioner by the person subject to
38 the review, examination, audit, or investigation, and the
39 commissioner may maintain an action for the recovery of these
40 costs in any court of competent jurisdiction. In determining the

1 cost, the commissioner may use the actual amount of the salary or
2 other compensation paid to the persons making the review,
3 examination, audit, or investigation plus the actual amount of
4 expenses including overhead reasonably incurred in the
5 performance of the work.

6 The recoverable cost of each review, examination, audit, or
7 investigation made by the commissioner under Section 1280.7 of
8 the Insurance Code shall not exceed twenty-five thousand dollars
9 (\$25,000), except that costs exceeding twenty-five thousand dollars
10 (\$25,000) shall be recoverable if the costs are necessary to prevent
11 a violation of any provision of Section 1280.7 of the Insurance
12 Code.

13 (r) Any shares or memberships issued by any corporation
14 organized and existing pursuant to the provisions of Part 2
15 (commencing with Section 12200) of Division 3 of Title 1,
16 provided the aggregate investment of any shareholder or member
17 in shares or memberships sold pursuant to this subdivision does
18 not exceed three hundred dollars (\$300). This exemption does not
19 apply to the shares or memberships of that corporation if any
20 promoter thereof expects or intends to make a profit directly or
21 indirectly from any business or activity associated with the
22 corporation or the operation of the corporation or from
23 remuneration, other than reasonable salary, received from the
24 corporation. This exemption does not apply to nonvoting shares
25 or memberships of that corporation issued to any person who does
26 not possess, and who will not acquire in connection with the
27 issuance of nonvoting shares or memberships, voting power
28 (Section 12253) in the corporation. This exemption also does not
29 apply to shares or memberships issued by a nonprofit cooperative
30 corporation organized to facilitate the creation of an unincorporated
31 interindemnity arrangement that provides indemnification for
32 medical malpractice to its physician and surgeon members as set
33 forth in subdivision (q).

34 (s) Any security consisting of or representing an interest in a
35 pool of mortgage loans that meets each of the following
36 requirements:

37 (1) The pool consists of whole mortgage loans or participation
38 interests in those loans, which loans were originated or acquired
39 in the ordinary course of business by a national bank or federal
40 savings association or federal savings bank having its principal

1 office in this state, by a bank incorporated under the laws of this
2 state or by a savings association as defined in subdivision (a) of
3 Section 5102 of the Financial Code and which is subject to the
4 supervision and regulation of the Commissioner of Financial
5 Institutions, and each of which at the time of transfer to the pool
6 is an authorized investment for the originating or acquiring
7 institution.

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

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

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

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

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

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

31 SEC. 8. Section 25101 of the Corporations Code is amended
32 to read:

33 25101. The following securities are exempt from the provisions
34 of Section 25130:

35 (a) Any security issued by a person that is the issuer of any
36 security listed on a national securities exchange, ~~or on the National~~
37 ~~Market System of the Nasdaq Stock Market (or any successor to~~
38 ~~that entity); if the exchange or Nasdaq Stock Market (or its~~
39 ~~suecessor) is certified by rule or order of the commissioner.~~

1 (b) The exemption provided by subdivision (a) does not apply
2 to securities offered pursuant to a registration under the Securities
3 Act of 1933 or pursuant to the exemption afforded by Regulation
4 A under that act if the aggregate offering price of the securities
5 offered pursuant to that exemption exceeds fifty thousand dollars
6 (\$50,000).

7 SEC. 9. Section 25117 of the Corporations Code is amended
8 to read:

9 25117. (a) An evidence of indebtedness, and the purchasers
10 or holders thereof, shall be exempt from the usury provisions of
11 Section 1 of Article XV of the California Constitution if (1) the
12 evidence of indebtedness is rated or provisionally rated by Standard
13 & Poor's Corporation as AAA, AA, A, BBB, or investment grade
14 commercial paper, or by Moody's Investors Service, Inc. as Aaa,
15 Aa, A, Baa, or investment grade commercial paper, including any
16 such ratings with "+" or "-" designation or other variations that
17 occur within these ratings, or has a rating or a provisional rating
18 by another nationally recognized rating agency or system, which
19 rating and agency or system have been certified by rule or order
20 of the commissioner, or (2) the issuer thereof either (A) has any
21 security listed or approved for listing upon notice of issuance on
22 a national securities exchange ~~or on the National Market System~~
23 ~~of the Nasdaq Stock Market (or any successor to that entity), if~~
24 ~~the exchange or Nasdaq Stock Market (or its successor)~~ has been
25 certified by the commissioner, pursuant to subdivision (o) of
26 Section 25100, or (B) meets each of the following requirements:

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

29 (ii) The issuer had total shareholders' equity of at least one
30 million dollars (\$1,000,000) at the end of its most recent fiscal
31 year, and had consolidated net income, after all charges, including
32 taxes and extraordinary losses, and excluding extraordinary gains,
33 of at least five hundred thousand dollars (\$500,000) for three of
34 its last four fiscal years, including its most recent fiscal year. The
35 determination of total shareholders' equity and net income shall
36 be determined in conformity with generally accepted accounting
37 principles applicable to that fiscal year or years, on a consolidated
38 basis, or (3) the evidence of indebtedness is issued by any
39 corporation all of the outstanding shares of which are owned by

1 an issuer which meets the requirements of subparagraph (A) or
2 (B) of paragraph (2).

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

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

11 SEC. 10. Section 25211 of the Corporations Code is amended
12 to read:

13 25211. (a) The application for a certificate as a broker-dealer
14 shall be accompanied by the consent to service of process specified
15 in Section 25240 and, unless filed pursuant to subdivision (b), shall
16 contain such information in such detail relating to the applicant
17 and any persons associated with him or her as the commissioner
18 may by rule require.

19 (b) A broker-dealer registered under the Securities Exchange
20 Act of 1934 who is a member of the New York Stock Exchange,
21 the American Stock Exchange, the ~~Pacific Stock Exchange~~ *NYSE*
22 *Arca*, or the ~~National Association of Securities Dealers~~ *Financial*
23 *Industry Regulatory Authority*, and who has not had any certificate
24 as a broker-dealer, investment adviser or agent denied or revoked
25 under this law or any predecessor statute, may be licensed by
26 notification pursuant to this subdivision by filing with the
27 commissioner an application setting forth the following information
28 in such form and detail as the commissioner may by rule require:

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

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

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

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

39 (c) Unless a proceeding has been instituted under Section
40 25212, a certificate under subdivision (b) shall become effective

1 on the third business day after the application is filed with the
2 commissioner or upon the day the certificate is issued, whichever
3 first occurs. However, the commissioner may by order delay
4 effectiveness for a period not exceeding 15 business days (or for
5 an additional period with the consent of the applicant) if the
6 commissioner believes that the delay is necessary in the public
7 interest to determine if a proceeding should be instituted under
8 Section 25212. The commissioner may by rule or order waive that
9 provision of subdivision (b) which precludes application thereunder
10 by a person who has had a certificate denied or revoked under this
11 law or any predecessor statute if the commissioner finds the waiver
12 to be in the public interest. The commissioner, after appropriate
13 notice and opportunity for hearing in accordance with the
14 provisions of the Administrative Procedure Act, Chapter 5
15 (commencing with Section 11500) of Part 1 of Division 3 of Title
16 2 of the Government Code, may by rule or order disqualify a
17 self-regulatory organization specified in subdivision (b) from the
18 provisions thereof. The commissioner may by rule establish
19 standards or criteria pursuant to which disqualification may be
20 made and he or she may disqualify upon a finding that the
21 self-regulatory organization fails substantially to comply with
22 those standards or criteria. ~~Such disqualification~~ *Disqualification*
23 by the commissioner shall not affect a certificate which has become
24 effective pursuant to this subdivision prior to the effective date of
25 that rule or order of disqualification but each person licensed
26 pursuant to subdivision (b) upon the basis of membership in that
27 organization shall, within 90 days after the effective date of that
28 rule or order, or such additional time as the commissioner may
29 allow, file with the commissioner a complete and current
30 application in the form required pursuant to subdivision (a). If a
31 broker-dealer licensed pursuant to subdivision (b) ceases to meet
32 the qualifications for licensing pursuant to that subdivision, he *or*
33 *she* shall, within 10 days after ~~such~~ *that* event, file with the
34 commissioner a complete and current application in the form
35 required pursuant to subdivision (a).

36 (d) An application for a certificate as a broker-dealer, with
37 respect to a broker-dealer to be formed or organized, may be made
38 by a licensed broker-dealer to which the broker-dealer to be formed
39 or organized is to be the successor. The application shall contain
40 such information in such detail relating to the applicant and to the

1 successor and any person associated with the applicant or the
2 successor as the commissioner may by rule require. The application
3 shall become effective and the successor may transact business as
4 a broker-dealer 30 days after the receipt of the application by the
5 commissioner or within such shorter period of time as the
6 commissioner may determine, unless an order has been entered
7 under Section 25212 denying a certificate to the successor or a
8 proceeding looking toward such an order has been instituted under
9 that section. The certificate shall terminate on the 45th day after
10 the effective date thereof, unless prior thereto the successor shall,
11 in accordance with such rules as the commissioner may prescribe,
12 adopt the application as its own and file the consent to service of
13 process specified in Section 25240.

14 SEC. 11. Section 25219 of the Corporations Code is amended
15 to read:

16 25219. Notwithstanding any other provision of this division,
17 if in his or her opinion the public interest and the protection of
18 investors so require, the commissioner is authorized summarily to
19 suspend all over-the-counter trading in this state by broker-dealers
20 and agents in any security or summarily to suspend all trading on
21 a national securities exchange located in this state in any security
22 (provided, in the case of trading on that exchange, that the security
23 is not listed on the National Market System of the NASDAQ Stock
24 Market or any national securities exchange located outside this
25 state on which trading has not been suspended) for a period not
26 exceeding 90 days, and for successive periods of 90 days. No
27 broker-dealer or agent shall effect any transaction (other than an
28 unsolicited brokerage transaction effected on the National Market
29 System of the NASDAQ Stock Market or on a national securities
30 exchange located outside this state) in, or induce or attempt to
31 induce the purchase or sale of, any security in this state in which
32 trading is in any manner suspended under this section, except in
33 performance of a contract previously entered into.

34 SEC. 12. Section 25231 of the Corporations Code is amended
35 to read:

36 25231. (a) Any investment adviser, or any person who
37 contemplates becoming an investment adviser, may apply for a
38 certificate to act as an investment adviser by filing with the
39 commissioner an application. The application shall be accompanied
40 by the consent to service of process specified in Section 25240

1 and shall contain information, in such form and detail, as the
2 commissioner may by rule prescribe.

3 (b) Unless otherwise provided by rule or order of the
4 commissioner, all investment adviser and investment adviser
5 representative applications, amendments, reports, notices, related
6 filings, and fees required to be filed with the commissioner
7 pursuant to this title shall be filed electronically with and
8 transmitted to the Web-based Investment Adviser Registration
9 Depository operated by the ~~National Association of Securities~~
10 ~~Dealers~~ *Financial Industry Regulatory Authority*.

11 SEC. 13. Section 25247 of the Corporations Code is amended
12 to read:

13 25247. (a) Upon written or oral request, the commissioner
14 shall make available to any person the information specified in
15 Section 6254.12 of the Government Code and made available
16 through the Public Disclosure Program of the ~~National Association~~
17 ~~of Security Dealers, Incorporated (NASD)~~ *Financial Industry*
18 *Regulatory Authority* with respect to any broker-dealer or agent
19 licensed or regulated under this part. The commissioner shall also
20 make available the current license status and the year of issuance
21 of the license of a broker-dealer. Any information disclosed
22 pursuant to this subdivision shall constitute a public record.
23 Notwithstanding any other provisions of law, the commissioner
24 may disclose either orally or in writing that information pursuant
25 to this subdivision. There shall be no liability on the part of and
26 no cause of action of any nature shall arise against the State of
27 California, the Department of Corporations, the Commissioner of
28 Corporations, or any officer, agent, or employee of the state or of
29 the Department of Corporations for the release of any false or
30 unauthorized information, unless the release of that information
31 was done with knowledge and malice.

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

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

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

8 (e) Upon written or oral request, the commissioner shall make
9 available to any person the disciplinary records maintained on the
10 Investment Adviser Registration Depository and made available
11 through the Investment Advisor Public Disclosure Web site with
12 respect to any investment adviser, investment adviser
13 representative, or associated person of an investment adviser
14 licensed or regulated under this part. The commissioner shall also
15 make available the current license status and the year of issuance
16 of the license of an investment adviser. Any information disclosed
17 pursuant to this subdivision shall constitute a public record.
18 Notwithstanding any other provision of law, the commissioner
19 may disclose that information either orally or in writing pursuant
20 to this subdivision. There shall be no liability on the part of and
21 no cause of action of any nature shall arise against the State of
22 California, the Department of Corporations, the Commissioner of
23 Corporations, or any officer, agent, or employee of the state or of
24 the Department of Corporations for the release of any false or
25 unauthorized information, unless the release of that information
26 was done with knowledge and malice.

27 (f) Section 461 of the Business and Professions Code shall not
28 be applicable to the Department of Corporations when using a
29 national, uniform application adopted or approved for use by the
30 Securities and Exchange Commission, the North American
31 Securities Administrators Association, or the ~~National Association~~
32 ~~of Securities Dealers Regulation, Inc.~~ *Financial Industry*
33 *Regulatory Authority* that is required for participation in the Central
34 Registration Depository or the Investment Adviser Registration
35 Depository.

36 (g) This section shall not require the disclosure of criminal
37 history record information maintained by the Federal Bureau of
38 Investigation pursuant to Section 534 of Title 28 of the United

- 1 States Code, and the rules thereunder, or information not otherwise
- 2 subject to disclosure under the Information Practices Act of 1977.

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