

AMENDED IN ASSEMBLY APRIL 22, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 722**

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**Introduced by Assembly Member Perea**

February 25, 2015

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An act to amend Sections 25102, 25104, 25110, 25501, 25503, and 25608 of, and to add Section 25113.1 to, the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 722, as amended, Perea. Securities transactions: qualifications by permit: liability.

Existing law, the Corporate Securities Law of 1968, requires securities offered or sold in this state in an issuer or nonissuer transaction to be qualified through an application filed with the Commissioner of Business Oversight, unless exempt from the qualification requirements. That law makes it unlawful, for a person in connection with the offer, sale, or purchase of a security, to engage in fraudulent or misleading acts or omissions.

This bill would authorize an applicant to file an application for qualification of the offer or sale of a security by crowdfunding permit if certain conditions are met, including that the total offering of securities by the applicant to be sold in a 12-month period, within or outside this state, is limited to \$1,000,000, less a specified amount; the aggregate amount of securities sold to any investor, including any amount sold during the 12-month period preceding the date of the transaction, does not exceed the lesser of \$5,000 or 10% of the net worth of that natural person; and the issuer will not, directly or indirectly, conduct any unsolicited telephone solicitation of the securities offered. ~~This bill~~

~~would also exempt from qualification requirements the offer of a security in an issuer or nonissuer transaction for which an application for that qualification has been filed with the commissioner but has not yet become effective, as specified. This bill would impose a filing fee of \$200 plus  $\frac{1}{5}$  of 2% of the aggregate value of the securities sought to be sold in this state.~~

Existing law provides that any person who violates a condition of qualification of the offer or sale of a security is liable to any person acquiring the security sold in violation, who may sue to recover the consideration paid for such security with interest thereon at the legal rate or for damages, as specified.

This bill would extend that provision to a violation of a condition of qualification by permit authorized by this bill. This bill would also require a court to award reasonable attorney's fees and costs, and authorize the award of treble and punitive damages, to a prevailing purchaser in an action brought against any person who violates those conditions of qualification by permit authorized by this bill.

Existing law imposes liability on any person who engages in specified unlawful activity to the person who purchases a security from him or sells a security to him, and authorizes the purchaser or seller to sue either for rescission or for damages.

This bill would provide that the plaintiff is not required to plead or prove that the defendant acted with scienter.

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

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

1 SECTION 1. Section 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,

1 unless the sale of securities is exempt from the qualification by  
2 Section 25100, 25102, or 25105 of the California Corporations  
3 Code. The rights of all parties to this agreement are expressly  
4 conditioned upon the qualification being obtained, unless the sale  
5 is so exempt"; and (2) no part of the purchase price is paid or  
6 received and none of the securities are issued until the sale of the  
7 securities is qualified under this law unless the sale of securities  
8 is exempt from the qualification by this section, Section 25100,  
9 or 25105.

10 (b) Any offer (but not a sale) of a security for which (1)~~(A)~~ a  
11 registration statement has been filed under the Securities Act of  
12 1933 but has not yet become effective, or for which an offering  
13 statement under Regulation A has been filed but has not yet been  
14 qualified, if no stop order or refusal order is in effect ~~or (B) an~~  
15 ~~application for qualification under Section 25113.1 has been filed~~  
16 ~~with the commissioner but has not yet become effective;~~ and (2)  
17 no public proceeding or examination looking towards an order is  
18 pending under Section 8 of the act and no order under Section  
19 25140 or subdivision (a) of Section 25143 is in effect under this  
20 law.

21 (c) Any offer (but not a sale) and the execution and delivery of  
22 any agreement for the sale of securities pursuant to the offer as  
23 may be permitted by the commissioner upon application. Any  
24 negotiating permit under this subdivision shall be conditioned to  
25 the effect that none of the securities may be issued and none of  
26 the consideration therefor may be received or accepted until the  
27 sale of the securities is qualified under this law.

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

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

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

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

1 (2) All purchasers either have a preexisting personal or business  
2 relationship with the offeror or any of its partners, officers,  
3 directors or controlling persons, or managers (as appointed or  
4 elected by the members) if the offeror is a limited liability  
5 company, or by reason of their business or financial experience or  
6 the business or financial experience of their professional advisers  
7 who are unaffiliated with and who are not compensated by the  
8 issuer or any affiliate or selling agent of the issuer, directly or  
9 indirectly, could be reasonably assumed to have the capacity to  
10 protect their own interests in connection with the transaction.

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

15 (4) The offer and sale of the security is not accomplished by  
16 the publication of any advertisement. The number of purchasers  
17 referred to above is exclusive of any described in subdivision (i),  
18 any officer, director, or affiliate of the issuer, or manager (as  
19 appointed or elected by the members) if the issuer is a limited  
20 liability company, and any other purchaser who the commissioner  
21 designates by rule. For purposes of this section, a husband and  
22 wife (together with any custodian or trustee acting for the account  
23 of their minor children) are counted as one person and a  
24 partnership, corporation, or other organization that was not  
25 specifically formed for the purpose of purchasing the security  
26 offered in reliance upon this exemption, is counted as one person.  
27 The commissioner shall by rule require the issuer to file a notice  
28 of transactions under this subdivision.

29 The failure to file the notice or the failure to file the notice within  
30 the time specified by the rule of the commissioner shall not affect  
31 the availability of the exemption. Any issuer that fails to file the  
32 notice as provided by rule of the commissioner shall, within 15  
33 business days after discovery of the failure to file the notice or  
34 after demand by the commissioner, whichever occurs first, file the  
35 notice and pay to the commissioner a fee equal to the fee payable  
36 had the transaction been qualified under Section 25110. Neither  
37 the filing of the notice nor the failure by the commissioner to  
38 comment thereon precludes the commissioner from taking any  
39 action that the commissioner deems necessary or appropriate under  
40 this division with respect to the offer and sale of the securities.

1 (g) Any offer or sale of conditional sale agreements, equipment  
2 trust certificates, or certificates of interest or participation therein  
3 or partial assignments thereof, covering the purchase of railroad  
4 rolling stock or equipment or the purchase of motor vehicles,  
5 aircraft, or parts thereof, in a transaction not involving any public  
6 offering.

7 (h) Any offer or sale of voting common stock by a corporation  
8 incorporated in any state if, immediately after the proposed sale  
9 and issuance, there will be only one class of stock of the  
10 corporation outstanding that is owned beneficially by no more than  
11 35 persons, provided all of the following requirements have been  
12 met:

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

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

18 (A) Only assets (which may include cash) of an existing business  
19 enterprise transferred to the issuer upon its initial organization, of  
20 which all of the persons who are to receive the stock to be issued  
21 pursuant to this exemption were owners during, and the enterprise  
22 was operated for, a period of not less than one year immediately  
23 preceding the proposed issuance, and the ownership of the  
24 enterprise immediately prior to the proposed issuance was in the  
25 same proportions as the shares of stock are to be issued.

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

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

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

35 (3) No promotional consideration has been given, paid, or  
36 incurred in connection with the issuance. Promotional consideration  
37 means any consideration paid directly or indirectly to a person  
38 who, acting alone or in conjunction with one or more other persons,  
39 takes the initiative in founding and organizing the business or

1 enterprise of an issuer for services rendered in connection with the  
2 founding or organizing.

3 (4) A notice in a form prescribed by rule of the commissioner,  
4 signed by an active member of the State Bar of California, is filed  
5 with or mailed for filing to the commissioner not later than 10  
6 business days after receipt of consideration for the securities by  
7 the issuer. That notice shall contain an opinion of the member of  
8 the State Bar of California that the exemption provided by this  
9 subdivision is available for the offer and sale of the securities. The  
10 failure to file the notice as required by this subdivision and the  
11 rules of the commissioner shall not affect the availability of this  
12 exemption. An issuer who fails to file the notice within the time  
13 specified by this subdivision shall, within 15 business days after  
14 discovery of the failure to file the notice or after demand by the  
15 commissioner, whichever occurs first, file the notice and pay to  
16 the commissioner a fee equal to the fee payable had the transaction  
17 been qualified under Section 25110. The notice, except when filed  
18 on behalf of a California corporation, shall be accompanied by an  
19 irrevocable consent, in the form that the commissioner by rule  
20 prescribes, appointing the commissioner or his or her successor in  
21 office to be the issuer's attorney to receive service of any lawful  
22 process in any noncriminal suit, action, or proceeding against it  
23 or its successor that arises under this law or any rule or order  
24 hereunder after the consent has been filed, with the same force and  
25 validity as if served personally on the issuer. An issuer on whose  
26 behalf a consent has been filed in connection with a previous  
27 qualification or exemption from qualification under this law (or  
28 application for a permit under any prior law if the application or  
29 notice under this law states that the consent is still effective) need  
30 not file another. Service may be made by leaving a copy of the  
31 process in the office of the commissioner, but it is not effective  
32 unless (A) the plaintiff, who may be the commissioner in a suit,  
33 action, or proceeding instituted by him or her, forthwith sends  
34 notice of the service and a copy of the process by registered or  
35 certified mail to the defendant or respondent at its last address on  
36 file with the commissioner, and (B) the plaintiff's affidavit of  
37 compliance with this section is filed in the case on or before the  
38 return day of the process, if any, or within the further time as the  
39 court allows.

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

5 For the purposes of this subdivision, all securities held by a  
6 husband and wife, whether or not jointly, shall be considered to  
7 be owned by one person, and all securities held by a corporation  
8 that has issued stock pursuant to this exemption shall be considered  
9 to be held by the shareholders to whom it has issued the stock.

10 All stock issued by a corporation pursuant to this subdivision as  
11 it existed prior to the effective date of the amendments to this  
12 section made during the 1996 portion of the 1995-96 Regular  
13 Session that required the issuer to have stamped or printed  
14 prominently on the face of the stock certificate a legend in a form  
15 prescribed by rule of the commissioner restricting transfer of the  
16 stock in a manner provided for by that rule shall not be subject to  
17 the transfer restriction legend requirement and, by operation of  
18 law, the corporation is authorized to remove that transfer restriction  
19 legend from the certificates of those shares of stock issued by the  
20 corporation pursuant to this subdivision as it existed prior to the  
21 effective date of the amendments to this section made during the  
22 1996 portion of the 1995-96 Regular Session.

23 (i) Any offer or sale (1) to a bank, savings and loan association,  
24 trust company, insurance company, investment company registered  
25 under the Investment Company Act of 1940, pension or  
26 profit-sharing trust (other than a pension or profit-sharing trust of  
27 the issuer, a self-employed individual retirement plan, or individual  
28 retirement account), or other institutional investor or governmental  
29 agency or instrumentality that the commissioner may designate  
30 by rule, whether the purchaser is acting for itself or as trustee, or  
31 (2) to any corporation with outstanding securities registered under  
32 Section 12 of the Securities Exchange Act of 1934 or any wholly  
33 owned subsidiary of the corporation that after the offer and sale  
34 will own directly or indirectly 100 percent of the outstanding  
35 capital stock of the issuer, provided the purchaser represents that  
36 it is purchasing for its own account (or for the trust account) for  
37 investment and not with a view to or for sale in connection with  
38 any distribution of the security.

- 1 (j) Any offer or sale of any certificate of interest or participation  
2 in an oil or gas title or lease (including subsurface gas storage and  
3 payments out of production) if either of the following apply:
- 4 (1) All of the purchasers meet one of the following requirements:
- 5 (A) Are and have been during the preceding two years engaged  
6 primarily in the business of drilling for, producing, or refining oil  
7 or gas (or whose corporate predecessor, in the case of a corporation,  
8 has been so engaged).
- 9 (B) Are persons described in paragraph (1) of subdivision (i).
- 10 (C) Have been found by the commissioner upon written  
11 application to be substantially engaged in the business of drilling  
12 for, producing, or refining oil or gas so as not to require the  
13 protection provided by this law (which finding shall be effective  
14 until rescinded).
- 15 (2) The security is concurrently hypothecated to a bank in the  
16 ordinary course of business to secure a loan made by the bank,  
17 provided that each purchaser represents that it is purchasing for  
18 its own account for investment and not with a view to or for sale  
19 in connection with any distribution of the security.
- 20 (k) Any offer or sale of any security under, or pursuant to, a  
21 plan of reorganization under Chapter 11 of the federal bankruptcy  
22 law that has been confirmed or is subject to confirmation by the  
23 decree or order of a court of competent jurisdiction.
- 24 (l) Any offer or sale of an option, warrant, put, call, or straddle,  
25 and any guarantee of any of these securities, by a person who is  
26 not the issuer of the security subject to the right, if the transaction,  
27 had it involved an offer or sale of the security subject to the right  
28 by the person, would not have violated Section 25110 or 25130.
- 29 (m) Any offer or sale of a stock to a pension, profit-sharing,  
30 stock bonus, or employee stock ownership plan, provided that (1)  
31 the plan meets the requirements for qualification under Section  
32 401 of the Internal Revenue Code, and (2) the employees are not  
33 required or permitted individually to make any contributions to  
34 the plan. The exemption provided by this subdivision shall not be  
35 affected by whether the stock is contributed to the plan, purchased  
36 from the issuer with contributions by the issuer or an affiliate of  
37 the issuer, or purchased from the issuer with funds borrowed from  
38 the issuer, an affiliate of the issuer, or any other lender.

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

4 (1) The issuer is (A) a California corporation or foreign  
5 corporation that, at the time of the filing of the notice required  
6 under this subdivision, is subject to Section 2115, or (B) any other  
7 form of business entity, including without limitation a partnership  
8 or trust organized under the laws of this state. The exemption  
9 provided by this subdivision is not available to a “blind pool”  
10 issuer, as that term is defined by the commissioner, or to an  
11 investment company subject to the Investment Company Act of  
12 1940.

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

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

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

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

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

35 (E) With respect to the offer and sale of one class of voting  
36 common stock of an issuer or of preferred stock of an issuer  
37 entitling the holder thereof to at least the same voting rights as the  
38 issuer’s one class of voting common stock, provided that the issuer  
39 has only one-class voting common stock outstanding upon  
40 consummation of the offer and sale, a natural person who, either

1 individually or jointly with the person's spouse, (i) has a minimum  
2 net worth of two hundred fifty thousand dollars (\$250,000) and  
3 had, during the immediately preceding tax year, gross income in  
4 excess of one hundred thousand dollars (\$100,000) and reasonably  
5 expects gross income in excess of one hundred thousand dollars  
6 (\$100,000) during the current tax year or (ii) has a minimum net  
7 worth of five hundred thousand dollars (\$500,000). "Net worth"  
8 shall be determined exclusive of home, home furnishings, and  
9 automobiles. Other assets included in the computation of net worth  
10 may be valued at fair market value.

11 Each natural person specified above, by reason of his or her  
12 business or financial experience, or the business or financial  
13 experience of his or her professional adviser, who is unaffiliated  
14 with and who is not compensated, directly or indirectly, by the  
15 issuer or any affiliate or selling agent of the issuer, can be  
16 reasonably assumed to have the capacity to protect his or her  
17 interests in connection with the transaction. The amount of the  
18 investment of each natural person shall not exceed 10 percent of  
19 the net worth, as determined by this subparagraph, of that natural  
20 person.

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

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

27 (4) Each natural person purchaser, including a corporation,  
28 partnership, or other organization specifically formed by natural  
29 persons for the purpose of acquiring the securities offered by the  
30 issuer, receives, at least five business days before securities are  
31 sold to, or a commitment to purchase is accepted from, the  
32 purchaser, a written offering disclosure statement that shall meet  
33 the disclosure requirements of Regulation D (17 C.F.R. 230.501  
34 et seq.), and any other information as may be prescribed by rule  
35 of the commissioner, provided that the issuer shall not be obligated  
36 pursuant to this paragraph to provide this disclosure statement to  
37 a natural person qualified under Section 260.102.13 of Title 10 of  
38 the California Code of Regulations. The offer or sale of securities  
39 pursuant to a disclosure statement required by this paragraph that  
40 is in violation of Section 25401, or that fails to meet the disclosure

1 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall  
2 not render unavailable to the issuer the claim of an exemption from  
3 Section 25110 afforded by this subdivision. This paragraph does  
4 not impose, directly or indirectly, any additional disclosure  
5 obligation with respect to any other exemption from qualification  
6 available under any other provision of this section.

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

- 11 (i) The name of the issuer of the securities.
- 12 (ii) The full title of the security to be issued.
- 13 (iii) The anticipated suitability standards for prospective  
14 purchasers.
- 15 (iv) A statement that (I) no money or other consideration is  
16 being solicited or will be accepted, (II) an indication of interest  
17 made by a prospective purchaser involves no obligation or  
18 commitment of any kind, and, if the issuer is required by paragraph  
19 (4) to deliver a disclosure statement to prospective purchasers,  
20 (III) no sales will be made or commitment to purchase accepted  
21 until five business days after delivery of a disclosure statement  
22 and subscription information to the prospective purchaser in  
23 accordance with the requirements of this subdivision.
- 24 (v) Any other information required by rule of the commissioner.
- 25 (vi) The following legend: "For more complete information  
26 about (Name of Issuer) and (Full Title of Security), send for  
27 additional information from (Name and Address) by sending this  
28 coupon or calling (Telephone Number)."

29 (B) The general announcement of proposed offering referred  
30 to in subparagraph (A) may also set forth the following  
31 information:

- 32 (i) A brief description of the business of the issuer.
- 33 (ii) The geographic location of the issuer and its business.
- 34 (iii) The price of the security to be issued, or, if the price is not  
35 known, the method of its determination or the probable price range  
36 as specified by the issuer, and the aggregate offering price.
- 37 (C) The general announcement of proposed offering shall  
38 contain only the information that is set forth in this paragraph.
- 39 (D) Dissemination of the general announcement of proposed  
40 offering to persons who are not qualified purchasers, without more,

1 shall not disqualify the issuer from claiming the exemption under  
2 this subdivision.

3 (6) No telephone solicitation shall be permitted until the issuer  
4 has determined that the prospective purchaser to be solicited is a  
5 qualified purchaser.

6 (7) The issuer files a notice of transaction under this subdivision  
7 both (A) concurrent with the publication of a general announcement  
8 of proposed offering or at the time of the initial offer of the  
9 securities, whichever occurs first, accompanied by a filing fee, and  
10 (B) within 10 business days following the close or abandonment  
11 of the offering, but in no case more than 210 days from the date  
12 of filing the first notice. The first notice of transaction under  
13 subparagraph (A) shall contain an undertaking, in a form acceptable  
14 to the commissioner, to deliver any disclosure statement required  
15 by paragraph (4) to be delivered to prospective purchasers, and  
16 any supplement thereto, to the commissioner within 10 days of  
17 the commissioner's request for the information. The exemption  
18 from qualification afforded by this subdivision is unavailable if  
19 an issuer fails to file the first notice required under subparagraph  
20 (A) or to pay the filing fee. The commissioner has the authority  
21 to assess an administrative penalty of up to one thousand dollars  
22 (\$1,000) against an issuer that fails to deliver the disclosure  
23 statement required to be delivered to the commissioner upon the  
24 commissioner's request within the time period set forth above.  
25 Neither the filing of the disclosure statement nor the failure by the  
26 commissioner to comment thereon precludes the commissioner  
27 from taking any action deemed necessary or appropriate under this  
28 division with respect to the offer and sale of the securities.

29 (o) An offer or sale of any security issued by a corporation or  
30 limited liability company pursuant to a purchase plan or agreement,  
31 or issued pursuant to an option plan or agreement, where the  
32 security at the time of issuance or grant is exempt from registration  
33 under the Securities Act of 1933, as amended, pursuant to Rule  
34 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions  
35 of which are hereby incorporated by reference into this section,  
36 provided that (1) the terms of any purchase plan or agreement shall  
37 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of  
38 Title 10 of the California Code of Regulations, (2) the terms of  
39 any option plan or agreement shall comply with Sections  
40 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the

1 California Code of Regulations, and (3) the issuer files a notice of  
2 transaction in accordance with rules adopted by the commissioner  
3 no later than 30 days after the initial issuance of any security under  
4 that plan, accompanied by a filing fee as prescribed by subdivision  
5 (y) of Section 25608. The failure to file the notice of transaction  
6 within the time specified in this subdivision shall not affect the  
7 availability of this exemption. An issuer that fails to file the notice  
8 shall, within 15 business days after discovery of the failure to file  
9 the notice or after demand by the commissioner, whichever occurs  
10 first, file the notice and pay the commissioner a fee equal to the  
11 maximum aggregate fee payable had the transaction been qualified  
12 under Section 25110.

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

18 (p) An offer or sale of nonredeemable securities to accredited  
19 investors (Section 28031) by a person licensed under the Capital  
20 Access Company Law (Division 3 (commencing with Section  
21 28000) of Title 4), provided that all purchasers either (1) have a  
22 preexisting personal or business relationship with the offeror or  
23 any of its partners, officers, directors, controlling persons, or  
24 managers (as appointed or elected by the members), or (2) by  
25 reason of their business or financial experience or the business or  
26 financial experience of their professional advisers who are  
27 unaffiliated with and who are not compensated by the issuer or  
28 any affiliate or selling agent of the issuer, directly or indirectly,  
29 could be reasonably assumed to have the capacity to protect their  
30 own interests in connection with the transaction. All nonredeemable  
31 securities shall be evidenced by certificates that shall have stamped  
32 or printed prominently on their face a legend in a form to be  
33 prescribed by rule or order of the commissioner restricting transfer  
34 of the securities in the manner as the rule or order provides. The  
35 exemption under this subdivision shall not be available for any  
36 offering that is exempt or asserted to be exempt pursuant to Section  
37 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))  
38 or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is  
39 conducted by means of any form of general solicitation or general  
40 advertising.

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

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

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

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

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

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

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

37 Each natural person specified above, by reason of his or her  
38 business or financial experience, or the business or financial  
39 experience of his or her professional adviser, who is unaffiliated  
40 with and who is not compensated, directly or indirectly, by the

1 issuer or any affiliate or selling agent of the issuer, can be  
2 reasonably assumed to have the capacity to protect his or her  
3 interests in connection with the transaction.

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

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

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

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

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

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

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

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

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

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

3 (G) A description of any order, judgment, or decree that is final  
4 as to the issuing entity of any state, federal, or foreign country  
5 governmental agency or administrator, or of any state, federal, or  
6 foreign country court of competent jurisdiction (i) revoking,  
7 suspending, denying, or censuring for cause any license, permit,  
8 or other authority of the issuer or of any director, officer, partner,  
9 member, trustee, or person owning or controlling, directly or  
10 indirectly, 10 percent or more of the outstanding interest or equity  
11 securities of the issuer, to engage in the securities, commodities,  
12 franchise, insurance, real estate, or lending business or in the offer  
13 or sale of securities, commodities, franchises, insurance, real estate,  
14 or loans, (ii) permanently restraining, enjoining, barring,  
15 suspending, or censuring any such person from engaging in or  
16 continuing any conduct, practice, or employment in connection  
17 with the offer or sale of securities, commodities, franchises,  
18 insurance, real estate, or loans, (iii) convicting any such person  
19 of, or pleading nolo contendere by any such person to, any felony  
20 or misdemeanor involving a security, commodity, franchise,  
21 insurance, real estate, or loan, or any aspect of the securities,  
22 commodities, franchise, insurance, real estate, or lending business,  
23 or involving dishonesty, fraud, deceit, embezzlement, fraudulent  
24 conversion, or misappropriation of property, or (iv) holding any  
25 such person liable in a civil action involving breach of a fiduciary  
26 duty, fraud, deceit, embezzlement, fraudulent conversion, or  
27 misappropriation of property. This subparagraph does not apply  
28 to any order, judgment, or decree that has been vacated, overturned,  
29 or is more than 10 years old.

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

32 (I) The name, address, and telephone number of the issuing  
33 insurance company, and the name, address, and telephone number  
34 of the state or foreign country regulator of the insurance company.

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

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

38 (L) If a group insurance policy, the name, address, and telephone  
39 number of the group, and, if applicable, the material terms and

1 conditions of converting the policy to an individual policy,  
2 including the amount of increased premiums.

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

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

8 (O) The insurance policy premiums and terms of premium  
9 payments.

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

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

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

17 (S) A statement to the effect that any projected rate of return to  
18 the purchaser from the purchase of a viatical or life settlement  
19 contract or a fractionalized or pooled interest therein is based on  
20 an estimated life expectancy for the person insured under the life  
21 insurance policy; that the return on the purchase may vary  
22 substantially from the expected rate of return based upon the actual  
23 life expectancy of the insured that may be less than, equal to, or  
24 may greatly exceed the estimated life expectancy; and that the rate  
25 of return would be higher if the actual life expectancy were less  
26 than, and lower if the actual life expectancy were greater than the  
27 estimated life expectancy of the insured at the time the viatical or  
28 life settlement contract was closed.

29 (T) A statement that the purchaser should consult with his or  
30 her tax adviser regarding the tax consequences of the purchase of  
31 the viatical or life settlement contract or fractionalized or pooled  
32 interest therein and, if the purchaser is using retirement funds or  
33 accounts for that purchase, whether or not any adverse tax  
34 consequences might result from the use of those funds for the  
35 purchase of that investment.

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

38 SEC. 2. Section 25104 of the Corporations Code is amended  
39 to read:

1 25104. The following transactions are exempted from the  
2 provisions of Section 25130:

3 (a) Any offer or sale of a security by the bona fide owner thereof  
4 for his or her own account if the sale (1) is not accompanied by  
5 the publication of any advertisement and (2) is not effected by or  
6 through a broker-dealer in a public offering.

7 (b) Any offer or sale effected by or through a licensed  
8 broker-dealer pursuant to an unsolicited order or offer to buy. For  
9 the purpose of this subdivision, an inquiry regarding a written bid  
10 for a security or a written solicitation of an offer to sell a security  
11 made by another broker-dealer within the previous 60 days shall  
12 not be considered the solicitation of an order or offer to buy.

13 (c) Any offer or sale to a bank, savings and loan association,  
14 trust company, insurance company, investment company registered  
15 under the Investment Company Act of 1940, pension or  
16 profit-sharing trust (other than a pension or profit-sharing trust of  
17 the issuer, a self-employed individual retirement plan, or individual  
18 retirement account), or such other institutional investor or  
19 governmental agency or instrumentality as the commissioner may  
20 designate by rule, whether the purchaser is acting for itself or as  
21 trustee; provided the purchaser represents that it is purchasing for  
22 its own account (or for the trust account) for investment and not  
23 with a view to or for sale in connection with any distribution of  
24 the security.

25 (d) Any transaction or agreement between a person on whose  
26 behalf an offering is made and an underwriter or among  
27 underwriters, if the sale of the securities is exempt from  
28 qualification at the time of or qualified prior to distribution in this  
29 state, if any.

30 (e) Any offer or sale of any security by or for the account of a  
31 bona fide secured party selling the security in the ordinary course  
32 of business to liquidate a bona fide debt.

33 (f) Any transaction by an executor, administrator, sheriff,  
34 marshal, receiver, trustee in bankruptcy, guardian, or conservator.

35 (g) Any offer (but not a sale) of a security for which (1)~~(A)~~ a  
36 registration statement has been filed under the Securities Act of  
37 1933 but has not yet become effective, or for which an offering  
38 statement under Regulation A has been filed but has not yet been  
39 qualified, if no stop order or refusal order is in effect and no public  
40 proceeding or examination looking toward such an order is pending

1 under Section 8 of that act or ~~(B) an application for qualification~~  
2 ~~under Section 25113.1 has been filed with the commissioner but~~  
3 ~~has not yet become effective;~~ and (2) no order under Section 25140  
4 or subdivision (a) of Section 25143 is in effect under this division.

5 (h) Any offer or sale of a security if a qualification under  
6 Chapter 2 (commencing with Section 25110) of this part for any  
7 securities of the same class has become effective within 18 months,  
8 or longer period as the commissioner may order provided that each  
9 consecutive order shall be for no more than six months, prior to  
10 the offer or sale or if a qualification under Chapter 3 (commencing  
11 with Section 25120) or Chapter 4 (commencing with Section  
12 25130) of this part for any securities of the same class has become  
13 effective within 12 months prior to that offer or sale, provided no  
14 order under Section 25140 or subdivision (a) of Section 25143 is  
15 in effect under this division with respect to the qualification, and,  
16 provided further, that this exemption does not apply to securities  
17 offered pursuant to a registration under the Securities Act of 1933  
18 or pursuant to an exemption under Regulation A under that act if  
19 the aggregate offering price of the securities offered under such  
20 exemption exceeds fifty thousand dollars (\$50,000). The  
21 commissioner may, by rule or order, withhold this exemption with  
22 respect to securities qualified only pursuant to a limited offering  
23 qualification.

24 SEC. 3. Section 25110 of the Corporations Code is amended  
25 to read:

26 25110. It is unlawful for any person to offer or sell in this state  
27 any security in an issuer transaction (other than in a transaction  
28 subject to Section 25120), whether or not by or through  
29 underwriters, unless such sale has been qualified under Section  
30 25111, 25112, 25113, or 25113.1 (and no order under Section  
31 25140 or subdivision (a) of Section 25143 is in effect with respect  
32 to such qualification) or unless such security or transaction is  
33 exempted or not subject to qualification under Chapter 1  
34 (commencing with Section 25100) of this part. The offer or sale  
35 of such a security in a manner that varies or differs from, exceeds  
36 the scope of, or fails to conform with either a material term or  
37 material condition of qualification of the offering as set forth in  
38 the permit or qualification order, or a material representation as  
39 to the manner of offering which is set forth in the application for  
40 qualification, shall be an unqualified offer or sale.

1 SEC. 4. Section 25113.1 is added to the Corporations Code,  
2 to read:

3 25113.1. (a) Any offer or sale of any security that meets all  
4 of the conditions in subdivision (b) may be qualified by permit  
5 under this section.

6 (b) (1) An application for a crowdfunding permit under this  
7 section shall contain any information and be accompanied by any  
8 documents as shall be required by rule of the commissioner, in  
9 addition to the information specified in Section 25160 and the  
10 consent to service of process required by Section 25165. For this  
11 purpose, the commissioner may classify issuers and types of  
12 securities.

13 (2) An applicant may file an application for a crowdfunding  
14 permit under this section if it meets all of the following conditions:

15 (A) The applicant is: (i) a California corporation or a foreign  
16 corporation, which at the time of filing an application under this  
17 subdivision is subject to Section 2115, and neither corporation is  
18 a “blind pool” company, as that term is defined by the  
19 commissioner; (ii) not issuing fractional undivided interests in oil  
20 or gas rights, or a similar interest in other mineral rights; (iii) not  
21 an investment company subject to the Investment Company Act  
22 of 1940; and (iv) not subject to the reporting requirements of  
23 Section 13 or 15(d) of the Securities Exchange Act of 1934.

24 (B) The total offering of securities by the applicant to be sold  
25 in a 12-month period, within or outside this state, is limited to one  
26 million dollars (\$1,000,000), less the aggregate offering price for  
27 all securities sold (within the 12 months before the start, and during  
28 the offering, of the securities) under Rule 504 (17 C.F.R. 230.504)  
29 under the Securities Act of 1933 or in violation of subdivision (a)  
30 of Section 5 of that act.

31 (C) Offers and sales made in reliance on this section will not  
32 be integrated with: (i) prior offers or sales of ~~securities~~; *securities*  
33 or (ii) subsequent offers or sales of securities that are (I) registered  
34 under the Securities Act of 1933; (II) made pursuant to Rule 701  
35 (~~17 C.F.R. 230.701~~) (*17 C.F.R. 230.701*) under that act; (III) made  
36 pursuant to an employee benefit plan; (IV) made pursuant to  
37 Regulation S (17 C.F.R. 230.901-905) under that act; (V) made in  
38 reliance on a federal rule in substantially the same form as the rule  
39 proposed by the Securities Exchange Commission to govern the  
40 offer and sale of securities under Section 4 (a)(6) of the Securities

1 Act of 1933, referred to as Regulation Crowdfunding, proposed  
2 ~~17-CFR 17 C.F.R.~~ Parts 200, 227, 232, 239, 240, and 249 [Release  
3 Nos. 33-9470; 34-70741; File Nos. 7-09-13]; or (VI) made more  
4 than six months after the completion of the offering in reliance on  
5 this section.

6 (D) The aggregate amount of securities sold to any investor in  
7 reliance on this section, including any amount sold during the  
8 12-month period preceding the date of the transaction, does not  
9 exceed the lesser of five thousand dollars (\$5,000) or 10 percent  
10 of the net worth of that natural person, or such amount as the  
11 commissioner may provide by rule or order. “Net worth” shall be  
12 determined exclusive of home, home furnishings, and automobiles.  
13 Other assets included in the computation of net worth may be  
14 valued at fair market value.

15 (E) The ~~issuer~~ *applicant* has taken reasonable steps to ensure  
16 that each investor who is a natural person who is not an accredited  
17 investor as defined in Rule 501 (17 C.F.R. 230.501) under the  
18 Securities Act of 1933 either alone or with his or her purchaser  
19 representative or representatives has such knowledge and  
20 experience in financial and business matters that he or she is  
21 capable of evaluating the merits and risks of the prospective  
22 investment.

23 (F) The ~~issuer~~ *applicant* files with the commissioner, provides  
24 to investors, and makes available to potential investors a Small  
25 Company Offering Registration disclosure document on Form  
26 U-7, as adopted by the North American Securities Administrators  
27 Association, prior to the commencement of the offering of  
28 securities.

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

35 (H) The ~~issuer~~ *applicant* shall not, directly or indirectly, conduct  
36 any unsolicited telephone solicitation of the securities offered by  
37 this section.

38 (I) The ~~issuer~~, *applicant*, a predecessor of the ~~issuer~~, *applicant*,  
39 an affiliated ~~issuer~~, *applicant*, a director, executive officer, or other  
40 officer participating in the offering, a general partner or managing

1 member of the ~~issuer~~, *applicant*, a beneficial owner of 20 percent  
2 or more of the ~~issuer's~~ *applicant's* outstanding voting equity  
3 securities, calculated on the basis of voting power, a promoter  
4 connected with the issuer in any capacity at the time of the sale,  
5 an investment manager of an ~~issuer~~ *applicant* that is a pooled  
6 investment fund, a person that has been or will be paid, directly  
7 or indirectly, remuneration for solicitation of purchasers in  
8 connection with the sale of securities, a general partner or managing  
9 member of the investment manager or solicitor, or any director,  
10 executive officer, or other officer participating in the offering of  
11 the investment manager or solicitor or general partner or managing  
12 member of the investment manager or solicitor shall not be  
13 disqualified as a “bad actor” under Rule 506(d) (17 C.F.R.  
14 230.506(d)) under the Securities Act of 1933.

15 (J) Any other requirement set forth by rule adopted by the  
16 commissioner.

17 (c) If no stop order or order under subdivision (a) of Section  
18 25143 is in effect under this law, qualification of the sale of the  
19 securities under this section automatically becomes effective (and  
20 the securities may be offered and sold in accordance with the terms  
21 of the application as amended) at 12 o'clock noon California time  
22 of the 60th calendar day after the filing of the application or at  
23 such earlier time as the commissioner determines.

24 SEC. 5. Section 25501 of the Corporations Code is amended  
25 to read:

26 25501. Any person who violates Section 25401 shall be liable  
27 to the person who purchases a security from him or her or sells a  
28 security to him or her, who may sue either for rescission or for  
29 damages (if the plaintiff or the defendant, as the case may be, no  
30 longer owns the security), unless the defendant proves that the  
31 plaintiff knew the facts concerning the untruth or omission or that  
32 the defendant exercised reasonable care and did not know (or if  
33 he had exercised reasonable care would not have known) of the  
34 untruth or omission. The plaintiff shall not be required to plead or  
35 prove that the defendant acted with scienter. Upon rescission, a  
36 purchaser may recover the consideration paid for the security, plus  
37 interest at the legal rate, less the amount of any income received  
38 on the security, upon tender of the security. Upon rescission, a  
39 seller may recover the security, upon tender of the consideration  
40 paid for the security plus interest at the legal rate, less the amount

1 of any income received by the defendant on the security. Damages  
2 recoverable under this section by a purchaser shall be an amount  
3 equal to the difference between (a) the price at which the security  
4 was bought plus interest at the legal rate from the date of purchase  
5 and (b) the value of the security at the time it was disposed of by  
6 the plaintiff plus the amount of any income received on the security  
7 by the plaintiff. Damages recoverable under this section by a seller  
8 shall be an amount equal to the difference between (1) the value  
9 of the security at the time of the filing of the complaint plus the  
10 amount of any income received by the defendant on the security  
11 and (2) the price at which the security was sold plus interest at the  
12 legal rate from the date of sale. Any tender specified in this section  
13 may be made at any time before entry of judgment.

14 SEC. 6. Section 25503 of the Corporations Code is amended  
15 to read:

16 25503. Any person who violates Section 25110, 25130 or  
17 25133, or a condition of qualification under Chapter 2  
18 (commencing with Section 25110) of this part, imposed pursuant  
19 to Section 25141, or an order suspending trading issued pursuant  
20 to Section 25219, shall be liable to any person acquiring from him  
21 the security sold in violation of such section, who may sue to  
22 recover the consideration he paid for such security with interest  
23 thereon at the legal rate, less the amount of any income received  
24 therefrom, upon the tender of such security, or for damages, if he  
25 no longer owns the security, or if the consideration given for the  
26 security is not capable of being returned. Damages, if the plaintiff  
27 no longer owns the security, shall be equal to the difference  
28 between (a) his purchase price plus interest at the legal rate from  
29 the date of purchase and (b) the value of the security at the time it  
30 was disposed of by the plaintiff plus the amount of any income  
31 received therefrom by the plaintiff.

32 Damages, if the consideration given for the security is not  
33 capable of being returned, shall be equal to the value of that  
34 consideration plus interest at the legal rate from the date of  
35 purchase, provided the security is tendered; and if the plaintiff no  
36 longer owns the security, damages in such case shall be equal to  
37 the difference between (a) the value of the consideration given for  
38 the security plus interest at the legal rate from the date of purchase  
39 and (b) the value of the security at the time it was disposed of by  
40 the plaintiff plus the amount of any income received therefrom by

1 the plaintiff. Any person who violates Section 25120 or a condition  
2 of qualification under Chapter 3 (commencing with Section 25120)  
3 of this part imposed pursuant to Section 25141, shall be liable to  
4 any person acquiring from him the security sold in violation of  
5 such section who may sue to recover the difference between (a)  
6 the value of the consideration received by the seller and (b) the  
7 value of the security at the time it was received by the buyer, with  
8 interest thereon at the legal rate from the date of purchase. Any  
9 person on whose behalf an offering is made and any underwriter  
10 of the offering, whether on a best efforts or a firm commitment  
11 basis, shall be jointly and severally liable under this section, but  
12 in no event shall any underwriter (unless such underwriter shall  
13 have knowingly received from the issuer for acting as an  
14 underwriter some benefit, directly or indirectly, in which all other  
15 underwriters similarly situated did not share in proportion to their  
16 respective interest in the underwriting) be liable in any suit or suits  
17 authorized under this section for damages in excess of the total  
18 price at which the securities underwritten by him and distributed  
19 to the public were offered to the public. Any tender specified in  
20 this section may be made at any time before entry of judgment.  
21 No person shall be liable under this section for violation of Section  
22 25110, ~~25120~~ 25120, or 25130 if the sale of the security is qualified  
23 prior to the payment or receipt of any part of the consideration for  
24 the security sold, even though an offer to sell or a contract of sale  
25 may have been made or entered into without qualification. The  
26 court shall award reasonable attorney's fees and costs, and, in its  
27 discretion, may award treble and punitive damages, to a prevailing  
28 purchaser in an action brought against any person who violates  
29 Section 25110 in any offering qualified under Section 25113.1.

30 SEC. 7. Section 25608 of the Corporations Code is amended  
31 to read:

32 25608. (a) The commissioner shall charge and collect the fees  
33 fixed in this section and Section 25608.1. All fees charged and  
34 collected under this section and Section 25608.1 shall be  
35 transmitted to the Treasurer at least weekly, accompanied by a  
36 detailed statement thereof and shall be credited to the State  
37 Corporations Fund.

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

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

8

9 Value of Securities	
10 Proposed to be Sold	Filing Fee
11 \$25,000 or less	\$ 25
12 \$25,001 to \$100,000	\$ 35
13 \$100,001 to \$500,000	\$ 50
14 \$500,001 to \$1,000,000	\$150
15 Over \$1,000,000	\$300

16

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

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

28 The fee for filing a small company application for qualification  
 29 of the sale of securities by permit under paragraph (2) of  
 30 subdivision (b) of Section 25113 is two thousand five hundred  
 31 dollars (\$2,500). In the case where the costs of processing a small  
 32 company application exceed the filing fee, an additional fee shall  
 33 be charged, not to exceed one thousand dollars (\$1,000), over and  
 34 above the filing fee based on the costs of the salary or other  
 35 compensation paid to persons processing the application plus  
 36 overhead costs reasonably incurred in the performance of the work.  
 37 In determining the costs, the commissioner may use the estimated  
 38 average hourly cost for all persons processing applications for the  
 39 fiscal year.

1 The fee for filing a crowdfunding application for qualification  
2 of the sale of securities by permit under Section 25113.1 is two  
3 hundred dollars (\$200) plus one-fifth of 2 percent of the aggregate  
4 value of the securities sought to be sold in this state.

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

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

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

20 (2) Interim or voting trust certificates shall have a value equal  
21 to the aggregate value of the securities to be represented by the  
22 interim or voting trust certificates.

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

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

36 (h) The fee for filing an application for qualification of the sale  
37 of securities by permit under Section 25121 is:

38 (1) Two hundred dollars (\$200) in connection with any change  
39 (including any stock split or reverse stock split or stock dividend,  
40 except a stock dividend where the shareholders are given an option

1 to accept either cash or additional shares of common stock) in the  
2 rights, preferences, privileges, or restrictions of or on outstanding  
3 securities.

4 (2) Two hundred dollars (\$200) plus one-fifth of 1 percent of  
5 the value, as alleged in the application, or the actual value, as  
6 determined by the commissioner, of the consideration to be  
7 received in exchange therefor, up to a maximum aggregate fee of  
8 two thousand five hundred dollars (\$2,500), in any exchange of  
9 securities by the issuer with its existing security holders  
10 exclusively, or in any exchange in connection with any merger or  
11 consolidation or purchase of corporate assets in consideration of  
12 the issuance of securities, or any entity conversion transaction.

13 (i) The fee for filing an application for qualification of the sale  
14 of securities by notification under Section 25131 shall be one  
15 hundred dollars (\$100).

16 (j) The fee for an application for the removal of any condition  
17 under Section 25141 is fifty dollars (\$50).

18 (k) The fee for filing any application for a permit to execute or  
19 issue any guarantee of any security is fifty dollars (\$50).

20 (l) The fee for acting as escrowholder for securities under  
21 Section 25149 is fifty dollars (\$50). In addition, a fee of two dollars  
22 and fifty cents (\$2.50) shall be paid for the deposit with the  
23 commissioner of each new certificate or other document resulting  
24 from a transfer in escrow.

25 (m) The fee for filing an application for an order (1) consenting  
26 to the transfer in escrow of securities or (2) consenting to the  
27 transfer of securities subject to any condition imposed by the  
28 commissioner requiring the commissioner's consent to the transfer  
29 is twenty dollars (\$20) for each transfer.

30 (n) The filing fee for an amendment to an application filed after  
31 the effective date of the qualification of the sale of securities is  
32 fifty dollars (\$50) plus any additional fee that would have been  
33 required to be paid with the original application for qualification  
34 of the sale of securities under this section if the matters set forth  
35 in the amendment had been included in the original application.

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

38 (2) Each broker-dealer shall pay to the commissioner its pro  
39 rata share of all costs and expenses, reasonably incurred in the  
40 administration of the broker-dealer program under this division,

1 as estimated by the commissioner for the ensuing year and any  
2 deficit actually incurred or anticipated in the administration of the  
3 program in the year in which the assessment is made. The pro rata  
4 share shall be the proportion that the broker-dealer and the number  
5 of its agents in this state bears to the aggregate number of  
6 broker-dealers and agents in this state as shown by records  
7 maintained by or on behalf of the commissioner. The pro rata share  
8 may include the costs of any examinations, audit, or investigation  
9 provided for in subdivision (r).

10 (3) Every broker-dealer who has secured from the commissioner  
11 a certificate shall, in order to keep the certificate in effect for an  
12 additional period, pay a minimum assessment of seventy-five  
13 dollars (\$75) on or before the 31st of December in each year.

14 (4) The commissioner may assess and levy against each  
15 broker-dealer any additional amount above the minimum  
16 assessment amount of seventy-five dollars (\$75) that is reasonable  
17 and necessary to support the broker-dealer program under this  
18 division. If an additional amount is assessed, the commissioner  
19 shall notify each broker-dealer by mail of any additional amount  
20 assessed and levied against it on or before the 30th day of May in  
21 each year, and that amount shall be paid within 20 days thereafter.  
22 If payment is not made within 20 days, the commissioner shall  
23 assess and collect a penalty in addition to the assessment of 1  
24 percent of the assessment for each month or part of a month that  
25 the payment is delayed or withheld.

26 (5) If a broker-dealer fails to pay any assessment on or before  
27 the 30th day of the month following the day upon which payment  
28 is due, the commissioner may by order summarily suspend or  
29 revoke the certificate issued to the broker-dealer. If, after that order  
30 is made, a request for hearing is filed in writing and a hearing is  
31 not held within 60 days thereafter, the order is deemed rescinded  
32 as of its effective date. During any period when its certificate is  
33 revoked or suspended, a broker-dealer shall not conduct business  
34 pursuant to this division except as may be permitted by order of  
35 the commissioner; provided, however, that the revocation,  
36 suspension, or surrender of a certificate shall not affect the powers  
37 of the commissioner as provided under this division.

38 (6) In determining the amount assessed, the commissioner shall  
39 consider all appropriations from the State Corporations Fund for  
40 the support of the broker-dealer program under this division and

1 all reimbursements applicable to the administration of the  
2 broker-dealer program under this division.

3 (p) (1) The commissioner shall charge a fee of twenty-five  
4 dollars (\$25) for the filing of a notice or report required by rules  
5 adopted pursuant to subdivision (b) of Section 25210 or subdivision  
6 (b) of Section 25230.

7 (2) The commissioner may charge a fee up to thirty-five dollars  
8 (\$35) to keep in effect for the following year any notice or report  
9 required by rules adopted pursuant to subdivision (b) of Section  
10 25210 or subdivision (b) of Section 25230.

11 (3) No person shall, on behalf of a broker-dealer licensed  
12 pursuant to Section 25211, effect any transaction in, or induce or  
13 attempt to induce the purchase or sale of, any security in this state  
14 unless the broker-dealer pays the annual fee required by paragraph  
15 (2) of this subdivision on or before the day upon which payment  
16 is due.

17 (4) No person may, in this state, on behalf of an investment  
18 adviser licensed pursuant to Section 25231, offer or negotiate for  
19 the sale of investment advisory services of the investment adviser,  
20 determine which recommendations shall be made to, make  
21 recommendations to, or manage the accounts of, clients of the  
22 investment adviser, or determine the reports or analyses concerning  
23 securities to be published by the investment adviser, unless the  
24 investment adviser pays the annual fee required by paragraph (2)  
25 on or before the day upon which payment is due.

26 (5) The commissioner may by order summarily enjoin an  
27 individual from performing any activity under paragraph (3) or  
28 (4) if the annual fee in paragraph (2) is not paid on or before the  
29 day upon which payment is due. An order under this paragraph  
30 may not be made before 10 days after notice by the commissioner  
31 that the fee is due and unpaid.

32 (q) (1) Except as provided for in paragraph (2), the fee for filing  
33 an application for an investment adviser under Section 25231 is  
34 one hundred twenty-five dollars (\$125), and payment of this  
35 amount shall keep the certificate, if granted, in effect during the  
36 calendar year during which it is granted. Every investment adviser  
37 who has secured from the commissioner a certificate shall, in order  
38 to keep the certificate in effect for an additional period, pay a  
39 renewal fee of one hundred twenty-five dollars (\$125) on or before  
40 the 31st day of December.

1 (2) Paragraph (1) shall not apply to a broker-dealer licensed  
2 under Section 25210.

3 (r) (1) Except as provided for in paragraph (2), the fee for any  
4 routine or nonroutine regulatory examination, audit, or  
5 investigation is the amount of the salary or other compensation  
6 paid to the persons making the examination, audit, or investigation  
7 plus the amount of expenses including overhead reasonably  
8 incurred in the performance of the work. In determining the costs  
9 associated with an examination, audit, or investigation, the  
10 commissioner may use the estimated average hourly cost for all  
11 persons performing examinations, audits, or investigations for the  
12 fiscal year.

13 (2) An investment adviser licensed under Section 25230 pursuant  
14 to the Investment Adviser Registration Depository shall not be  
15 subject to paragraph (1) only in regard to the fee for a routine  
16 regulatory examination of its investment advisory services for  
17 which it is licensed under Section 25230.

18 (s) The fee for any hearing held by the commissioner pursuant  
19 to Section 25142 shall be the sum determined by the commissioner  
20 to cover the actual expense of noticing and holding the hearing.

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

25 (u) The fee for filing an offer under subdivision (b) of Section  
26 25507 shall be the amount of filing fee payable under subdivision  
27 (e), (f), (h), or (i) of this section if an application had been filed to  
28 qualify the transaction in which the securities upon which the offer  
29 is to be made were sold in violation of the qualification provisions  
30 of this law.

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

33 (w) The commissioner may by rule require payment of a fee  
34 for filing a notice or report required by a rule adopted pursuant to  
35 Section 25105. The fee required in connection with a transaction  
36 as defined by that rule shall not exceed the fees specified in  
37 subdivision (c) based on the value of the securities sold, but the  
38 commissioner may permit a single notice for more than one  
39 transaction.

- 1 (x) The fee for filing the first notice of transaction under  
2 subdivision (n) of Section 25102 is six hundred dollars (\$600).  
3 (y) The fee for filing a notice of transaction under subdivision  
4 (o) of Section 25102 shall be the fee for filing an application for  
5 qualification of the sale of securities by permit under paragraph  
6 (1) of subdivision (b) of Section 25113 as set forth in subdivision  
7 (e) of this section.  
8 (z) The fee for filing a notice of transaction under subdivision  
9 (h) of Section 25103 shall be six hundred dollars (\$600).

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