

AMENDED IN SENATE MAY 11, 1995

AMENDED IN SENATE APRIL 25, 1995

SENATE BILL

No. 261

Introduced by Senator Campbell

February 8, 1995

An act to amend Sections 25102, 25103, 25111, 25113, 25140, and 25608 of, and to add Section 25537 to, the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

SB 261, as amended, T. Campbell. Securities.

Existing law makes it unlawful to offer or sell a security unless it is qualified, or exempt from qualification requirements. Existing law exempts certain transactions from the qualification requirement applicable to offers or sales in an issuer transaction.

This bill would additionally exempt offers or sales of a security in an offering that complies with requirements of federal law applicable to limited offers or certain compensatory benefit plans, and would exempt certain offers pursuant to a solicitation of interest that complies with certain federal requirements and certain additional requirements.

This bill would also exempt an offer or sale of any security listed or approved for listing upon notice of issuance as a small cap issue security on an interdealer quotation system by the National Association of Securities Dealers, Inc., and any warrant or right to purchase or subscribe to the security, if certain requirements are met.

Existing law exempts certain transactions from the qualification requirement applicable to offers or sales in an issuer transaction or in connection with certain reorganizations.

This bill would additionally exempt an issuance or exchange of securities incident to a merger, sale of corporate assets, or reorganization if it meets certain federal requirements, or certain other specified requirements.

Existing law permits a security for which a registration statement has been filed under the federal Securities Act of 1933 in connection with the same offering to be qualified by coordination with the federal registration.

This bill would provide that the term “registration statement” includes an offering statement under a specified federal securities regulation.

Existing law provides for the qualification of certain securities by permit. Existing law provides for the filing of a small company application for permit if it meets certain statutory requirements.

This bill would permit an applicant to file a small company application for permit in accordance with rules adopted by the Commissioner of Corporations. The bill would specify certain matters that must be contained in the rules, including conditions for eligibility for qualification.

Existing law authorizes the Commissioner of Corporations to issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a qualification of an offering or a permit.

This bill would provide that the commissioner shall not have authority to issue any stop order or to refuse to issue or to suspend or revoke any permit on the basis that the proposed plan of business of the issuer or the proposed issuance or sale of securities is not fair, just, or equitable, or that the issuer does not intend to transact its business fairly, or that the securities proposed to be issued or the method to be used in issuing them will tend to work a fraud upon the purchase thereof, for certain small business offerings if certain conditions are met.

Existing law imposes various fees in connection with securities-related actions by the Commissioner of Corporations.



This bill would provide that 10% of the fees shall be set aside and used solely for prosecution of violations involving fraud in connection with the offer or sale of securities.

This bill would impose a fee for filing the notice of transactions under certain provisions.

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
2 is amended to read:

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

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

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



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

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

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

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

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

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

25 (2) All purchasers either have a preexisting personal
26 or business relationship with the offeror or any of its
27 partners, officers, directors or controlling persons, or by
28 reason of their business or financial experience or the
29 business or financial experience of their professional
30 advisors who are unaffiliated with and who are not
31 compensated by the issuer or any affiliate or selling agent
32 of the issuer, directly or indirectly, could be reasonably
33 assumed to have the capacity to protect their own
34 interests in connection with the transaction.

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



1 (4) The offer and sale of the security is not
2 accomplished by the publication of any advertisement.
3 The number of purchasers referred to above is exclusive
4 of any described in subdivision (i), any officer, director or
5 affiliate of the issuer and any other purchaser who the
6 commissioner designates by rule. For purposes of this
7 section, a husband and wife (together with any custodian
8 or trustee acting for the account of their minor children)
9 are counted as one person and a partnership, corporation
10 or other organization that was not specifically formed for
11 the purpose of purchasing the security offered in reliance
12 upon this exemption, is counted as one person. The
13 commissioner may by rule require the issuer to file a
14 notice of transactions under this subdivision; provided,
15 however, that the failure to file the notice or the failure
16 to file the notice within the time specified by the rule of
17 the commissioner shall not affect the availability of this
18 exemption. An issuer who fails to file the notice as
19 provided by rule of the commissioner shall, within 15
20 business days after demand by the commissioner, file the
21 notice and pay to the commissioner a fee equal to the fee
22 payable had the transaction been qualified under Section
23 25110.

24 (g) Any offer or sale of conditional sale agreements,
25 equipment trust certificates, or certificates of interest or
26 participation therein or partial assignments thereof,
27 covering the purchase of railroad rolling stock or
28 equipment or the purchase of motor vehicles, aircraft, or
29 parts thereof, in a transaction not involving any public
30 offering.

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

37 (1) All of the stock shall be evidenced by certificates
38 that shall have stamped or printed prominently on their
39 face a legend in a form to be prescribed by rule of the



1 commissioner restricting transfer of the stock in the
2 manner that the rule provides.

3 (2) The offer and sale of the stock is not accompanied
4 by the publication of any advertisement, and no selling
5 expenses have been given, paid, or incurred in
6 connection therewith.

7 (3) The consideration to be received by the issuer for
8 the stock to be issued shall consist of (i) only assets (which
9 may include cash) of an existing business enterprise
10 transferred to the issuer upon its initial organization, of
11 which all of the persons who are to receive the stock to be
12 issued pursuant to this exemption were owners during,
13 and the enterprise was operated for, a period of not less
14 than one year immediately preceding the proposed
15 issuance, and the ownership of the enterprise
16 immediately prior to the proposed issuance was in the
17 same proportions as the shares of stock are to be issued,
18 or (ii) only cash or cancellation of indebtedness for
19 money borrowed or both upon the initial organization of
20 the issuer, provided all of the stock is issued for the same
21 price per share, or (iii) only cash, provided the sale is
22 approved in writing by each of the existing shareholders
23 and the purchaser or purchasers are existing
24 shareholders, or (iv), in a case where after the proposed
25 issuance there will be only one owner of the stock of the
26 issuer, any legal consideration.

27 (4) No promotional consideration has been given,
28 paid, or incurred in connection with the issuance.
29 Promotional consideration means any consideration paid
30 directly or indirectly to a person who, acting alone or in
31 conjunction with one or more other persons, takes the
32 initiative in founding and organizing the business or
33 enterprise of an issuer, for services rendered in
34 connection with the founding or organizing.

35 (5) A notice in a form prescribed by rule of the
36 commissioner, signed by an active member of the State
37 Bar of California, shall be filed with or mailed for filing to
38 the commissioner not later than 10 business days after
39 receipt of consideration for the securities by the issuer,
40 which notice shall contain an opinion of the member of



1 the State Bar of California that the exemption provided
2 by this subdivision is available for the offer and sale of the
3 securities; provided, however, that the failure to file the
4 notice as required by this subdivision and the rules of the
5 commissioner shall not affect the availability of this
6 exemption. An issuer who fails to file the notice within the
7 time specified by this subdivision shall, within 15 business
8 days after demand by the commissioner, file the notice
9 and pay to the commissioner a fee equal to the fee payable
10 had the transaction been qualified under Section 25110.
11 The notice, except when filed on behalf of a California
12 corporation, shall be accompanied by an irrevocable
13 consent, in the form that the commissioner by rule
14 prescribes, appointing the commissioner or his or her
15 successor in office to be the issuer's attorney to receive
16 service of any lawful process in any noncriminal suit,
17 action, or proceeding against it or its successor that arises
18 under this law or any rule or order hereunder after the
19 consent has been filed, with the same force and validity
20 as if served personally on the issuer. An issuer on whose
21 behalf a consent has been filed in connection with a
22 previous qualification or exemption from qualification
23 under this law (or application for a permit under any
24 prior law if the application or notice under this law states
25 that the consent is still effective) need not file another.
26 Service may be made by leaving a copy of the process in
27 the office of the commissioner but it is not effective unless
28 (1) the plaintiff, who may be the commissioner in a suit,
29 action or proceeding instituted by him, forthwith sends
30 notice of the service and a copy of the process by
31 registered or certified mail to the defendant or
32 respondent at its last address on file with the
33 commissioner, and (2) the plaintiff's affidavit of
34 compliance with this section is filed in the case on or
35 before the return day of the process, if any, or within the
36 further time as the court allows.

37 For the purposes of this subdivision, all securities held
38 by a husband and wife, whether or not jointly, shall be
39 considered to be owned by one person, and all securities
40 held by a corporation that has issued stock pursuant to this



1 exemption shall be considered to be held by the
2 shareholders to whom it has issued the stock.

3 (i) Any offer or sale (1) to a bank, savings and loan
4 association, trust company, insurance company,
5 investment company registered under the Investment
6 Company Act of 1940, pension or profit-sharing trust
7 (other than a pension or profit-sharing trust of the issuer,
8 a self-employed individual retirement plan, or individual
9 retirement account), or other institutional investor or
10 governmental agency or instrumentality that the
11 commissioner may designate by rule, whether the
12 purchaser is acting for itself or as trustee, or (2) to any
13 corporation with outstanding securities registered under
14 Section 12 of the Securities Exchange Act of 1934 or any
15 wholly owned subsidiary of such a corporation that after
16 the offer and sale will own directly or indirectly 100
17 percent of the outstanding capital stock of the issuer;
18 provided the purchaser represents that it is purchasing
19 for its own account (or for the trust account) for
20 investment and not with a view to or for sale in
21 connection with any distribution of the security.

22 (j) Any offer or sale of any certificate of interest or
23 participation in an oil or gas title or lease (including
24 subsurface gas storage and payments out of production)
25 if (1) all of the purchasers: (i) are and have been during
26 the preceding two years engaged primarily in the
27 business of drilling for, producing, or refining oil or gas
28 (or whose corporate predecessor, in the case of a
29 corporation, has been so engaged), or (ii) are persons
30 described in clause (1) of subdivision (i) of this section,
31 or (iii) have been found by the commissioner upon
32 written application to be substantially engaged in the
33 business of drilling for, producing or refining oil or gas so
34 as not to require the protection provided by this law
35 (which finding shall be effective until rescinded), or (2)
36 the security is concurrently hypothecated to a bank in the
37 ordinary course of business to secure a loan made by the
38 bank; provided each purchaser represents that it is
39 purchasing for its own account for investment and not



1 with a view to or for sale in connection with any
2 distribution of the security.

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

8 (l) Any offer or sale of an option, warrant, put, call, or
9 straddle, and any guarantee of any of these securities, by
10 a person who is not the issuer of the security subject to the
11 right, if the transaction, had it involved an offer or sale of
12 the security subject to the right by the person, would not
13 have violated Section 25110 or 25130.

14 (m) Any offer or sale of a stock to a pension,
15 profit-sharing, stock bonus or employee stock ownership
16 plan provided that (1) the plan meets the requirements
17 for qualification under Section 401 of the Internal
18 Revenue Code, and (2) the employees are not required
19 or permitted individually to make any contributions to
20 the plan. The exemption provided by this subdivision
21 shall not be affected by whether the stock is contributed
22 to the plan, purchased from the issuer with contributions
23 by the issuer or an affiliate of the issuer, or purchased from
24 the issuer with funds borrowed from the issuer, an
25 affiliate of the issuer or any other lender.

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

29 (1) The issuer is (A) a California corporation or
30 foreign corporation that, at the time of the filing of the
31 notice required under this subdivision, is subject to
32 Section 2115, without regard to the notice filing
33 requirement under Section 2108, or (B) any other form
34 of business entity, including without limitation a
35 partnership or trust organized under the laws of this state.
36 The exemption provided by this subdivision is not
37 available to a “blind pool” issuer, as that term is defined
38 by the commissioner, or to an investment company
39 subject to the Investment Company Act of 1940.



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

11 (A) A person designated in Section 260.102.13 of Title
12 10 of the California Code of Regulations.

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

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

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

25 (E) With respect to the offer and sale of one class of
26 voting common stock of an issuer or of preferred stock of
27 an issuer entitling the holder thereof to at least the same
28 voting rights as the issuer's one class of voting common
29 stock, provided that the issuer has only one-class voting
30 common stock outstanding upon consummation of the
31 offer and sale, a natural person who, either individually
32 or jointly with the person's spouse, (i) has a minimum net
33 worth of two hundred fifty thousand dollars (\$250,000)
34 and had, during the immediately preceding tax year,
35 gross income in excess of one hundred thousand dollars
36 (\$100,000) and reasonably expects gross income in excess
37 of one hundred thousand dollars (\$100,000) during the
38 current tax year or (ii) has a minimum net worth of five
39 hundred thousand dollars (\$500,000). "Net worth" shall
40 be determined exclusive of home, home furnishings, and



1 automobiles. Other assets included in the computation of
2 net worth may be valued at fair market value.

3 Each such natural person, by reason of his or her
4 business or financial experience, or the business or
5 financial experience of his or her professional advisor,
6 who is unaffiliated with and who is not compensated,
7 directly or indirectly, by the issuer or any affiliate or
8 selling agent of the issuer, can be reasonably assumed to
9 have the capacity to protect his or her interests in
10 connection with the transaction. The amount of the
11 investment of each natural person shall not exceed 10
12 percent of the net worth, as determined by this
13 subparagraph, of that natural person.

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

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

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



1 25110 afforded by this subdivision. This paragraph does
2 not impose, directly or indirectly, any additional
3 disclosure obligation with respect to any other exemption
4 from qualification available under any other provision of
5 this section.

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

10 (i) The name of the issuer of the securities.

11 (ii) The full title of the security to be issued.

12 (iii) The anticipated suitability standards for
13 prospective purchasers.

14 (iv) A statement that (I) no money or other
15 consideration is being solicited or will be accepted, (II)
16 an indication of interest made by a prospective purchaser
17 involves no obligation or commitment of any kind, and,
18 if the issuer is required by paragraph (4) to deliver a
19 disclosure statement to prospective purchasers, (III) no
20 sales will be made or commitment to purchase accepted
21 until five business days after delivery of a disclosure
22 statement and subscription information to the
23 prospective purchaser in accordance with the
24 requirements of this subdivision.

25 (v) Any other information required by rule of the
26 commissioner.

27 (vi) The following legend: “For more complete
28 information about (Name of Issuer) and (Full Title of
29 Security), send for additional information from (Name
30 and Address) by sending this coupon or calling
31 (Telephone Number).”

32 (B) The general announcement of proposed offering
33 referred to in subparagraph (A) may also set forth the
34 following information:

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

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

38 (iii) The price of the security to be issued, or, if the
39 price is not known, the method of its determination or the



1 probable price range as specified by the issuer, and the
2 aggregate offering price.

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

6 (D) Dissemination of the general announcement of
7 proposed offering to persons who are not qualified
8 purchasers, without more, shall not disqualify the issuer
9 from claiming the exemption under this subdivision.

10 (6) No telephone solicitation shall be permitted until
11 the issuer has determined that the prospective purchaser
12 to be solicited is a qualified purchaser.

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

1 (o) An offer or sale of any security in an offering that
2 complies with all of the provisions of Rule 505 or 506 of
3 Regulation D under the Securities Act of 1933, (17 C.F.R.
4 Sec. 230.505 or 230.506), as amended, all of which are
5 hereby incorporated by reference into this section,
6 provided that the issuer files a notice of the transaction in
7 accordance with rules adopted by the commissioner,
8 which notice shall be accompanied by a filing fee as
9 provided in subdivision (y) of Section 25608.

10 (p) An offer or sale of any security issued pursuant to
11 a stock or stock option that complies with all of the
12 provisions of Rule 701 under the Securities Act of 1933 (17
13 C.F.R. Sec. 230.701), as amended, the provisions of which
14 are hereby incorporated by reference into this section;
15 provided that (1) the terms of any stock purchase plan
16 shall comply with Sections 260.140.42 and 260.140.45 of
17 Title 10 of the California Code of Regulations, (2) the
18 terms of any stock option plan shall comply with Sections
19 260.140.41 and 260.140.45 of Title 10 of the California Code
20 of Regulations, and (3) the issuer files a notice of
21 transaction in accordance with rules adopted by the
22 commissioner within 30 days of the adoption of any such
23 plan, accompanied by a filing fee as prescribed by
24 subdivision (z) of Section 25608.

25 (q) Any offer (but not a sale) pursuant to a solicitation
26 of interest prior to an offering to be qualified under
27 Regulation A of the Securities Act of 1933 (17 C.F.R. Secs.
28 230.251 to 230.263, inclusive), as amended, provided that
29 (1) the solicitation complies with the provisions of Rule
30 254 under Regulation A (17 C.F.R. Sec. 230.254), and (2)
31 the issuer complies with the following provisions:

32 (A) Any solicitation of interest, as described in Rule
33 254 of Regulation A (17 C.F.R. Sec. 230.254), to be
34 published or delivered to any person in this state under
35 Regulation A, shall be filed with the commissioner no
36 later than the time of its first publication or delivery in
37 this state, accompanied by a filing fee as prescribed by
38 subdivision (y) of Section 25608. This filing is a condition
39 to the use of this exemption.



1 (B) Any solicitation of interest, as described in Rule
2 254 of Regulation A (17 C.F.R. Sec. 230.254), published or
3 delivered to any person in this state, shall contain, in
4 addition to the other statements required in Rule 254 of
5 Regulation A, the additional statement in prominent
6 form: “This information is distributed under the rules of
7 the California Commissioner of Corporations. The
8 commissioner has not reviewed or approved its form or
9 content.”

10 (C) A copy of the offering statement as described in
11 Rule 252 of Regulation A (17 C.F.R. Sec. 230.252), filed
12 with the Securities and Exchange Commission, shall be
13 filed simultaneously with the commissioner, together
14 with a notice of exemption in the form prescribed by the
15 commissioner, and the prescribed fee, as provided in the
16 commissioner’s rules.

17 (D) A copy of the offering statement qualified by the
18 Securities and Exchange Commission shall be filed with
19 the commissioner no later than five days after the first
20 sale is made in this state.

21 (E) No security offered pursuant to an offering
22 statement under Regulation A may be issued, and no
23 consideration therefor may be received or accepted, until
24 the sale of the security is qualified under this law.

25 *(r) An offer or sale of any security listed or approved*
26 *for listing upon notice of issuance as a small cap issue*
27 *security on an interdealer quotation system by the*
28 *National Association of Securities Dealers, Inc., and any*
29 *warrant or right to purchase or subscribe to the security,*
30 *provided that all of the following conditions are met:*

31 *(1) The proposed aggregate offering price of all of the*
32 *securities to be sold in the offering anywhere does not*
33 *exceed ten million dollars (\$10,000,000).*

34 *(2) The offering complies with Sections 260.140.30 to*
35 *260.140.30, inclusive, of Title 10 of the California Code of*
36 *Regulations, which, under subdivision (b) of Section*
37 *260.140.31, limit the number of promotional shares to 50*
38 *percent of the issuer’s issued and outstanding stock for*
39 *offerings under this section.*

1 (3) *The offering shall be subject to the impound*
2 *provisions of Sections 260.141.20 to 260.141.27, inclusive,*
3 *of Title 10 of the California Code of Regulations.*

4 (4) *The offering shall be subject to the limitation on*
5 *selling expenses under Section 260.140.20 of Title 10 of the*
6 *California Code of Regulations.*

7 (5) *The financial statements for the offering shall be*
8 *subject to Section 260.613 of Title 10 of the California*
9 *Code of Regulations.*

10 (6) *The issuer shall satisfy the applicable disclosure*
11 *requirements as prescribed by the then existing*
12 *Securities and Exchange Commission forms and*
13 *regulations under the Securities Act of 1933, as amended;*
14 *and a copy of the registration statement, together with all*
15 *of the exhibits filed with the Securities and Exchange*
16 *Commission and made effective thereby, shall be filed*
17 *with the commissioner within 10 days after the effective*
18 *date of the registration statement, together with a notice*
19 *of exemption in the form prescribed by the commissioner*
20 *and the filing fee as prescribed by subdivision (f) of*
21 *Section 25608. This filing is a condition to the use of this*
22 *exemption. The term “registration statement” as used in*
23 *this subdivision shall be deemed to include an offering*
24 *statement under Regulation A under the Securities Act*
25 *of 1933, as amended.*

26 SEC. 2. Section 25103 of the Corporations Code is
27 amended to read:

28 25103. The following transactions are exempted from
29 the provisions of Sections 25110 and 25120:

30 (a) Any negotiations or agreements prior to general
31 solicitation of shareholders' approval, and subject to that
32 approval, of a change in the rights, preferences,
33 privileges, or restrictions of or on outstanding securities
34 or a merger, consolidation, or sale of corporate assets in
35 consideration of the issuance of securities.

36 (b) Any change in the rights, preferences, privileges,
37 or restrictions of or on outstanding securities, unless the
38 holders of at least 25 percent of the outstanding shares or
39 units of any class of securities that will be directly or
40 indirectly affected substantially and adversely by that



1 change have addresses in this state according to the
2 records of the issuer.

3 (c) Any exchange incident to a merger, consolidation,
4 or sale of assets in consideration of the issuance of
5 securities of another issuer, unless at least 25 percent of
6 the outstanding securities of any class, any holders of
7 which are to receive securities in the exchange, are held
8 by persons who have addresses in this state, according to
9 the records of the issuer of which they are holders. This
10 exemption is not available for a rollup transaction as
11 defined by Section 25014.6. The exemption is also not
12 available for a transaction excluded from the definition of
13 rollup transaction by virtue of paragraph (5) or (6) of
14 subdivision (b) of Section 25014.6 if the transaction is one
15 of a series of transactions that directly or indirectly
16 through acquisition or otherwise involves the
17 combination or reorganization of one or more rollup
18 participants.

19 (d) For the purposes of subdivision (b) and
20 subdivision (c) of this section, (1) any securities held to
21 the knowledge of the issuer in the names of
22 broker-dealers or nominees of broker-dealers and (2) any
23 securities controlled by any one person who controls
24 directly or indirectly 50 percent or more of the
25 outstanding securities of that class shall not be considered
26 outstanding. The determination of whether 25 percent of
27 the outstanding securities are held by persons having
28 addresses in this state, for the purposes of subdivision (b)
29 and subdivision (c) of this section, shall be made as of the
30 record date for the determination of the security holders
31 entitled to vote on or consent to the action, if approval of
32 those holders is required, or if not as of the date of
33 directors' approval of that action.

34 (e) Any change (other than a stock split or reverse
35 stock split) in the rights, preferences, privileges, or
36 restrictions of or on outstanding shares, except the
37 following if they materially and adversely affect any class
38 of shareholders: (1) to add, change, or delete assessment
39 provisions; (2) to change the rights to dividends thereon;
40 (3) to change the redemption provisions; (4) to make



1 them redeemable; (5) to change the amount payable on
2 liquidation; (6) to change, add, or delete conversion
3 rights; (7) to change, add, or delete voting rights; (8) to
4 change, add, or delete preemptive rights; (9) to change,
5 add, or delete sinking fund provisions; (10) to rearrange
6 the relative priorities of outstanding shares; (11) to
7 impose, change, or delete restrictions upon the transfer
8 of shares in the articles of incorporation or bylaws; (12)
9 to change the right of shareholders with respect to the
10 calling of special meetings of shareholders; and (13) to
11 change, add, or delete any rights, preferences, privileges,
12 or restrictions of, or on, the outstanding shares or
13 memberships of a mutual water company or other
14 corporation organized primarily to provide services or
15 facilities to its shareholders or members. Changes in the
16 rights, preferences, privileges, or restrictions of or on
17 outstanding shares do not materially and adversely affect
18 any class of shareholders within the meaning of this
19 subdivision if they arise from (i) the addition to articles
20 of incorporation of the provisions described or referred to
21 in subdivision (a) of Section 158 upon the conversion of
22 an existing corporation to a close corporation pursuant to
23 subdivision (b) of Section 158, (ii) the deletion from the
24 articles of incorporation of the provisions described or
25 referred to in subdivision (a) of Section 158 upon the
26 voluntary termination of close corporation status
27 pursuant to subdivisions (c) and (e) of Section 158, (iii)
28 the involuntary cessation of close corporation status
29 pursuant to subdivision (e) of Section 158, or (iv) the
30 termination of a shareholders' agreement pursuant to
31 subdivision (b) of Section 300.

32 (f) Any stock split or reverse stock split, except the
33 following: (1) any stock split or reverse stock split if the
34 corporation has more than one class of shares outstanding
35 and the split would have a material effect on the
36 proportionate interests of the respective classes as to
37 voting, dividends, or distributions; (2) any stock split of
38 a stock that is traded in the market and its market price
39 as of the date of directors' approval of the stock split
40 adjusted to give effect to the split was less than two dollars



1 (\$2) per shares; and (3) any reverse stock split if the
2 corporation has the option of paying cash for any
3 fractional shares created by the reverse split and as a
4 result of that action the proportionate interests of the
5 shareholders would be substantially altered. Any shares
6 issued upon a stock split or reverse stock split exempted
7 by this subdivision shall be subject to any conditions
8 previously imposed by the commissioner applicable to
9 the shares with respect to which they are issued.

10 (g) Any change in the rights of outstanding debt
11 securities, except the following if they substantially and
12 adversely affect any class of securities: (1) to change the
13 rights to interest thereon; (2) to change their redemption
14 provisions; (3) to make them redeemable; (4) to extend
15 the maturity thereof or to change the amount payable
16 thereon at maturity; (5) to change their voting rights; (6)
17 to change their conversion rights; (7) to change sinking
18 fund provisions; and (8) to make them subordinate to
19 other indebtedness.

20 (h) An exchange incident to a merger or sale of
21 corporate assets in consideration of the issuance of
22 one-class voting common stock of another corporation,
23 which exchange meets each of the following conditions:

24 (1) The acquiring corporation (or the parent
25 corporation if its wholly owned subsidiary is the acquiring
26 corporation) has earned a majority of its revenue from its
27 operations rather than investments during each of the last
28 four fiscal quarters prior to the date of the offer of the
29 acquiring corporation's common stock.

30 (2) The corporation to be acquired has 20 or fewer
31 security holders, all of which are equity security holders,
32 including equity security holders not in this state.

33 (3) All equity security holders of the corporation to be
34 acquired have either (A) preexisting personal or business
35 relationship with the acquiring corporation or any of its
36 officers, directors, or controlling persons or (B) by reason
37 of their business or financial experience, or the business
38 or financial experience of their professional advisors who
39 are unaffiliated with and who are not compensated by the
40 acquiring corporation or any affiliate or selling agent of



1 the acquiring corporation, directly or indirectly, could be
2 reasonably assumed to have the capacity to protect their
3 own interest in connection with the transaction.

4 (4) All equity security holders of the corporation to be
5 acquired have consented in writing to the transaction,
6 and each equity security holder of the corporation to be
7 acquired has represented that the acquisition of the
8 common stock in the transaction is for the equity security
9 holder's own account (or a trust account if the equity
10 security holder is a trustee) and not with a view to or for
11 sale in connection with any distribution of the common
12 stock.

13 (5) The offer and sale of the acquiring corporation's
14 common stock is not accomplished by the publication of
15 any advertisement. The distribution of information
16 necessary to solicit approval of the transaction from the
17 equity security holders of the corporation to be acquired
18 shall not be deemed to be the publication of any
19 advertisement to the extent that the distribution of
20 information is required by the laws of this state or the
21 applicable laws of any other jurisdiction.

22 (6) All equity security holders of the corporation to be
23 acquired, other than the acquiring corporation, shall
24 receive as a result of the merger or sale of corporate assets
25 (A) only one-class voting common stock of the acquiring
26 corporation (or parent or subsidiary if that common stock
27 is the consideration offered), (B) only cash, or (C) a
28 combination as determined by the equity security holder
29 of common stock as set forth in subparagraph (A) and
30 cash; each choice at the option of the equity security
31 holder of the corporation to be acquired.

32 For purposes of this section, a husband and wife
33 (together with any custodian or trustee acting for the
34 account of their minor children) are counted as one
35 equity security holder of the corporation to be acquired
36 and a partnership, corporation, or other organization that
37 was not specifically formed for the purpose of receiving
38 the security exchanged in reliance upon this exemption,
39 is counted as one equity security holder of the corporation
40 to be acquired.



1 The commissioner may, by rule, require the acquiring
2 corporation to file a notice of transaction under this
3 section. However, the failure to file the notice or the
4 failure to file the notice within the time specified by the
5 rule of the commissioner shall not affect the availability
6 of this exemption. An acquiring entity that fails to file the
7 notice as provided by rule of the commissioner shall,
8 within 15 business days after demand by the
9 commissioner, file the notice and pay to the
10 commissioner a fee equal to the fee payable had the
11 transaction been qualified under Section 25110 or 25120.

12 (i) An issuance or exchange of securities incident to a
13 merger, sale of corporate assets, or reorganization that
14 meets either of the following conditions:

15 (1) The merger, sale of assets, or reorganization is
16 consummated by means of an offering of cash or
17 securities made pursuant to an effective registration
18 statement under the Securities Act of 1933, as amended.

19 (2) The merger, sale of assets, or reorganization is
20 made pursuant to an offering of cash or securities meeting
21 the requirements of subdivision (f), (n), or (o) of Section
22 25102.

23 In either case, the surviving corporation shall be
24 required to file a notice of the transaction under this
25 subdivision within 30 days of the closing of the transaction
26 in accordance with rules adopted by the commissioner,
27 accompanied by a filing fee as prescribed by subdivision
28 (y) of Section 25608.

29 SEC. 3. Section 25111 of the Corporations Code is
30 amended to read:

31 25111. (a) Any security for which a registration
32 statement has been filed under the Securities Act of 1933
33 in connection with the same offering may be qualified by
34 coordination under this section either in an issuer or
35 nonissuer transaction. The term “registration statement”
36 as used in this section includes an offering statement
37 under Regulation A (17 C.F.R. Secs. 230.251 to 230.263,
38 inclusive), under the Securities Act of 1933, as amended.

39 (b) Except as provided in subdivision (d), an
40 application for qualification under this section shall



1 contain the following information and be accompanied
2 by the following documents, in addition to the
3 information specified in Section 25160 and the consent to
4 service of process required by Section 25165: (1) a copy
5 of the registration statement under the Securities Act of
6 1933, together with all exhibits (other than exhibits
7 incorporated by reference and those specified by rule of
8 the commissioner, unless requested by the
9 commissioner); (2) an undertaking to forward to the
10 commissioner all future amendments to the registration
11 statement under the Securities Act of 1933, other than an
12 amendment that merely delays the effective date of the
13 registration statement, promptly and in any event not
14 later than the first business day after the day they are
15 forwarded to or filed with the Securities and Exchange
16 Commission, whichever first occurs; and (3) other
17 information required to evidence compliance with any
18 rules of the commissioner. The application must be filed
19 with the commissioner not later than the fifth business
20 day following filing of the registration statement with the
21 Securities and Exchange Commission, unless that time is
22 extended by rule or order of the commissioner.

23 (c) Except as provided in subdivision (d),
24 qualification of the sale of securities under this section
25 automatically becomes effective (and the securities may
26 be offered and sold in accordance with the terms of the
27 application as amended) at the moment the federal
28 registration statement becomes effective if all the
29 following conditions are satisfied: (1) no stop order or
30 order under subdivision (a) of Section 25143 is in effect
31 under this law; (2) the application has been on file with
32 the commissioner for at least 10 days; and (3) a statement
33 of the maximum and minimum proposed offering prices
34 and the maximum underwriting discounts and
35 commissions has been on file for two business days or such
36 shorter period as the commissioner permits by rule or
37 order and the offering is made within those limitations.
38 The applicant shall promptly notify the commissioner by
39 telephone or telegram of the date and time when the
40 federal registration statement became effective and the



1 content of the price amendment, if any, and shall
2 promptly file a posteffective amendment to the
3 application containing the information and documents in
4 the price amendment. “Price amendment” means the
5 final federal amendment that includes a statement of the
6 offering price, underwriting and selling discounts or
7 commissions, amount of proceeds, interest, dividend or
8 conversion rates, call prices and other matters related to
9 the offering price. Upon failure to receive the required
10 notification and posteffective amendment with respect
11 to the price amendment, the commissioner may enter a
12 stop order, without notice or hearing, retroactively
13 denying effectiveness to the application for qualification
14 or suspending its effectiveness until compliance with this
15 subdivision, if he promptly notifies the applicant by
16 telephone or telegram (and promptly confirms by letter
17 or telegram when he notifies by telephone) of the
18 issuance of the order. If the applicant proves compliance
19 with the requirements of this subdivision as to notice and
20 posteffective amendment, the stop order is void as of the
21 time of its entry. The commissioner may by rule or order
22 waive either or both of the conditions specified in clauses
23 (2) and (3) of this subdivision. If the federal registration
24 statement becomes effective before all the conditions in
25 this subdivision are satisfied and they are not waived, the
26 application for qualification automatically becomes
27 effective as soon as all the conditions are satisfied. If the
28 applicant advises the commissioner of the date when the
29 federal registration statement is expected to become
30 effective, the commissioner shall promptly advise the
31 applicant by telephone or telegram, at the applicant’s
32 expense, whether all the conditions are satisfied and
33 whether he then contemplates the institution of a
34 proceeding under Section 25140 or 25143; but this advice
35 by the commissioner does not preclude the institution of
36 such a proceeding at any time.

37 (d) (1) An open-end investment company or a unit
38 investment trust that has previously qualified the sale of
39 its securities pursuant to this section shall, in lieu of filing
40 the application specified in subdivision (b), file pursuant



1 to this subdivision if it has made no material change in its
2 offering and if it is in compliance with all terms of its prior
3 qualification. An application filed pursuant to this
4 subdivision shall contain the following information and be
5 accompanied by the following documents, in addition to
6 the information specified in Section 25160 and the
7 consent to service of process required by Section 25165:
8 (A) a statement that the applicant has made no material
9 change in its offering and that it is in compliance with the
10 terms of its qualification; and (B) a copy of its current
11 registration statement under the Securities Act of 1933.

12 If no stop order or orders under subdivision (a) of
13 Section 25143 are in effect under this law, qualification of
14 the sale of securities under this subdivision automatically
15 becomes effective (and the securities may be offered and
16 sold in accordance with the terms of the application)
17 upon the day following the expiration of its prior
18 qualification pursuant to this section or, if that
19 qualification has expired, upon the first business day
20 following the filing of the application pursuant to this
21 subdivision. Nothing contained in this subdivision shall
22 restrict the authority of the commissioner pursuant to
23 Section 25140 or 25143.

24 (2) A unit investment trust that has not previously
25 applied to qualify the sale of its securities pursuant to this
26 section but that is substantially the same as one or more
27 unit investment trusts previously qualified under this
28 section by the same sponsor, shall file pursuant to this
29 subdivision if it can make the statements specified below.
30 An application filed pursuant to this subdivision shall
31 contain the following information and be accompanied
32 by the following documents, in addition to the
33 information specified in Section 25160 and the consent to
34 service of process required by Section 25165: (A) a
35 statement that the applicant, in its organization, its plan
36 of business, its securities and its offering, is substantially
37 the same as a unit investment trust previously qualified
38 under this section by the same sponsor; (B) a statement
39 that those previously qualified unit investment trusts are
40 in compliance with the terms of their qualifications and



1 (C) a copy of its current registration statement under the
2 Securities Act of 1933. If no stop order or orders under
3 subdivision (a) of Section 25143 are in effect under this
4 law, qualification of the sale of securities under this
5 subdivision automatically becomes effective (and the
6 security may be offered and sold in accordance with the
7 terms of the application) at the moment the federal
8 registration becomes effective or, if the registration is
9 effective when the application is filed, upon the first
10 business day following the filing of the application
11 pursuant to this subdivision.

12 SEC. 4. Section 25113 of the Corporations Code is
13 amended to read:

14 25113. (a) All securities, whether or not eligible for
15 qualification by coordination under Section 25111 or
16 qualification by notification under Section 25112, may be
17 qualified by permit under this section.

18 (b) (1) An application for a permit under this section
19 shall contain any information and be accompanied by any
20 documents as shall be required by rule of the
21 commissioner, in addition to the information specified in
22 Section 25160 and the consent to service of process
23 required by Section 25165. For this purpose, the
24 commissioner may classify issuers and types of securities.

25 (2) An applicant may file a small company application
26 for permit under this section in accordance with rules
27 adopted by the commissioner. The rules adopted by the
28 commissioner under this paragraph shall include all of the
29 following:

30 (A) The rules shall provide that any reference in those
31 rules to Form U-7 means the Small Corporate Offering
32 Registration Form (Form U-7) as adopted by the North
33 American Securities Administrators Association, Inc.
34 (NASAA) on April 29, 1989, which is incorporated herein
35 by reference and on file with the Secretary of State.
36 Copies of Form U-7 are available from the commissioner
37 and from NASAA.

38 (B) To be eligible for qualification, the following
39 conditions apply:



1 (i) The issuer shall be a corporation or a limited
2 liability company.

3 (ii) The issuer shall not be a blind pool company. For
4 that purpose, a “blind pool company” means a company
5 that has no specific business plan or purpose except to
6 locate and acquire a presently unknown business or
7 opportunity.

8 (iii) The issuer shall not be engaged in oil and gas
9 exploration or production, or mining or other extractive
10 industries.

11 (iv) The issuer shall not be an investment company
12 subject to the Investment Company Act of 1940
13 (Subchapter I (commencing with Section 80a-1) of
14 Chapter 2D of Title 15, U.S.C.).

15 (v) The issuer shall not be subject to the reporting
16 requirements of Section 13 or 15(d) of the Securities
17 Exchange Act of 1934 (15 U.S.C. Sec 78l and 15 U.S.C.
18 78o(d)).

19 (vi) The total offering by the applicant to be sold in a
20 12-month period, within or outside this state, is limited to
21 one million dollars (\$1,000,000) or such larger amount as
22 may be permitted to be offered without registration
23 under Rule 504 as amended from time to time by the
24 Securities and Exchange Commission (17 C.F.R. Sec.
25 230.504), less the aggregate offering price for all securities
26 sold within the 12 months before the start of, and during
27 the offering of, the securities under Rule 504 of the
28 Securities and Exchange Commission, in reliance on any
29 exemption under subdivision (a) of Section 3 of the
30 Securities Act of 1933 (15 U.S.C. Sec. 77c(a)), or in
31 violation of subdivision (a) of Section 5 of that act (15
32 U.S.C. Sec. 77e(a)).

33 (vii) The minimum offering price of the voting
34 common stock to be sold is two dollars (\$2) per share and
35 the applicant files an undertaking with the commissioner
36 that there will be no stock splits or stock dividends for a
37 period of two years from the close of the offering.

38 (viii) The issuer of debt offerings can demonstrate
39 ability to service its debt.



1 (ix) Financial statements and other financial
2 information, if any, required for registration shall be
3 prepared in the manner prescribed in Section 260.613 of
4 Title 10 of the California Code of Regulations, provided
5 that financial statements may be reviewed rather than
6 audited.

7 (x) Except as modified by this section, the
8 qualifications set forth in Part II, “Qualifications for Use
9 of Form,” in the Instructions for Use of Form U-7 shall be
10 met.

11 (C) Application for qualification of securities under
12 this paragraph shall be made by the issuer of the securities
13 by filing with the commissioner a disclosure document on
14 Form U-7, with exhibits as required by Part V of the
15 Instructions for Use of Form U-7, and any other
16 documents required by Part III(A) of the Instructions for
17 Use of Form U-7, accompanied by a filing fee as provided
18 in subdivision (e) of Section 25608.

19 (D) The issuer shall deliver to each investor (i) a copy
20 of the Form U-7 as filed with the commissioner, (ii) a copy
21 of the pamphlet entitled “A Consumer’s Guide to Small
22 Business Investments,” as provided by subdivision (c) of
23 Section 260.140.05 of Title 10 of the California Code of
24 Regulations, and (iii) any other statement mandated by
25 the commissioner.

26 (c) Qualification of securities under this section
27 becomes effective upon the commissioner issuing a
28 permit authorizing the issuance of those securities.

29 SEC. 5. Section 25140 of the Corporations Code is
30 amended to read:

31 25140. (a) (1) The commissioner may issue a stop
32 order denying effectiveness to, or suspending or revoking
33 the effectiveness of, any qualification of an underwritten
34 offering of securities under Section 25111, 25112 or 25131
35 or may suspend or revoke any permit issued under
36 Section 25113 or 25122 if he or she finds (A) that the order
37 is in the public interest and (B) that the proposed plan
38 of business of the issuer or the proposed issuance or sale
39 of securities is not fair, just, or equitable, or that the issuer
40 does not intend to transact its business fairly and honestly,



1 or that the securities proposed to be issued or the method
2 to be used in issuing them will tend to work a fraud upon
3 the purchaser thereof.

4 (2) In the case of an application for or qualification of
5 securities under Section 25111, 25112, or 25131 that is not
6 an underwritten offering of securities, the commissioner
7 may issue a stop order denying effectiveness to, or
8 suspending or revoking the effectiveness of the
9 qualification unless he or she finds (A) that the stop order
10 is not in the public interest and (B) that the proposed
11 plan of business of the applicant or the proposed issuance
12 of securities is fair, just, and equitable, that the issuer
13 intends to transact its business fairly and honestly, and
14 that the securities that the issuer proposes to issue or the
15 method to be used in issuing them are not such as will
16 work a fraud upon the purchaser thereof.

17 (b) The commissioner may refuse to issue a permit
18 under Section 25113 unless he or she finds that the
19 proposed plan of business of the applicant and the
20 proposed issuance of securities are fair, just, and
21 equitable, that the applicant intends to transact its
22 business fairly and honestly, and that the securities that
23 it proposes to issue and the methods to be used by it in
24 issuing them are not such as, in his or her opinion, will
25 work a fraud upon the purchaser thereof.

26 (c) The commissioner may refuse to issue a permit
27 under Section 25122 unless he or she finds that the
28 proposed plan of recapitalization or reorganization and
29 the proposed issuance of securities are fair, just, and
30 equitable to all security holders affected.

31 (d) Notwithstanding the provisions of subdivisions (a)
32 and (b) of this section, the commissioner shall not have
33 authority to issue any stop order or to refuse to issue or to
34 suspend or revoke any permit on the basis that the price
35 at which the security is to be offered is unfair, unjust or
36 inequitable in any case where the security is being
37 publicly offered for cash pursuant to a registration
38 statement under the Securities Act of 1933 and the
39 offering is the subject of a firm commitment
40 underwriting by an underwriter or syndicate of



1 underwriters all of whom are registered under the
2 Securities Exchange Act of 1934. For the purposes of this
3 subdivision a firm commitment underwriting means an
4 underwriting pursuant to which the underwriter or
5 syndicate of underwriters is committed to take up and
6 pay for the securities subject only to the usual or
7 customary conditions, but not including any “market
8 out” or similar condition operative after the time of
9 commencement of the offering. (A condition relating to
10 the suspension of all trading on a national securities
11 exchange, a banking holiday, war, civil insurrection, or
12 the like is not a “market out” or similar condition within
13 the meaning of this subdivision.) Nothing contained in
14 this subdivision shall deny authority to the commissioner
15 to issue a stop order or to refuse to issue or to suspend or
16 revoke a permit because of unreasonable discounts,
17 commissions or other compensation to underwriters,
18 sellers or others, unreasonable promoters’ profits or
19 participations or unreasonable amounts or kinds of
20 options.

21 (e) Notwithstanding the provisions of subdivisions (a)
22 and (b), the commissioner shall not have authority to
23 issue any stop order or to refuse to issue, or to suspend or
24 revoke any permit on the basis that the proposed plan of
25 business of the issuer or the proposed issuance or sale of
26 securities is not fair, just, or equitable, or that the issuer
27 does not intend to transact its business fairly, or that the
28 securities proposed to be issued or the method to be used
29 in issuing them will tend to work a fraud upon the
30 purchase thereof, in any of the following offerings: (1)
31 offerings that are qualified under paragraph (2) of
32 subdivision (b) of Section 25113, or (2) offerings by “small
33 business issuers” as defined by Section 260.001 of Title 10
34 of the California Code of Regulations, provided in each
35 case that the offerings meet each of the following
36 conditions:

37 (A) The proposed maximum aggregate offering price
38 for all the securities to be sold in the offering anywhere
39 does not exceed five million dollars (\$5,000,000).



1 (B) The offering complies with Sections 260.140.30 to
2 260.140.33, inclusive, of Title 10 of the California Code of
3 Regulations, which, under subdivision (b) of Section
4 260.140.31 of Title 10 of the California Code of
5 Regulations, limits the number of “promotional shares” to
6 50 percent of the issuer’s issued and outstanding stock for
7 offerings under this section.

8 (C) The offering shall be subject to the impound
9 provisions provided in Sections 260.141.20 to 260.141.27,
10 inclusive, of Title 10 of the California Code of Regulations.

11 (D) The offering shall be subject to the limitation on
12 selling expenses under Section 260.140.20 of Title 10 of the
13 California Code of Regulations.

14 (E) The financial statements for the offering shall be
15 subject to Section 260.613 of Title 10 of the California
16 Code of Regulations.

17 (F) The issuer shall satisfy the applicable disclosure
18 requirements as prescribed by the then existing
19 Securities and Exchange Commission forms and
20 regulations under the Securities Act of 1933, as amended.

21 (G) The sale of securities shall be restricted to
22 purchasers who meet any one of the following four tests:
23 (i) investors shall have a minimum annual gross income
24 of forty thousand dollars (\$40,000) and a minimum net
25 worth of one hundred thousand dollars (\$100,000), (ii)
26 investors shall have a minimum net worth of one hundred
27 fifty thousand dollars (\$150,000), (iii) the investor’s
28 investment shall represent less than 10 percent of the
29 purchaser’s net worth, or (iv) the investor’s investment
30 does not exceed five thousand dollars (\$5,000). Net worth
31 shall be deemed exclusive of home, home furnishings, and
32 personal automobiles. Assets included in the computation
33 of net worth may be valued at fair market value.

34 SEC. 6. Section 25537 is added to the Corporations
35 Code, to read:

36 25537. Ten percent of all fees collected pursuant to
37 Section 25608 shall be set aside and used solely for
38 prosecution of violations of this division involving fraud
39 in connection with the offer or sale of any securities in this
40 state.



1 SEC. 7. Section 25608 of the Corporations Code is
2 amended to read:

3 25608. (a) The commissioner shall charge and collect
4 the fees fixed in this section. All fees charged and
5 collected under this section shall be transmitted to the
6 Treasurer at least weekly, accompanied by a detailed
7 statement thereof and shall be credited to the State
8 Corporations Fund.

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

12 (c) The fee for filing a notice pursuant to paragraph
13 (5) of subdivision (h) of Section 25102, the fee for filing
14 a notice pursuant to paragraph (4) of subdivision (f) of
15 Section 25102, and the fee for filing a notice pursuant to
16 paragraph (6) of subdivision (h) of Section 25103, in
17 addition to the fee prescribed in those paragraphs, if
18 applicable, shall be determined based on the value of the
19 securities proposed to be sold in the transaction for which
20 the notice is filed and in accordance with subdivision (g),
21 and shall be as follows:

22 Value of Securities	
23 Proposed to be Sold	Filing Fee
24 \$25,000 or less	\$ 25
25 \$25,001 to \$100,000	\$ 35
26 \$100,001 to \$500,000	\$ 50
27 \$500,001 to \$1,000,000	\$150
28 Over \$1,000,000	\$300

29
30
31 (d) The fee for filing an application for designation of
32 an issuer pursuant to subdivision (k) of Section 25100 is
33 fifty dollars (\$50).

34 (e) The fee for filing an application for qualification of
35 the sale of securities by notification under Section 25112
36 or by permit under paragraph (1) of subdivision (b) of
37 Section 25113 (except applications for qualification by
38 permit of the sale of any guarantee of any security, the
39 fees for which applications are fixed in subdivision (k))
40 is two hundred dollars (\$200) plus one-fifth of 1 percent



1 of the aggregate value of the securities sought to be sold
2 in this state up to a maximum aggregate fee of two
3 thousand five hundred dollars (\$2,500).

4 The fee for filing a small company application for
5 qualification of the sale of securities by permit under
6 paragraph (2) of subdivision (b) of Section 25113 is two
7 thousand five hundred dollars (\$2,500). In the case where
8 the costs of processing a small company application
9 exceed the filing fee, an additional fee shall be charged,
10 not to exceed one thousand dollars (\$1,000), over and
11 above the filing fee based on the costs of the salary or
12 other compensation paid to persons processing the
13 application plus overhead costs reasonably incurred in
14 the performance of the work. In determining the costs,
15 the commissioner may use the estimated average hourly
16 cost for all persons processing applications for the fiscal
17 year.

18 (f) The fee for filing an application for qualification of
19 the sale of securities by coordination under Section 25111
20 is two hundred dollars (\$200) plus one-fifth of 1 percent
21 of the aggregate value of the securities sought to be sold
22 in this state up to a maximum aggregate fee of two
23 thousand five hundred dollars (\$2,500).

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

26 (1) The value of the securities shall be the price at
27 which the company proposes to sell the securities, or the
28 value, as alleged in the application, or the actual value, as
29 determined by the commissioner, of the consideration (if
30 other than money) to be received in exchange therefor,
31 or of the securities when sold, whichever is greater.

32 (2) Interim or voting trust certificates shall have a
33 value equal to the aggregate value of the securities to be
34 represented by the interim or voting trust certificates.

35 (3) The value of a warrant or right to purchase or
36 subscribe to another security of the same or another issuer
37 shall be an amount equal to the consideration to be paid
38 for that warrant or right plus an amount equal to the
39 consideration to be paid upon purchase of the additional
40 securities, provided that if the latter amount is not



1 determinable at the time of qualification, that amount
2 shall then be the value of the additional securities as
3 determined by the commissioner.

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

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

12 (1) Two hundred dollars (\$200) in connection with
13 any change (including any stock split or reverse stock
14 split or stock dividend, except a stock dividend where the
15 shareholders are given an option to accept either cash or
16 additional shares of common stock) in the rights,
17 preferences, privileges, or restrictions of or on
18 outstanding securities.

19 (2) Two hundred dollars (\$200) plus one-fifth of 1
20 percent of the value, as alleged in the application, or the
21 actual value, as determined by the commissioner, of the
22 consideration to be received in exchange therefor, up to
23 a maximum aggregate fee of two thousand five hundred
24 dollars (\$2,500), in any exchange of securities by the
25 issuer with its existing security holders exclusively, or in
26 any exchange in connection with any merger or
27 consolidation or purchase of corporate assets in
28 consideration of the issuance of securities.

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

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

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

37 (l) The fee for acting as escrow holder for securities
38 under Section 25149 is fifty dollars (\$50). In addition, a fee
39 of two dollars and fifty cents (\$2.50) shall be paid for the



1 deposit with the commissioner of each new certificate or
2 other document resulting from a transfer in escrow.

3 (m) The fee for filing an application for an order (1)
4 consenting to the transfer in escrow of securities, (2)
5 consenting to the transfer of securities subject to any
6 condition imposed by the commissioner requiring the
7 commissioner's consent to the transfer, or (3) consenting
8 to the transfer of securities subject to a legend stamped
9 or printed on the certificates evidencing the securities
10 pursuant to subdivision (h) of Section 25102, is twenty
11 dollars (\$20) for each transferor.

12 (n) The filing fee for an amendment to an application
13 filed after the effective date of the qualification of the sale
14 of securities is fifty dollars (\$50) plus any additional fee
15 that would have been required to be paid with the
16 original application for qualification of the sale of
17 securities under this section if the matters set forth in the
18 amendment had been included in the original
19 application.

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

23 (2) Each broker-dealer shall pay to the commissioner
24 its pro rata share of all costs and expenses, reasonably
25 incurred in the administration of the broker-dealer
26 program under this division, as estimated by the
27 commissioner for the ensuing year and any deficit
28 actually incurred or anticipated in the administration of
29 the program in the year in which the assessment is made.
30 The pro rata share shall be the proportion that the
31 broker-dealer and the number of its agents in this state
32 bears to the aggregate number of broker-dealers and
33 agents in this state as shown by records maintained by or
34 on behalf of the commissioner. The pro rata share may
35 include the costs of any examinations, audit, or
36 investigation provided for in subdivision (r).

37 (3) On or before the 30th day of May in each year, the
38 commissioner shall notify each broker-dealer by mail of
39 the amount assessed and levied against it and that amount
40 shall be paid within 20 days thereafter. If payment is not



1 made within 20 days, the commissioner shall assess and
2 collect a penalty in addition to the assessment, of 1
3 percent of the assessment for each month or part of a
4 month that the payment is delayed or withheld.

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

8 (5) In determining the amount assessed, the
9 commissioner shall consider all appropriations from the
10 State Corporations Fund for the support of the
11 broker-dealer program under this division and all
12 reimbursements applicable to the administration of the
13 broker-dealer program under this division.

14 (6) If a broker-dealer fails to pay the assessment on or
15 before the 30th day of June following the day upon which
16 payment is due, the commissioner may by order
17 summarily suspend or revoke the certificate issued to the
18 broker-dealer. If, after that order is made, a request for
19 hearing is filed in writing and a hearing is not held within
20 60 days thereafter, the order is deemed rescinded as of its
21 effective date. During any period when its certificate is
22 revoked or suspended, a broker-dealer shall not conduct
23 business pursuant to this division except as may be
24 permitted by order of the commissioner; provided,
25 however, that the revocation, suspension, or surrender of
26 a certificate shall not affect the powers of the
27 commissioner as provided under this division.

28 (p) The commissioner shall charge a fee of twenty-five
29 dollars (\$25) for the filing of a notice or report required
30 by rule adopted pursuant to subdivision (b) of Section
31 25210.

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



1 dollars (\$125) on or before the 15th day of December
2 preceding the additional period.

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

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

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

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

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

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

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



1 (y) The fee for filing a notice of transaction under
2 subdivisions (o) and (q) of Section 25102, and subdivision
3 (i) of Section 25103 is six hundred dollars (\$600).

4 (z) The fee for filing a notice of transaction under
5 subdivision (p) of Section 25102 shall be two thousand five
6 hundred dollars (\$2,500).

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