AMENDED IN SENATE JUNE 19, 1995

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~~ *under a stock purchase or stock option* 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 *as defined* 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~~ *by* permit if it meets certain statutory requirements*, including a minimum offering price of voting common stock of $5 per share and the submission of an application and disclosure document that has been reviewed and signed by each member of the board of directors.*

This bill would instead provide for a minimum offering price of $2 per share for voting common stock, preferred stock, and conversion of preferred stock into voting common stock. The bill would also require the application and disclosure document to be reviewed and signed by a majority of the members of the board of directors rather than by each member.

~~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 *related to the offer or sale of securities under limited offers or certain compensatory benefit plans*.

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 exempted 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

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

(b) Any offer (but not a sale) of a security for which a registration statement has been filed under the Securities Act of 1933 but has not yet become effective, or for which an offering statement under Regulation A has been filed but has not yet been qualified, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under Section 8 of the act and no order under Section 25140 or subdivision (a) of Section 25143 is in effect under this law.

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

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

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

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

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

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

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

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

(g) Any offer or sale of conditional sale agreements, equipment trust certificates, or certificates of interest or

participation therein or partial assignments thereof, covering the purchase of railroad rolling stock or equipment or the purchase of motor vehicles, aircraft, or parts thereof, in a transaction not involving any public offering.

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

(1) All of the stock shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by rule of the commissioner restricting transfer of the stock in the manner that the rule provides.

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

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

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

(5) A notice in a form prescribed by rule of the commissioner, signed by an active member of the State Bar of California, shall be filed with or mailed for filing to the commissioner not later than 10 business days after receipt of consideration for the securities by the issuer, which notice shall contain an opinion of the member of the State Bar of California that the exemption provided by this subdivision is available for the offer and sale of the securities; provided, however, that the failure to file the notice as required by this subdivision and the rules of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice within the time specified by this subdivision shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110. The notice, except when filed on behalf of a California corporation, shall be accompanied by an irrevocable consent, in the form that the commissioner by rule prescribes, appointing the commissioner or his or her successor in office to be the issuer's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against it or its successor that arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the issuer. An issuer on whose behalf a consent has been filed in connection with a previous qualification or exemption from qualification under this law (or application for a permit under any prior law if the application or notice under this law states that the consent is still effective) need not file another. Service may be made by leaving a copy of the process in

the office of the commissioner but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him *or her*, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at its last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within the further time as the court allows.

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

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

(j) Any offer or sale of any certificate of interest or participation in an oil or gas title or lease (including subsurface gas storage and payments out of production) if (1) all of the purchasers: (i) are and have been during the preceding two years engaged primarily in the

business of drilling for, producing, or refining oil or gas (or whose corporate predecessor, in the case of a corporation, has been so engaged), or (ii) are persons described in clause (1) of subdivision (i) of this section, or (iii) have been found by the commissioner upon written application to be substantially engaged in the business of drilling for, producing or refining oil or gas so as not to require the protection provided by this law (which finding shall be effective until rescinded), or (2) the security is concurrently hypothecated to a bank in the ordinary course of business to secure a loan made by the bank; provided each purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the security.

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

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

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

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

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

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

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

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

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

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

(E) With respect to the offer and sale of one class of voting common stock of an issuer or of preferred stock of

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

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

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

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

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

purchaser, a written offering disclosure statement, which shall meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), and any other information as may be prescribed by rule of the commissioner; provided that the issuer shall not be obligated pursuant to the provisions of this paragraph to provide this disclosure statement to a natural person qualified under Section 260.102.13 of Title 10 of the California Code of Regulations. The offer or sale of securities pursuant to a disclosure statement required by this paragraph in violation of Section 25401, or that fails to meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall not render unavailable to the issuer the claim of an exemption from the provisions of Section 25110 afforded by this subdivision. This paragraph does not impose, directly or indirectly, any additional disclosure obligation with respect to any other exemption from qualification available under any other provision of this section.

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

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

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

(iii) The anticipated suitability standards for prospective purchasers.

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

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

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

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

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

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

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

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

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

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

(7) The issuer files a notice of transaction under this subdivision both (A) concurrent with the publication of a general announcement of proposed offering or at the time of the initial offer of the securities, whichever occurs first, accompanied by a filing fee, and (B) within 10 business days following the close or abandonment of the offering, but in no case more than 210 days from the date of filing the first notice. The first notice of transaction under subparagraph (A) shall contain an undertaking, in a form acceptable to the commissioner, to deliver any disclosure statement required by paragraph (4) to be delivered to prospective purchasers, and any supplement thereto, to the commissioner within 10 days of the commissioner’s request for the information. The exemption from qualification afforded by this subdivision

is unavailable if an issuer fails to file the first notice required under subparagraph (A) or to pay the filing fee. The commissioner has the authority to assess an administrative penalty of up to one thousand dollars ($1,000) against an issuer that fails to deliver the disclosure statement required to be delivered to the commissioner upon the commissioner's request within the time period set forth above. Neither the filing of the disclosure statement nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action deemed necessary or appropriate under this division with respect to the offer and sale of the securities.

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

~~(p)~~

(o) An offer or sale of any security issued pursuant to a stock *purchase* or stock option that complies with all of the provisions of Rule 701 under the Securities Act of 1933 (17 C.F.R. Sec. 230.701), as amended, the provisions of which are hereby incorporated by reference into this section; provided that (1) the terms of any stock purchase plan shall comply with Sections 260.140.42 ~~and 260.140.45~~, *260.140.45, and 260.140.46* of Title 10 of the California Code of Regulations, (2) the terms of any stock option plan shall comply with Sections 260.140.41 ~~and 260.140.45~~, *260.140.45, and 260.140.46* of Title 10 of the California Code of Regulations, and (3) the issuer files a notice of transaction in accordance with rules adopted by the commissioner within 30 days of the adoption of any such plan, accompanied by a filing fee as prescribed by subdivision ~~(z)~~ *(y)* of Section 25608.

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

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

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

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

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

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

~~(r) 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, provided that all of the following conditions are met:~~

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

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

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

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

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

~~(6) The issuer shall satisfy the applicable disclosure requirements as prescribed by the then existing Securities and Exchange Commission forms and regulations under the Securities Act of 1933, as amended; and a copy of the registration statement, together with all of the exhibits filed with the Securities and Exchange Commission and made effective thereby, shall be filed with the commissioner within 10 days after the effective date of the registration statement, together with a notice of exemption in the form prescribed by the commissioner and the filing fee as prescribed by subdivision (f) of Section 25608. This filing is a condition to the use of this exemption. The term "registration statement" as used in this subdivision shall be deemed to include an offering statement under Regulation A under the Securities Act of 1933, as amended.~~

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

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

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

~~(b) Any change in the rights, preferences, privileges, or restrictions of or on outstanding securities, unless the holders of at least 25 percent of the outstanding shares or units of any class of securities that will be directly or indirectly affected substantially and adversely by that change have addresses in this state according to the records of the issuer.~~

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

~~(d) For the purposes of subdivision (b) and subdivision (c) of this section, (1) any securities held to the knowledge of the issuer in the names of broker-dealers or nominees of broker-dealers and (2) any securities controlled by any one person who controls directly or indirectly 50 percent or more of the outstanding securities of that class shall not be considered~~

~~outstanding. The determination of whether 25 percent of the outstanding securities are held by persons having addresses in this state, for the purposes of subdivision (b) and subdivision (c) of this section, shall be made as of the record date for the determination of the security holders entitled to vote on or consent to the action, if approval of those holders is required, or if not as of the date of directors' approval of that action.~~

~~(e) Any change (other than a stock split or reverse stock split) in the rights, preferences, privileges, or restrictions of or on outstanding shares, except the following if they materially and adversely affect any class of shareholders: (1) to add, change, or delete assessment provisions; (2) to change the rights to dividends thereon; (3) to change the redemption provisions; (4) to make them redeemable; (5) to change the amount payable on liquidation; (6) to change, add, or delete conversion rights; (7) to change, add, or delete voting rights; (8) to change, add, or delete preemptive rights; (9) to change, add, or delete sinking fund provisions; (10) to rearrange the relative priorities of outstanding shares; (11) to impose, change, or delete restrictions upon the transfer of shares in the articles of incorporation or bylaws; (12) to change the right of shareholders with respect to the calling of special meetings of shareholders; and (13) to change, add, or delete any rights, preferences, privileges, or restrictions of, or on, the outstanding shares or memberships of a mutual water company or other corporation organized primarily to provide services or facilities to its shareholders or members. Changes in the rights, preferences, privileges, or restrictions of or on outstanding shares do not materially and adversely affect any class of shareholders within the meaning of this subdivision if they arise from (i) the addition to articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the conversion of an existing corporation to a close corporation pursuant to subdivision (b) of Section 158, (ii) the deletion from the articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the~~

~~voluntary termination of close corporation status pursuant to subdivisions (c) and (e) of Section 158, (iii) the involuntary cessation of close corporation status pursuant to subdivision (e) of Section 158, or (iv) the termination of a shareholders' agreement pursuant to subdivision (b) of Section 300.~~

~~(f) Any stock split or reverse stock split, except the following: (1) any stock split or reverse stock split if the corporation has more than one class of shares outstanding and the split would have a material effect on the proportionate interests of the respective classes as to voting, dividends, or distributions; (2) any stock split of a stock that is traded in the market and its market price as of the date of directors' approval of the stock split adjusted to give effect to the split was less than two dollars ($2) per shares; and (3) any reverse stock split if the corporation has the option of paying cash for any fractional shares created by the reverse split and as a result of that action the proportionate interests of the shareholders would be substantially altered. Any shares issued upon a stock split or reverse stock split exempted by this subdivision shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.~~

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

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

~~(1) The acquiring corporation (or the parent corporation if its wholly owned subsidiary is the acquiring~~

~~corporation) has earned a majority of its revenue from its operations rather than investments during each of the last four fiscal quarters prior to the date of the offer of the acquiring corporation's common stock.~~

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

~~(3) All equity security holders of the corporation to be acquired have either (A) preexisting personal or business relationship with the acquiring corporation or any of its officers, directors, or controlling persons or (B) by reason of their business or financial experience, or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the acquiring corporation or any affiliate or selling agent of the acquiring corporation, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interest in connection with the transaction.~~

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

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

~~(6) All equity security holders of the corporation to be acquired, other than the acquiring corporation, shall receive as a result of the merger or sale of corporate assets (A) only one-class voting common stock of the acquiring~~

~~corporation (or parent or subsidiary if that common stock is the consideration offered), (B) only cash, or (C) a combination as determined by the equity security holder of common stock as set forth in subparagraph (A) and cash; each choice at the option of the equity security holder of the corporation to be acquired.~~

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

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

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

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

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

~~In either case, the surviving corporation shall be required to file a notice of the transaction under this subdivision within 30 days of the closing of the transaction~~

~~in accordance with rules adopted by the commissioner, accompanied by a filing fee as prescribed by subdivision (y) of Section 25608.~~

~~SEC. 3.~~

SEC. 2. Section 25111 of the Corporations Code is amended to read:

25111. (a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be qualified by coordination under this section either in an issuer or nonissuer transaction. The term ‘‘registration statement’’ as used in this section includes an offering statement ~~under Regulation A (17 C.F.R. Secs. 230.251 to 230.263, inclusive)~~ *as defined by Rule 252(a) under Regulation A (17 C.F.R. Sec. 230.252(a))*, under the Securities Act of 1933, as amended.

(b) Except as provided in subdivision (d), an application for qualification under this section shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 25160 and the consent to service of process required by Section 25165: (1) a copy of the registration statement under the Securities Act of 1933, together with all exhibits (other than exhibits incorporated by reference and those specified by rule of the commissioner, unless requested by the commissioner); (2) an undertaking to forward to the commissioner all future amendments to the registration statement under the Securities Act of 1933, other than an amendment that merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs; and (3) other information required to evidence compliance with any rules of the commissioner. The application must be filed with the commissioner not later than the fifth business day following filing of the registration statement with the Securities and Exchange Commission, unless that time is extended by rule or order of the commissioner.

(c) Except as provided in subdivision (d), qualification of the sale of securities under this section automatically becomes effective (and the securities may be offered and sold in accordance with the terms of the application as amended) at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order or order under subdivision (a) of Section 25143 is in effect under this law; (2) the application has been on file with the commissioner for at least 10 days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two business days or such shorter period as the commissioner permits by rule or order and the offering is made within those limitations. The applicant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment to the application containing the information and documents in the price amendment. ‘‘Price amendment’’ means the final federal amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, interest, dividend or conversion rates, call prices and other matters related to the offering price. Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the application for qualification or suspending its effectiveness until compliance with this subdivision, if he *or she* promptly notifies the applicant by telephone or telegram (and promptly confirms by letter or telegram when he *or she* notifies by telephone) of the issuance of the order. If the applicant proves compliance with the requirements of this subdivision as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or order waive either or both of the conditions specified in clauses

(2) and (3) of this subdivision. If the federal registration statement becomes effective before all the conditions in this subdivision are satisfied and they are not waived, the application for qualification automatically becomes effective as soon as all the conditions are satisfied. If the applicant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the applicant by telephone or telegram, at the applicant's expense, whether all the conditions are satisfied and whether he *or she* then contemplates the institution of a proceeding under Section 25140 or 25143; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

(d) (1) An open-end investment company or a unit investment trust that has previously qualified the sale of its securities pursuant to this section shall, in lieu of filing the application specified in subdivision (b), file pursuant to this subdivision if it has made no material change in its offering and if it is in compliance with all terms of its prior qualification. An application filed pursuant to this subdivision shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 25160 and the consent to service of process required by Section 25165: (A) a statement that the applicant has made no material change in its offering and that it is in compliance with the terms of its qualification; and (B) a copy of its current registration statement under the Securities Act of 1933.

If no stop order or orders under subdivision (a) of Section 25143 are in effect under this law, qualification of the sale of securities under this subdivision automatically becomes effective (and the securities may be offered and sold in accordance with the terms of the application) upon the day following the expiration of its prior qualification pursuant to this section or, if that qualification has expired, upon the first business day following the filing of the application pursuant to this subdivision. Nothing contained in this subdivision shall

restrict the authority of the commissioner pursuant to Section 25140 or 25143.

(2) A unit investment trust that has not previously applied to qualify the sale of its securities pursuant to this section but that is substantially the same as one or more unit investment trusts previously qualified under this section by the same sponsor, shall file pursuant to this subdivision if it can make the statements specified below. An application filed pursuant to this subdivision shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 25160 and the consent to service of process required by Section 25165: (A) a statement that the applicant, in its organization, its plan of business, its securities and its offering, is substantially the same as a unit investment trust previously qualified under this section by the same sponsor; (B) a statement that those previously qualified unit investment trusts are in compliance with the terms of their qualifications and (C) a copy of its current registration statement under the Securities Act of 1933. If no stop order or orders under subdivision (a) of Section 25143 are in effect under this law, qualification of the sale of securities under this subdivision automatically becomes effective (and the security may be offered and sold in accordance with the terms of the application) at the moment the federal registration becomes effective or, if the registration is effective when the application is filed, upon the first business day following the filing of the application pursuant to this subdivision.

~~SEC. 4.~~

SEC. 3. Section 25113 of the Corporations Code is ~~amended to read:~~

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

~~(b) (1) An application for a permit under this section shall contain any information and be accompanied by any documents as shall be required by rule of the~~

~~commissioner, in addition to the information specified in Section 25160 and the consent to service of process required by Section 25165. For this purpose, the commissioner may classify issuers and types of securities.~~

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

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

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

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

~~(ii) The issuer shall not be a blind pool company. For that purpose, a ''blind pool company'' means a company that has no specific business plan or purpose except to locate and acquire a presently unknown business or opportunity.~~

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

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

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

~~(vi) The total offering by the applicant to be sold in a 12-month period, within or outside this state, is limited to one million dollars ($1,000,000) or such larger amount as~~

~~may be permitted to be offered without registration under Rule 504 as amended from time to time by the Securities and Exchange Commission (17 C.F.R. Sec. 230.504), less the aggregate offering price for all securities sold within the 12 months before the start of, and during the offering of, the securities under Rule 504 of the Securities and Exchange Commission, in reliance on any exemption under subdivision (a) of Section 3 of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)), or in violation of subdivision (a) of Section 5 of that act (15 U.S.C. Sec. 77e(a)).~~

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

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

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

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

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

~~(D) The issuer shall deliver to each investor (i) a copy of the Form U-7 as filed with the commissioner, (ii) a copy of the pamphlet entitled "A Consumer's Guide to Small Business Investments," as provided by subdivision (c) of~~

~~Section 260.140.05 of Title 10 of the California Code of Regulations, and (iii) any other statement mandated by the commissioner.~~

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

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

~~25140. (a) (1) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any qualification of an underwritten offering of securities under Section 25111, 25112 or 25131 or may suspend or revoke any permit issued under Section 25113 or 25122 if he or she finds (A) that the order is in the public interest and (B) 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 and honestly, 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 purchaser thereof.~~

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

~~(b) The commissioner may refuse to issue a permit under Section 25113 unless he or she finds that the proposed plan of business of the applicant and the proposed issuance of securities are fair, just, and equitable, that the applicant intends to transact its business fairly and honestly, and that the securities that~~

~~it proposes to issue and the methods to be used by it in issuing them are not such as, in his or her opinion, will work a fraud upon the purchaser thereof.~~

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

~~(d) Notwithstanding the provisions of subdivisions (a) and (b) of this section, 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 price at which the security is to be offered is unfair, unjust or inequitable in any case where the security is being publicly offered for cash pursuant to a registration statement under the Securities Act of 1933 and the offering is the subject of a firm commitment underwriting by an underwriter or syndicate of underwriters all of whom are registered under the Securities Exchange Act of 1934. For the purposes of this subdivision a firm commitment underwriting means an underwriting pursuant to which the underwriter or syndicate of underwriters is committed to take up and pay for the securities subject only to the usual or customary conditions, but not including any "market out" or similar condition operative after the time of commencement of the offering. (A condition relating to the suspension of all trading on a national securities exchange, a banking holiday, war, civil insurrection, or the like is not a "market out" or similar condition within the meaning of this subdivision.) Nothing contained in this subdivision shall deny authority to the commissioner to issue a stop order or to refuse to issue or to suspend or revoke a permit because of unreasonable discounts, commissions or other compensation to underwriters, sellers or others, unreasonable promoters' profits or participations or unreasonable amounts or kinds of options.~~

~~(e) Notwithstanding the provisions of subdivisions (a) and (b), 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, in any of the following offerings: (1) offerings that are qualified under paragraph (2) of subdivision (b) of Section 25113, or (2) offerings by "small business issuers" as defined by Section 260.001 of Title 10 of the California Code of Regulations, provided in each case that the offerings meet each of the following conditions:~~

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

~~(B) The offering complies with Sections 260.140.30 to 260.140.33, inclusive, of Title 10 of the California Code of Regulations, which, under subdivision (b) of Section 260.140.31 of Title 10 of the California Code of Regulations, limits the number of "promotional shares" to 50 percent of the issuer's issued and outstanding stock for offerings under this section.~~

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

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

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

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

~~(G) The sale of securities shall be restricted to purchasers who meet any one of the following four tests: (i) investors shall have a minimum annual gross income~~

~~of forty thousand dollars ($40,000) and a minimum net worth of one hundred thousand dollars ($100,000), (ii) investors shall have a minimum net worth of one hundred fifty thousand dollars ($150,000), (iii) the investor's investment shall represent less than 10 percent of the purchaser's net worth, or (iv) the investor's investment does not exceed five thousand dollars ($5,000). Net worth shall be deemed exclusive of home, home furnishings, and personal automobiles. Assets included in the computation of net worth may be valued at fair market value.~~

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

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

~~SEC. 7.~~ *amended to read:*

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

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

(2) An applicant may file a small company application for permit under this section if it meets all of the following conditions:

(A) The applicant is: (i) a California corporation or a foreign corporation, which at the time of filing an application under this subdivision is subject to Section 2115 of the Corporations Code irrespective of the notice filing requirement under Section 2108, and neither corporation is a ''blind pool'' company, as that term is defined by the commissioner; (ii) not engaged in oil and gas exploration or production, or mining or other

extractive industries; (iii) not an investment company subject to the Investment Company Act of 1940; and (iv) not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.

(B) The total offering of voting common stock by the applicant to be sold in a 12-month period, within or outside this state, is limited to one million dollars ($1,000,000), less the aggregate offering price for all securities sold (within the 12 months before the start, and during the offering, of the voting common stock) under Rule 504 of the Securities and Exchange Commission, in reliance on any exemption under subdivision (b) of Section 3 of the Securities Act of 1933, or in violation of subdivision (a) of Section 5 of that act, and immediately after the proposed sale and issuance there will be only one class of voting common stock.

(C) The minimum offering price of the voting common stock *and preferred stock (and the conversion price if the preferred stock is convertible into the voting common stock)* to be sold is ~~five dollars ($5)~~ *two dollars ($2)* per share and the applicant files an undertaking with the commissioner that there will be no stock splits, stock dividends, spinoffs, or mergers for a period of two years from the close of the offering. The undertaking notwithstanding, the commissioner may approve a spinoff or merger pursuant to an application for qualification filed by an applicant.

(D) The net proceeds from the offering are to be expended in the operations of the business.

(E) The offering is made pursuant to a Small Corporate Offering Registration disclosure document based on the Form U-7 as adopted by the North American Securities Administrators Association and such additional requirements as the commissioner shall prescribe, which may include, but not be limited to, investor suitability and due diligence investigation requirements.

(F) The application and disclosure document is reviewed and signed by ~~each member~~ *a majority of the members* of the board of directors of the applicant.

(G) The application shall contain that information and be accompanied by those documents required by rule of the commissioner, in addition to the information specified in Section 25610 and the consent to service of process required by Section 25165.

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

SEC. 4. Section 25608 of the Corporations Code is amended to read:

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

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

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

Value of Securities Proposed to be Sold	Filing Fee
$25,000 or less	$ 25
$25,001 to $100,000	$ 35
$100,001 to $500,000	$ 50
$500,001 to $1,000,000	$150
Over $1,000,000	$300

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

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

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

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

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

(1) The value of the securities shall be the price at which the company proposes to sell the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if

other than money) to be received in exchange therefor, or of the securities when sold, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Each broker-dealer shall pay to the commissioner its pro rata share of all costs and expenses, reasonably incurred in the administration of the broker-dealer program under this division, as estimated by the commissioner for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made.

The pro rata share shall be the proportion that the broker-dealer and the number of its agents in this state bears to the aggregate number of broker-dealers and agents in this state as shown by records maintained by or on behalf of the commissioner. The pro rata share may include the costs of any examinations, audit, or investigation provided for in subdivision (r).

(3) On or before the 30th day of May in each year, the commissioner shall notify each broker-dealer by mail of the amount assessed and levied against it and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

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

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

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

(p) The commissioner shall charge a fee of twenty-five dollars ($25) for the filing of a notice or report required

by rule adopted pursuant to subdivision (b) of Section 25210.

(q) The fee for filing an application for an investment adviser under Section 25231 is one hundred twenty-five dollars ($125), and payment of this amount shall keep the certificate, if granted, in effect during the calendar year during which it is granted. Every investment adviser who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a renewal fee of one hundred twenty-five dollars ($125) on or before the 15th day of December preceding the additional period.

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

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

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

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

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

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

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

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

~~(z)~~

(y) The fee for filing a notice of transaction under subdivision ~~(p)~~ *(o)* of Section 25102 shall be two thousand five hundred dollars ($2,500).

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