

AMENDED IN SENATE MARCH 15, 2012

AMENDED IN SENATE FEBRUARY 23, 2012

**SENATE BILL**

**No. 978**

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**Introduced by Senators Vargas and Price**

January 23, 2012

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An act to amend Section 10232.5 of, and to add Sections 10232.3 and 10232.45 to, the Business and Professions Code, and to amend Sections 25102 and 25113 of, and to add Section 25102.2 to, the Corporations Code, relating to securities transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 978, as amended, Vargas. Securities transactions: exemption from qualification requirements.

(1) Existing law, the Corporate Securities Law of 1968, regulates the offer and sale of securities in this state by the Commissioner of Corporations. Existing law requires an issuer of securities to qualify with the commissioner the offer and sale of securities unless the transaction is subject to one of several specified exemptions from the qualification requirements. A willful violation of these provisions is a crime.

~~Existing law exempts from those qualification requirements an offer or sale of any evidence of indebtedness or guarantee thereof, in a transaction not involving a public offering.~~

Existing law ~~also~~ exempts from the qualification requirements the offer or sale of any security made to no more than 35 people, as specified, and allows the commissioner to require the issuer to file a notice of transactions. Existing law provides that the exemption remains available to an issuer ~~who~~ *that* fails to file the notice or files the notice after the time specified by the commissioner. *Existing law requires an*

*issuer relying on that exemption to file a notice within 15 business days following discovery of the failure to timely file the notice, or after demand of the commissioner, whichever is earlier.*

*This bill would require the commissioner to require the issuer to file a notice of transactions in connection with that exemption.*

*Existing law also exempts from those qualification requirements an offer or sale of any evidence of indebtedness or guarantee thereof, in a transaction not involving a public offering, and does not require an issuer to file a notice of transaction made in reliance upon that exemption.*

*This bill would apply the same notice requirements to the latter exemption as would be applied with respect to the exemption for offers to no more than 35 people described above.*

~~This bill would, instead, require the commissioner, by rule, to require an issuer that is relying on either of the above exemptions to file a notice of transactions, and would make the exemptions unavailable if the issuer fails to timely file that notice together with the applicable filing fee. The bill would authorize the commissioner to assess an administrative penalty of up to \$1,000 against an issuer who fails to timely file that notice. The bill would require an issuer relying on these exemptions that is principally engaged in the business of purchasing, selling, financing, or brokering real estate, and that claims an exemption, to make every reasonable effort efforts to ensure that the investment is suitable for the investor, as specified, to provide the basis upon which the issuer shall make that determination, and require the issuer to maintain the information used to make the determination for 4 years.~~

~~This bill would require the commissioner, by rule, to require an issuer that claims an exemption from the qualification requirements with respect to an offer or sale of securities involving real property or indebtedness secured by real property to provide information regarding the nature of the proposed offering on a form prescribed by the commissioner, as specified. The bill would also require the commissioner to submit prepare an annual report to the Legislature regarding the securities offerings and sales authorized by permit issued by the commissioner under specified provisions of existing law and to make the report publicly available by posting the report on the Internet Web site of the Department of Corporations.~~

(2) Existing law exempts from the qualification requirements, subject to complying with specified requirements, a transaction that involves the sale of a series of notes secured directly by an interest in real

property or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, having no more than 10 investors. Existing law requires a real estate broker to indicate in the real estate broker's transaction file the provisions of law pertaining to qualification or exemption from qualification under which a transaction is being conducted. Existing law requires a real estate broker to file certain information with the commissioner relative to conducting these transactions that are exempt from qualification. Existing law requires a real estate broker to submit a copy of the information in the real estate broker's transaction file relative to qualification or exemption from qualification for a transaction to any investor from whom the real estate broker obtains funds in connection with the transaction.

This bill would provide that a transaction that involves the sale of a note secured directly by an interest in real property or the sale of an undivided interest in a note secured directly by real property equivalent to a series transaction be conducted in compliance with those requirements.

(3) Existing law requires a real estate broker negotiating (1) a loan, as specified, secured by a lien on real property or a business opportunity; or (2) the sale of a real property sales contract or promissory note secured directly or collaterally by a lien on real property, to provide a disclosure statement, containing specified information regarding the proposed transaction, to a prospective lender or a prospective purchaser, respectively.

This bill would add to the information required to be included in the disclosure statement a statement that the broker has a responsibility to make every reasonable effort to determine that the loan or the purchase, respectively, is a suitable and appropriate investment for the lender or purchaser, respectively.

Because this bill would expand the scope of existing crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 10232.3 is added to the Business and  
2 Professions Code, to read:

3 10232.3. (a) Any transaction that involves the sale of or offer  
4 to sell a note secured directly by interests in one or more parcels  
5 of real property or the sale of an undivided interest in a note secured  
6 directly by one or more parcels of real property shall adhere to all  
7 of the following:

8 (1) Except as provided in paragraph (2), the aggregate principal  
9 amount of the notes or interests sold, together with the unpaid  
10 principal amount of any encumbrances upon the real property  
11 senior thereto, shall not exceed the following percentages of the  
12 current market value of each parcel of the real property, as  
13 determined in writing by the broker or appraiser pursuant to Section  
14 10232.6, plus the amount for which the payment of principal and  
15 interest in excess of the percentage of current market value is  
16 insured for the benefit of the holders of the notes or interests by  
17 an insurer admitted to do business in this state by the Insurance  
18 Commissioner:

- 19
- 20 (A) Single-family residence, owner occupied..... 80%
- 21 (B) Single-family residence, not owner occupied..... 75%
- 22 (C) Commercial and income-producing properties..... 65%
- 23 (D) Single-family residentially zoned lot or parcel which has installed  
24 offsite improvements including drainage, curbs, gutters, sidewalks,  
25 paved roads, and utilities as mandated by the political subdivision  
26 having jurisdiction over the lot or parcel..... 65%
- 27 (E) Land that has been zoned for (and if required, approved for  
28 subdivision as) commercial or residential development..... 50%
- 29 (F) Other real property..... 35%
- 30

31 (2) The percentage amounts specified in paragraph (1) may be  
32 exceeded when and to the extent that the broker determines that  
33 the encumbrance of the property in excess of these percentages is  
34 reasonable and prudent considering all relevant factors pertaining  
35 to the real property. However, in no event shall the aggregate  
36 principal amount of the notes or interests sold, together with the  
37 unpaid principal amount of any encumbrances upon the property  
38 senior thereto, exceed 80 percent of the current fair market value

1 of improved real property or 50 percent of the current fair market  
2 value of unimproved real property, except in the case of a  
3 single-family zoned lot or parcel as defined in paragraph (1), which  
4 shall not exceed 65 percent of the current fair market value of that  
5 lot or parcel, plus the amount insured as specified in paragraph  
6 (1). A written statement shall be prepared by the broker that sets  
7 forth the material considerations and facts that the broker relies  
8 upon for his or her determination, which shall be retained as a part  
9 of the broker's record of the transaction. Either a copy of the  
10 statement or the information contained therein shall be included  
11 in the disclosures required pursuant to Section 10232.5.

12 (3) A copy of the appraisal or the broker's evaluation, for each  
13 parcel of real property securing the notes or interests, shall be  
14 delivered to each purchaser. The broker shall advise purchasers  
15 of their right to receive a copy. For purposes of this paragraph,  
16 "appraisal" means a written estimate of value based upon the  
17 assembling, analyzing, and reconciling of facts and value indicators  
18 for the real property in question. A broker shall not purport to make  
19 an appraisal unless the person so employed is qualified on the basis  
20 of special training, preparation, or experience.

21 (4) For construction or rehabilitation loans, the term "current  
22 market value" may be deemed to be the value of the completed  
23 project if all of the following safeguards are met:

24 (A) An independent neutral third-party escrow holder is used  
25 for all deposits and disbursements.

26 (B) The loan is fully funded, with the entire loan amount to be  
27 deposited in escrow prior to recording of the deed or deeds of trust.

28 (C) A comprehensive, detailed draw schedule is used to ensure  
29 proper and timely disbursements to allow for completion of the  
30 project.

31 (D) The disbursement draws from the escrow account are based  
32 on verification from an independent qualified person who certifies  
33 that the work completed to date meets the related codes and  
34 standards and that the draws were made in accordance with the  
35 construction contract and draw schedule. For purposes of this  
36 subparagraph, "independent qualified person" means a person who  
37 is not an employee, agent, or affiliate of the broker and who is a  
38 licensed architect, general contractor, structural engineer, or active  
39 local government building inspector acting in his or her official  
40 capacity.

1 (E) An appraisal is completed by a qualified and licensed  
2 appraiser in accordance with the Uniform Standards of Professional  
3 Appraisal Practice (USPAP).

4 (F) The documentation shall include a detailed description of  
5 the actions that may be taken in the event of a failure to complete  
6 the project, whether that failure is due to default, insufficiency of  
7 funds, or other causes.

8 (G) The entire amount of the loan does not exceed two million  
9 five hundred thousand dollars (\$2,500,000).

10 (5) If a note or an interest will be secured by more than one  
11 parcel of real property, for the purpose of determining the  
12 maximum amount of the note or interest, each security property  
13 shall be assigned a portion of the note or interest which shall not  
14 exceed the percentage of current market value determined by, and  
15 in accordance with, the provisions of paragraphs (1) and (2).

16 (b) The note or interest shall not be sold, unless the purchaser  
17 meets one or both of the qualifications of income or net worth set  
18 forth below and signs a statement, which shall be retained by the  
19 broker for four years, conforming to the following:

20  
21 “Transaction Identifier: \_\_\_\_\_

22 Name of Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

23 Check either one of the following, if true:

24 ( ) My investment in the transaction does not exceed 10% of my net worth,  
25 exclusive of home, furnishings, and automobiles.

26 ( ) My investment in the transaction does not exceed 10% of my adjusted  
27 gross income for federal income tax purposes for my last tax year or,  
28 in the alternative, as estimated for the current year.

29 \_\_\_\_\_  
30 Signature”

31  
32 SEC. 2. Section 10232.45 is added to the Business and  
33 Professions Code, to read:

34 10232.45. (a) Any broker subject to the provisions of Section  
35 10232.3 or Article 6 (commencing with Section 10237) shall make  
36 every reasonable effort to ensure all of the following with respect  
37 to the offer or sale of a note or an interest in a note to be secured  
38 by a lien on real property or a business opportunity:

39 (1) All persons to whom notes or interests are sold can be  
40 reasonably assumed to have the capacity to understand the

1 fundamental aspects of the investment, by reason of their  
2 educational, business, or financial experience.

3 (2) All persons to whom notes or interests are sold can bear the  
4 economic risk of the investment.

5 (3) The investment in the notes or interests is suitable and  
6 appropriate for the purchaser, given the purchaser's investment  
7 objectives, portfolio structure, and financial situation.

8 (b) A broker shall make this determination on the basis of  
9 information he or she obtains from the purchaser. Relevant  
10 information for this purpose includes, at least, the age, investment  
11 objective, investment experience, income, net worth, financial  
12 situation, and other investments of the prospective purchaser, as  
13 well as any other pertinent factors the commissioner shall establish  
14 through regulation.

15 (c) A broker shall maintain records of the information used to  
16 determine that an investment is suitable and appropriate for each  
17 purchaser and shall retain these records for at least four years.

18 SEC. 3. Section 10232.5 of the Business and Professions Code  
19 is amended to read:

20 10232.5. (a) If the real estate broker is performing acts  
21 described in subdivision (d) of Section 10131 in negotiating a loan  
22 to be secured by a lien on real property or on a business  
23 opportunity, the statement required to be given to the prospective  
24 lender shall include, but shall not necessarily be limited to, the  
25 following information:

26 (1) Address or other means of identification of the real property  
27 that is to be the security for the borrower's obligation.

28 (2) Estimated fair market value of the securing property as  
29 determined by an appraisal, a copy of which shall be provided to  
30 the lender. However, a lender may waive the requirement of an  
31 independent appraisal in writing, on a case-by-case basis, in which  
32 case, the real estate broker shall provide the broker's written  
33 estimated fair market value of the securing property, which shall  
34 include the objective data upon which the broker's estimate is  
35 based.

36 (3) Age, size, type of construction, and a description of  
37 improvements to the property if contained in the appraisal or as  
38 represented to the broker by the prospective borrower.

1 (4) Identity, occupation, employment, income, and credit data  
2 about the prospective borrower or borrowers as represented to the  
3 broker by the prospective borrower or borrowers.

4 (5) Terms of the promissory note to be given to the lender.

5 (6) Pertinent information concerning all encumbrances which  
6 constitute liens against the securing property and, to the extent of  
7 actual knowledge of the broker, pertinent information about other  
8 loans that the borrower expects or anticipates will result in a lien  
9 being recorded against the property securing the promissory note  
10 to be created in favor of the prospective lender.

11 As used in this paragraph, actual knowledge with respect to any  
12 anticipated or expected loan, means knowledge gained by the  
13 broker through arranging that other loan or receipt of written  
14 notification of that other loan. In this regard, the broker shall also  
15 provide to the prospective lender the option to apply to purchase  
16 a title insurance policy or an endorsement to an existing title  
17 insurance policy covering the securing property, and a copy of a  
18 written loan application, and a credit report.

19 (7) Provisions for servicing of the loan, if any, including  
20 disposition of the late charge and prepayment penalty fees paid by  
21 the borrower.

22 (8) Detailed information concerning any proposed arrangement  
23 under which the prospective lender along with persons not  
24 otherwise associated with him or her will be joint beneficiaries or  
25 obligees.

26 (9) If the solicitation is subject to the provisions of Section  
27 10231.2, a detailed statement of the intended use and disposition  
28 of the funds being solicited including an explanation of the nature  
29 and extent of the benefits to be directly or indirectly derived by  
30 the broker.

31 (10) If the broker is subject to the provisions of Section 10232  
32 or Article 6 (commencing with Section 10237), a statement that  
33 the broker has a responsibility to make every reasonable effort to  
34 determine that the loan is a suitable and appropriate investment  
35 for the lender, based on information provided by the lender  
36 regarding the lender's financial situation and investment objectives.

37 (b) If the real estate broker is performing acts described in  
38 subdivision (e) of Section 10131 or in Section 10131.1 in  
39 negotiating the sale of a real property sales contract or promissory  
40 note secured directly or collaterally by a lien on real property, the



1 statement required to be given to the prospective purchaser by  
2 Section 10232.4 shall include, but shall not necessarily be limited  
3 to, the following information:

4 (1) Address or other means of identification of the real property  
5 that is the security for the trustor's or vendee's obligation.

6 (2) Estimated fair market value of the real property as  
7 determined by an appraisal, a copy of which shall be provided to  
8 the prospective purchaser. However, a purchaser may waive the  
9 requirement of an independent appraisal in writing, on a  
10 case-by-case basis, in which case, the real estate broker shall  
11 provide the broker's written estimated fair market value of the  
12 securing property, which shall include the objective data upon  
13 which the broker's estimate is based.

14 (3) Age, size, type of construction, and a description of  
15 improvements to the real property if known by the broker.

16 (4) Information available to the broker relative to the ability of  
17 the trustor or vendee to meet his or her contractual obligations  
18 under the note or contract including the trustor's or vendee's  
19 payment history under the note or contract.

20 (5) Terms of the contract or note including the principal balance  
21 owing.

22 (6) Provisions for servicing of the note or contract, if any,  
23 including disposition of late charge, prepayment penalty or other  
24 fees or charges paid by the trustor or vendee.

25 (7) Detailed information concerning any proposed arrangement  
26 under which the prospective purchaser along with persons not  
27 otherwise associated with him or her will be joint beneficiaries or  
28 obligees. In this regard, the broker shall also provide to the  
29 prospective purchaser the option to apply to purchase a title  
30 insurance policy or an endorsement to an existing title insurance  
31 policy covering the real property and, if available from the seller  
32 of the note or contract or from the original lender, a copy of a  
33 written loan application, and a credit report.

34 (8) A statement as to whether the dealer is acting as a principal  
35 or as an agent in the transaction with the prospective purchaser.

36 (9) If the broker is subject to the provisions of Section 10232  
37 or Article 6 (commencing with Section 10237), a statement that  
38 the broker has a responsibility to make every reasonable effort to  
39 determine that the purchase is a suitable and appropriate investment  
40 for the purchaser, based on information provided by the purchaser

1 regarding the purchaser's financial situation and investment  
2 objectives.

3 SEC. 4. Section 25102 of the Corporations Code is amended  
4 to read:

5 25102. The following transactions are exempt from the  
6 provisions of Section 25110:

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

24 (b) Any offer (but not a sale) of a security for which a  
25 registration statement has been filed under the Securities Act of  
26 1933 but has not yet become effective, or for which an offering  
27 statement under Regulation A has been filed but has not yet been  
28 qualified, if no stop order or refusal order is in effect and no public  
29 proceeding or examination looking towards an order is pending  
30 under Section 8 of the act and no order under Section 25140 or  
31 subdivision (a) of Section 25143 is in effect under this law.

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

39 (d) Any transaction or agreement between the issuer and an  
40 underwriter or among underwriters if the sale of the securities is

1 qualified, or exempt from qualification, at the time of distribution  
2 thereof in this state, if any.

3 (e) (1) Any offer or sale of any evidence of indebtedness,  
4 whether secured or unsecured, and any guarantee thereof, in a  
5 transaction not involving any public offering.

6 (2) The commissioner shall by rule require the issuer to file a  
7 notice of transactions under this subdivision. ~~The exemption from~~  
8 ~~qualification afforded by this subdivision shall be unavailable if~~  
9 ~~an issuer fails to file the notice within the time specified by the~~  
10 ~~commissioner or fails to pay the filing fee. The commissioner may~~  
11 ~~assess an administrative penalty of up to one thousand dollars~~  
12 ~~(\$1,000) against an issuer that fails to file the notice within the~~  
13 ~~time period specified by the commissioner. *The failure to file the*~~  
14 ~~*notice or the failure to file the notice within the time specified by*~~  
15 ~~*the rule of the commissioner shall not affect the availability of the*~~  
16 ~~*exemption. Any issuer that fails to file the notice as provided by*~~  
17 ~~*rule of the commissioner shall, within 15 business days after*~~  
18 ~~*discovery of the failure to file the notice or after demand by the*~~  
19 ~~*commissioner, whichever occurs first, file the notice and pay to*~~  
20 ~~*the commissioner a fee equal to the fee payable had the transaction*~~  
21 ~~*been qualified under Section 25110.*~~ Neither the filing of the notice  
22 nor the failure by the commissioner to comment thereon precludes  
23 the commissioner from taking any action that the commissioner  
24 deems necessary or appropriate under this division with respect  
25 to the offer and sale of the securities.

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

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

31 (2) All purchasers either have a preexisting personal or business  
32 relationship with the offeror or any of its partners, officers,  
33 directors or controlling persons, or managers (as appointed or  
34 elected by the members) if the offeror is a limited liability  
35 company, or by reason of their business or financial experience or  
36 the business or financial experience of their professional advisers  
37 who are unaffiliated with and who are not compensated by the  
38 issuer or any affiliate or selling agent of the issuer, directly or  
39 indirectly, could be reasonably assumed to have the capacity to  
40 protect their own interests in connection with the transaction.

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

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

19 ~~The exemption from qualification afforded by this subdivision~~  
20 ~~shall be unavailable if an issuer fails to file the notice within the~~  
21 ~~time specified by the commissioner or fails to pay the filing fee.~~  
22 ~~The commissioner may assess an administrative penalty of up to~~  
23 ~~one thousand dollars (\$1,000) against an issuer that fails to deliver~~  
24 ~~the notice within the time period set forth above. The failure to~~  
25 ~~file the notice or the failure to file the notice within the time~~  
26 ~~specified by the rule of the commissioner shall not affect the~~  
27 ~~availability of the exemption. Any issuer that fails to file the notice~~  
28 ~~as provided by rule of the commissioner shall, within 15 business~~  
29 ~~days after discovery of the failure to file the notice or after demand~~  
30 ~~by the commissioner, whichever occurs first, file the notice and~~  
31 ~~pay to the commissioner a fee equal to the fee payable had the~~  
32 ~~transaction been qualified under Section 25110.~~ Neither the filing  
33 of the notice nor the failure by the commissioner to comment  
34 thereon precludes the commissioner from taking any action that  
35 the commissioner deems necessary or appropriate under this  
36 division with respect to the offer and sale of the securities.

37 (g) Any offer or sale of conditional sale agreements, equipment  
38 trust certificates, or certificates of interest or participation therein  
39 or partial assignments thereof, covering the purchase of railroad  
40 rolling stock or equipment or the purchase of motor vehicles,

1 aircraft, or parts thereof, in a transaction not involving any public  
2 offering.

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

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

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

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

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

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

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

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

38 (4) A notice in a form prescribed by rule of the commissioner,  
39 signed by an active member of the State Bar of California, is filed  
40 with or mailed for filing to the commissioner not later than 10

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

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

39 For the purposes of this subdivision, all securities held by a  
40 husband and wife, whether or not jointly, shall be considered to

1 be owned by one person, and all securities held by a corporation  
2 that has issued stock pursuant to this exemption shall be considered  
3 to be held by the shareholders to whom it has issued the stock.

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

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

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

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

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

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

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

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

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

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

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

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

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



1 investment company subject to the Investment Company Act of  
2 1940.

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) The name of the issuer of the securities.
- 2 (ii) The full title of the security to be issued.
- 3 (iii) The anticipated suitability standards for prospective  
4 purchasers.
- 5 (iv) A statement that (I) no money or other consideration is  
6 being solicited or will be accepted, (II) an indication of interest  
7 made by a prospective purchaser involves no obligation or  
8 commitment of any kind, and, if the issuer is required by paragraph  
9 (4) to deliver a disclosure statement to prospective purchasers,  
10 (III) no sales will be made or commitment to purchase accepted  
11 until five business days after delivery of a disclosure statement  
12 and subscription information to the prospective purchaser in  
13 accordance with the requirements of this subdivision.
- 14 (v) Any other information required by rule of the commissioner.
- 15 (vi) The following legend: “For more complete information  
16 about (Name of Issuer) and (Full Title of Security), send for  
17 additional information from (Name and Address) by sending this  
18 coupon or calling (Telephone Number).”
- 19 (B) The general announcement of proposed offering referred  
20 to in subparagraph (A) may also set forth the following  
21 information:
  - 22 (i) A brief description of the business of the issuer.
  - 23 (ii) The geographic location of the issuer and its business.
  - 24 (iii) The price of the security to be issued, or, if the price is not  
25 known, the method of its determination or the probable price range  
26 as specified by the issuer, and the aggregate offering price.
- 27 (C) The general announcement of proposed offering shall  
28 contain only the information that is set forth in this paragraph.
- 29 (D) Dissemination of the general announcement of proposed  
30 offering to persons who are not qualified purchasers, without more,  
31 shall not disqualify the issuer from claiming the exemption under  
32 this subdivision.
- 33 (6) No telephone solicitation shall be permitted until the issuer  
34 has determined that the prospective purchaser to be solicited is a  
35 qualified purchaser.
- 36 (7) The issuer files a notice of transaction under this subdivision  
37 both (A) concurrent with the publication of a general announcement  
38 of proposed offering or at the time of the initial offer of the  
39 securities, whichever occurs first, accompanied by a filing fee, and  
40 (B) within 10 business days following the close or abandonment

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

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

1 maximum aggregate fee payable had the transaction been qualified  
2 under Section 25110.

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

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

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

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

1 organization is a qualified purchaser. Qualified purchasers include  
2 the following:

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

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

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

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

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

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

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

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

39 (2) Each purchaser represents that the purchaser is purchasing  
40 for the purchaser's own account (or trust account, if the purchaser

1 is a trustee) and not with a view to or for sale in connection with  
2 a distribution of the security.

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

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

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

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

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

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

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

32 (G) A description of any order, judgment, or decree that is final  
33 as to the issuing entity of any state, federal, or foreign country  
34 governmental agency or administrator, or of any state, federal, or  
35 foreign country court of competent jurisdiction (i) revoking,  
36 suspending, denying, or censuring for cause any license, permit,  
37 or other authority of the issuer or of any director, officer, partner,  
38 member, trustee, or person owning or controlling, directly or  
39 indirectly, 10 percent or more of the outstanding interest or equity  
40 securities of the issuer, to engage in the securities, commodities,

1 franchise, insurance, real estate, or lending business or in the offer  
2 or sale of securities, commodities, franchises, insurance, real estate,  
3 or loans, (ii) permanently restraining, enjoining, barring,  
4 suspending, or censuring any such person from engaging in or  
5 continuing any conduct, practice, or employment in connection  
6 with the offer or sale of securities, commodities, franchises,  
7 insurance, real estate, or loans, (iii) convicting any such person  
8 of, or pleading nolo contendere by any such person to, any felony  
9 or misdemeanor involving a security, commodity, franchise,  
10 insurance, real estate, or loan, or any aspect of the securities,  
11 commodities, franchise, insurance, real estate, or lending business,  
12 or involving dishonesty, fraud, deceit, embezzlement, fraudulent  
13 conversion, or misappropriation of property, or (iv) holding any  
14 such person liable in a civil action involving breach of a fiduciary  
15 duty, fraud, deceit, embezzlement, fraudulent conversion, or  
16 misappropriation of property. This subparagraph does not apply  
17 to any order, judgment, or decree that has been vacated, overturned,  
18 or is more than 10 years old.

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

21 (I) The name, address, and telephone number of the issuing  
22 insurance company, and the name, address, and telephone number  
23 of the state or foreign country regulator of the insurance company.

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

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

27 (L) If a group insurance policy, the name, address, and telephone  
28 number of the group, and, if applicable, the material terms and  
29 conditions of converting the policy to an individual policy,  
30 including the amount of increased premiums.

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

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

36 (O) The insurance policy premiums and terms of premium  
37 payments.

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



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

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

6 (S) A statement to the effect that any projected rate of return to  
7 the purchaser from the purchase of a viatical or life settlement  
8 contract or a fractionalized or pooled interest therein is based on  
9 an estimated life expectancy for the person insured under the life  
10 insurance policy; that the return on the purchase may vary  
11 substantially from the expected rate of return based upon the actual  
12 life expectancy of the insured that may be less than, equal to, or  
13 may greatly exceed the estimated life expectancy; and that the rate  
14 of return would be higher if the actual life expectancy were less  
15 than, and lower if the actual life expectancy were greater than the  
16 estimated life expectancy of the insured at the time the viatical or  
17 life settlement contract was closed.

18 (T) A statement that the purchaser should consult with his or  
19 her tax adviser regarding the tax consequences of the purchase of  
20 the viatical or life settlement contract or fractionalized or pooled  
21 interest therein and, if the purchaser is using retirement funds or  
22 accounts for that purchase, whether or not any adverse tax  
23 consequences might result from the use of those funds for the  
24 purchase of that investment.

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

27 SEC. 5. Section 25102.2 is added to the Corporations Code,  
28 to read:

29 25102.2. (a) The commissioner shall, by rule, require any  
30 issuer that claims an exemption from the requirements of Section  
31 25110 with respect to the offer or sale of securities involving real  
32 property or involving any indebtedness secured in whole or in part  
33 by real property to provide additional information regarding the  
34 nature of the proposed offering on a form prescribed by the  
35 commissioner. This information shall include any information the  
36 commissioner believes to be reasonably related to the protection  
37 of the public, and shall include, but not be limited to, a list of all  
38 state and federal licenses required to further the purposes of the  
39 investment and the names of all licensed persons that will undertake  
40 those activities.

1 (b) Any issuer that claims an exemption from the requirements  
2 of Section 25110 ~~with respect to the offer or sale of securities~~  
3 ~~involving real property or involving any indebtedness secured in~~  
4 ~~whole or in part by real property~~ *and that is principally engaged*  
5 *in the business of purchasing, selling, financing, or brokering real*  
6 *estate* shall make ~~every~~ reasonable ~~effort~~ *efforts* to ensure all of  
7 the following:

8 (1) All persons to whom securities are sold can be reasonably  
9 assumed to have the capacity to understand the fundamental aspects  
10 of the investment, by reason of their educational, business, or  
11 financial experience.

12 (2) All persons to whom securities are sold can bear the  
13 economic risk of the investment.

14 (3) The investment in the security is suitable and appropriate for  
15 each purchaser, given the purchaser's investment objectives,  
16 portfolio structure, and financial situation.

17 (c) An issuer subject to the requirements of subdivision (b) shall  
18 make the determination required by subdivision (b) on the basis  
19 of information he or she obtains from the purchaser. Relevant  
20 information for this purpose includes, at least, the age, investment  
21 objective, investment experience, income, net worth, financial  
22 situation, and other investments of the prospective purchaser, as  
23 well as any other pertinent factors the commissioner shall establish  
24 through regulation.

25 (d) An issuer subject to the requirements of subdivision (b) shall  
26 maintain records of the information used to determine that an  
27 investment is suitable and appropriate for each purchaser for at  
28 least four years.

29 SEC. 6. Section 25113 of the Corporations Code is amended  
30 to read:

31 25113. (a) All securities, whether or not eligible for  
32 qualification by coordination under Section 25111 or qualification  
33 by notification under Section 25112, may be qualified by permit  
34 under this section.

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

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

3 (A) The applicant is: (i) a California corporation or a foreign  
4 corporation, which at the time of filing an application under this  
5 subdivision is subject to Section 2115, and neither corporation is  
6 a “blind pool” company, as that term is defined by the  
7 commissioner; (ii) not engaged in oil and gas exploration or  
8 production, or mining or other extractive industries; (iii) not an  
9 investment company subject to the Investment Company Act of  
10 1940; and (iv) not subject to the reporting requirements of Section  
11 13 or 15(d) of the Securities Exchange Act of 1934.

12 (B) The total offering of voting common stock and preferred  
13 stock by the applicant to be sold in a 12-month period, within or  
14 outside this state, is limited to one million dollars (\$1,000,000),  
15 less the aggregate offering price for all securities sold (within the  
16 12 months before the start, and during the offering, of the voting  
17 common stock or preferred stock) under Rule 504 of the Securities  
18 and Exchange Commission, in reliance on any exemption under  
19 subdivision (b) of Section 3 of the Securities Act of 1933, or in  
20 violation of subdivision (a) of Section 5 of that act, and  
21 immediately after the proposed sale and issuance there will be only  
22 one class of voting common stock.

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

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

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

1 (F) The application and disclosure document is reviewed and  
2 signed by a majority of the members of the board of directors of  
3 the applicant.

4 (G) The application shall contain that information and be  
5 accompanied by those documents required by rule of the  
6 commissioner, in addition to the information specified in Section  
7 25610 and the consent to service of process required by Section  
8 25165.

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

12 (d) (1) The commissioner shall annually prepare a report ~~for~~  
13 ~~submission to the Legislature, and make that report publicly~~  
14 *available by posting the report on the department's Internet Web*  
15 *site, summarizing data collected from persons to which it issues*  
16 *permits pursuant to this section. The report shall include, but not*  
17 *be limited to, a summary of the general categories of investments*  
18 *for which permits are approved; the minimum, maximum, and*  
19 *average net worth required of those persons to whom permits are*  
20 *issued for each category of activity; the least stringent and most*  
21 *stringent suitability standards imposed on persons issued permits*  
22 *for each category of activity; the experience requirements imposed*  
23 *on persons issued permits for each category of activity; the total*  
24 *dollar amount of money sought to be raised per category of activity;*  
25 *the number and nature of enforcement actions taken against*  
26 *permitholders; and any other information the commissioner deems*  
27 *relevant to inform the Legislature about the activities of*  
28 *permitholders and the protections for those who invest with*  
29 *permitholders. The commissioner shall take steps to ensure that*  
30 *the publication of data collected from permitholders does not result*  
31 *in the release of proprietary information about individuals or*  
32 *businesses.*

33 (2) A report to be submitted pursuant to paragraph (1) shall be  
34 submitted in compliance with Section 9795 of the Government  
35 Code.

36 (e) The commissioner may examine those persons to whom  
37 permits are issued pursuant to this section to review compliance  
38 with the conditions of the permit and other applicable state law.  
39 The commissioner may disqualify an offering permitted pursuant

1 to this section if he or she finds that the issuer has materially  
2 violated the provisions of its permit.

3 SEC. 7. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

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