

THE CALIFORNIA CORPORATIONS COMMISSIONER HEREBY ADOPTS
THE FOLLOWING CHANGES IN THE REGULATIONS UNDER THE
CORPORATE SECURITIES LAW OF 1968
AS SET FORTH IN CHAPTER 3, TITLE 10,
CALIFORNIA CODE OF REGULATIONS
EFFECTIVE: OCTOBER 28, 2005

1. Amend Section 260.121 to read:

260.121. Application for Qualification of Recapitalizations and Reorganizations.

An application pursuant to Section 25121 of the Code for the qualification of the offer and sale of securities in connection with any change in the rights, preferences, privileges, or restrictions of or on outstanding securities or 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 wholly or in part of the issuance of securities or in an entity conversion transaction shall, in addition to the facing page required by Section 260.110 of these rules, continue on the following form:

NOTE: Any item which is inapplicable should be listed by number on the form followed simply by the word "inapplicable."

(a) IF THE TRANSACTION INVOLVES a merger, consolidation, ~~or~~ purchase of ~~corporate~~ assets or is an entity conversion transaction:

ITEM 8. DESCRIPTION OF PLAN. ~~Describe~~ Where applicable, describe the material features of the plan, the reasons therefor, the general effect thereof upon the rights of existing security holders, the approximate number of ~~shareholders~~ security holders of each ~~corporation~~ entity involved, the vote needed for its approval, the proposed date for the mailing of proxies and the proposed date of the ~~shareholders'~~ security holders' meeting.

ITEM 9. EXECUTION OF PLAN. Describe the method by which the plan described in Item 8 will be carried out, including the names of any broker-dealers or

agents to be employed by each ~~corporation~~ entity in effecting purchases or sales of securities pursuant to the plan and the compensation to be paid such persons, or other consideration to be received by such persons, or any other persons, in connection with the sale, ~~or purchase,~~ or exchange of securities. If agents (other than licensed broker-dealers) are to be employed by the applicant in connection with the distribution of securities in California pursuant to the plan, the applicant is required to comply with Sections 260.141.30 and 260.141.31, Title 10, California Code of Regulations, and the following information is to be furnished:

a. The name and business address of each person who will represent the applicant as an agent in this state.

b. The name and business address of the officer or other official who will supervise such agents on behalf of the applicant.

c. A statement that all such agents are employees of the applicant.

d. A statement of the compensation to be paid to such agents. A statement of the compensation to be paid to such supervisory personnel, other than their regular salaries if they are regular employees of the applicant.

e. Describe any order, judgment or decree of any governmental agency or administrator, or of any court of competent jurisdiction revoking or suspending for cause any license, permit or other authority of such agent or supervisory person or of any ~~corporation~~ entity of which he or she is an executive officer, or director, or person occupying a similar status or performing similar functions, to engage in the securities business or in the sale of a particular security or temporarily or permanently restraining or enjoining any such person or any ~~corporation~~ entity of which he or she is an executive officer, or director, or person occupying a similar status or performing similar functions from engaging in or continuing any conduct, practice, or employment in connection with the purchase or sale of securities, or convicting such person of any felony or misdemeanor involving a security or any aspect of the securities business, or of theft or of any felony.

f. A surety bond complying with Section 260.216.15, Title 10, California Code of Regulations.

ITEM 10. DESCRIPTION OF BUSINESS. Describe the business of the issuer and each other ~~corporation~~ entity involved in the transaction.

ITEM 11. DIVIDENDS IN ARREARS OR DEFAULTS. A statement concerning any dividends in arrears or defaults in principal or interest in respect of any securities of the issuer and any other ~~corporation~~ entity involved in the transaction, and concerning the effect of the plan thereon.

ITEM 12. HIGH AND LOW SALES PRICES WITHIN 2 YEARS. As to each class of securities of the issuer and of each other ~~corporation~~ entity involved in the transaction which is admitted to trading on a securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the plan, state the high and low sale prices (or, in the absence of such information, the range of the bid prices) for each quarterly period within two years.

ITEM 13. DIRECTORS AND EXECUTIVE OFFICERS.

(a) List the names of all directors, ~~and~~ executive officers or persons occupying a similar status or performing similar functions of the issuer and of each other ~~corporation~~ entity involved in the transaction, indicating all positions and offices held by each person named.

(b) Describe any order, judgment, or decree of any governmental agency or administrator, or of any court of competent jurisdiction revoking or suspending for cause any license, permit or other authority of such person or of any ~~corporation~~ entity of which he or she is an executive officer, or director, or person occupying a similar status or performing similar functions, to engage in the securities business or in the sale of a particular security or temporarily or permanently restraining or enjoining any such person or any ~~corporation~~ entity of which he or she is an executive officer, or director, or person occupying a similar status or performing similar functions from engaging in or continuing any conduct, practice, or employment in connection with the purchase or sale of securities, or convicting such person of any felony or misdemeanor involving a security or any aspect of the securities business, or of theft or of any felony.

ITEM 14. PRINCIPAL HOLDERS OF SECURITIES. State any material interest in the transaction of each person who, with respect to the issuer or any other ~~corporation~~

entity involved in the transaction, is a director, ~~or executive officer,~~ or person occupying a similar status or performing similar functions, or owns of record or beneficially (if known to the issuer) 10% or more of ~~the outstanding shares of~~ any class of outstanding equity securities, or is a promoter if the issuer or such other ~~corporation~~ entity was organized within the past three years. (Instruction: An interest of one of the specified persons which arises solely from the ownership of securities of only one of the ~~corporations~~ entities involved in the transaction is not a material interest where the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of that class.)

ITEM 15. EXCHANGE RATIO. State the basis of the ratio for the exchange or conversion of the securities of the issuer ~~corporation~~ for the securities of ~~the~~ each constituent ~~corporation(s)~~ entity.

ITEM 16. EXHIBITS. Attach and incorporate by reference the following exhibits. Note: Any exhibit which is inapplicable should be listed by letter on the form followed simply by the word "inapplicable."

A. With respect to the issuer and each other ~~corporation~~ entity involved in the transaction, the financial statements required by Section 260.613 of Title 10 of the California Code of Regulations, and pro forma financial statements giving effect to the proposed transaction.

B. A copy of the plan of reorganization or entity conversion if it is set forth in a written document, including any request for delayed effectiveness of the filing of such document with the Secretary of State or similar authority.

C. Copies (which may be in a restated or composite form) of the current charter documents (as defined in Section 260.001, Title 10, California Code of Regulations) of the issuer and of each constituent ~~corporation~~ entity involved in a merger or consolidation or entity conversion transaction.

D. A copy of any contract made or to be made by the issuer affecting any of the rights, preferences, privileges, or transferability of the securities.

E. Subject to the following instruction, a copy of any agreement made or to be made by or among ~~shareholders~~ security holders of the issuer which materially affects,

or will materially affect, any of the rights, preferences, privileges, or restrictions of or on securities of the issuer or the management of the issuer (including any voting agreement, irrevocable proxy or ~~shareholders'~~ security holders' agreement).

Instruction: If a copy of an agreement is not available to the issuer, so state and furnish a brief description of the agreement including therein such information regarding the parties and terms as is known to the issuer. Nothing contained herein shall be construed as requiring the issuer to disclose information concerning agreements of which it has no knowledge.

F. A preliminary copy of the proxy material to be used to solicit the vote or consents of security holders (amended copies of such proxy material and final copies should be submitted as supplemental information to this application), and the consent of any attorney, accountant or other expert named in such proxy material, if such expert's consent is required pursuant to Section 260.504.2.2, Title 10, California Code of Regulations, in the form required by that section.

G. The Consent to Service of Process if required by Section 25165 of the California Corporations Code.

H. A Customer Authorization of Disclosure of Financial Records Form (Form No. QR 500.259).

ITEM 17. REPORTS OF FINANCIAL CONDITION. Pursuant to Section 25146 of the California Corporations Code and Section 260.146 of Title 10 of the California Code of Regulations, applicant hereby undertakes, as long as required under the foregoing sections and subject to the exceptions therein contained, to file with the Commissioner: (a) within 120 days after the end of each fiscal year a report of financial condition and a related statement of income and expenses covering such fiscal year; and (b) within 90 days after the first six months of each fiscal year, a like report and statement covering such six-months period.

(b) IF THE TRANSACTION INVOLVES a change in the rights, preferences, privileges or restrictions of or on outstanding securities or an exchange by an issuer with its existing security holders exclusively:

ITEM 8. OUTSTANDING SECURITIES TO BE MODIFIED. State the title and amount of outstanding securities to be modified.

ITEM 9. DESCRIPTION OF OUTSTANDING SECURITIES AND MODIFIED SECURITIES. Describe any material differences between the outstanding securities and the modified or new securities.

ITEM 10. DESCRIPTION OF PROPOSED MODIFICATION. State the reasons for the proposed modification, the general effect thereof upon the rights of existing security holders, the basis of the ratio for the exchange of securities by an issuer with its existing security holders, the vote needed for approval, the proposed date for the mailing of proxies and the proposed date of the ~~shareholders'~~ security holders' meeting.

ITEM 11. DIVIDENDS IN ARREARS OR DEFAULTS. A statement as to arrears in dividends or as to defaults in principal or interest with respect to outstanding securities which are to be modified, and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

ITEM 12. METHOD OF SELLING THE SECURITIES. If the applicant will employ broker-dealers or agents in connection with the recapitalization described in Items 9 and 10, describe the functions such persons will perform, furnish their names, and state the compensation to be paid such persons, or other consideration to be received by such persons, or any other persons, in connection with the sale or purchase of securities under the plan of recapitalization. If agents are to be employed by the applicant in connection with the distribution of securities pursuant to the plan, the applicant is required to comply with Sections 260.141.30 and 260.141.31, Title 10, California Code of Regulations, and the following information is to be furnished:

- a. The name and business address of each person who will represent the applicant as an agent in this state.
- b. The name and business address of the officer or other official who will supervise such agents on behalf of the applicant.
- c. A statement that all such agents are employees of the applicant.

d. A statement of the compensation to be paid to such agents. A statement of the compensation to be paid to such supervisory personnel, other than their regular salaries if they are regular employees of the applicant.

e. Describe any order, judgment or decree of any governmental agency or administrator, or of any court of competent jurisdiction revoking or suspending for cause any license, permit or other authority of such agent or supervisory person or of any ~~corporation~~ entity of which ~~he~~ such person is an executive officer, or director, or person occupying a similar status or performing similar functions, to engage in the securities business or in the sale of a particular security or temporarily or permanently restraining or enjoining any such person or any ~~corporation~~ entity of which ~~he~~ such person is an executive officer, or director, or person occupying a similar status or performing similar functions from engaging in or continuing any conduct, practice, or employment in connection with the purchase or sale of securities, or convicting such person of any felony or misdemeanor involving a security or any aspect of the securities business, or of theft or of any felony.

f. A surety bond complying with Section 260.216.15, Title 10, California Code of Regulations.

ITEM 13. DIRECTORS AND EXECUTIVE OFFICERS.

(a) List the names of all directors and executive officers or persons occupying a similar status or performing similar functions of the issuer indicating all positions and offices held by each person named.

(b) Describe any order, judgment, or decree of any governmental agency or administrator, or of any court of competent jurisdiction revoking or suspending for cause any license, permit or other authority of such person or of any ~~corporation~~ entity of which ~~he~~ such person is an executive officer, or director, or person occupying a similar status or performing similar functions, to engage in the securities business or in the sale of a particular security or temporarily or permanently restraining or enjoining any such person or any ~~corporation~~ entity of which ~~he~~ such person is an executive officer, or director, or person occupying a similar status or performing similar functions from engaging in or continuing any conduct, practice, or employment in connection with the

purchase or sale of securities, or convicting such person of any felony or misdemeanor involving a security or any aspect of the securities business, or of theft or of any felony.

ITEM 14. PRINCIPAL HOLDERS OF SECURITIES. State any material interest in the transaction of each executive officer or director of the issuer, or any person occupying a similar status or performing similar functions, any person owning of record or beneficially (if known to the issuer) 10% or more of the outstanding ~~shares~~ securities of any class of equity security of the issuer, and any promoter of the issuer if the issuer was organized within the past three years.

ITEM 15. EXHIBITS. Attach and incorporate by reference the following exhibits. Note: Any exhibit which is inapplicable should be listed by letter on the form followed simply by the word "inapplicable."

A. With respect to the issuer, the financial statements required by Section 260.613 of Title 10 of the California Code of Regulations.

B. A copy of the plan of recapitalization if it is set forth in a written document, including any request for delayed effectiveness of the filing of such document with the Secretary of State or similar authority.

C. Copies (which may be in a restated or composite form) of the current charter documents (as defined in Section 260.001, Title 10, California Code of Regulations) of the issuer and of each constituent ~~corporation~~ entity involved in a merger or consolidation.

D. A preliminary copy of the proxy material to be used to solicit the vote or consents of security holders (amended copies of such proxy material and final copies should be submitted as supplemental information to this application), and the consent of any attorney, accountant or other expert named in such proxy material, if such expert's consent is required pursuant to Section 260.504.2.2, Title 10, California Code of Regulations, in the form required by that section.

E. A copy of any contract made or to be made by the issuer affecting any of the rights, preferences, privileges, or transferability of the securities.

F. The Consent to Service of Process if required by Section 25165 of the California Corporations Code.

G. Subject to the following instruction, a copy of any agreement made or to be made by or among ~~shareholders~~ security holders of the issuer which materially affects, or will materially affect, any of the rights, preferences, privileges, or restrictions of or on securities of the issuer or the management of the issuer (including any voting agreement, irrevocable proxy or ~~shareholders'~~ security holders' agreement).

H. A Customer Authorization of Disclosure of Financial Records Form (Form No. QR 500.259).

Instruction: If a copy of an agreement is not available to the issuer, so state and furnish a brief description of the agreement including therein such information regarding the parties and terms as is known to the issuer. Nothing contained herein shall be construed as requiring the issuer to disclose information concerning agreements of which it has no knowledge.

ITEM 16. REPORTS OF FINANCIAL CONDITION. Pursuant to Section 25146 of the California Corporations Code and Section 260.146 of Title 10 of the California Code of Regulations, applicant hereby undertakes, as long as required under the foregoing sections and subject to the exceptions therein contained, to file with the Commissioner:

(a) within 120 days after the end of each fiscal year a report of financial condition and a related statement of income and expenses covering such fiscal year; and

(b) within 90 days after the first six months of each fiscal year, a like report and statement covering such six months period.

(c) Signatures:

The application must be signed and verified in the following form:

The applicant has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized.

(Applicant)

By _____

(Title)

I certify (or declare) under penalty of perjury under the laws of the State of California that I have read this application and the exhibits thereto and know the contents thereof, and that the statements therein are true and correct.

Executed at _____, on _____, 20____
(Place) (Date)

(Signature)

Note: Authority cited: Sections 25120, 25610 and 25612, Corporations Code.
Reference: Sections 25120, 25121 and 25160, Corporations Code.

FINAL STATEMENT OF REASONS
FOR RULE CHANGES UNDER THE
CORPORATE SECURITIES LAW OF 1968

As required by Section 11346.2 of the Government Code, the Commissioner of Corporations (“Commissioner”) sets forth below the reasons for the amendments to Section 260.121 of the California Code of Regulations (10 C.C.R. Section 260.121).

Under the Corporate Securities Law of 1968, it is unlawful for any person to offer or sell a security in the State of California in an issuer transaction unless such sale has been qualified or is exempt or not subject to qualification. It is also unlawful for any person to offer or sell any security in an “entity conversion transaction” unless the security is qualified or exempt. (Cal. Corp. Code Section 25120). In order to qualify a security, an application for qualification must comply with Corporations Code Section 25121 and regulations promulgated thereunder. The application must include the facing page set forth in Section 260.110 as well as the form required by Section 260.121. However, Section 260.121 is limited to a transaction involving a merger, consolidation, or purchase of corporate assets, and does not include entity conversion transactions. The Commissioner proposes to amend the qualification application form in Section 260.121 to include entity conversion transactions, and to make technical, clarifying changes.

Section 260.121: The proposed amendments to Section 260.121 amend the application for qualification form to include securities issued in an entity conversion transaction.

Recent legislative enactments necessitate amending Section 260.121 to specifically include entity conversion transactions in the application for qualification. In 1999, the Legislature enacted AB 197 (Ackerman, Chapter 250, Statutes of 1999) to permit the conversion of partnerships and limited liability companies to other types of business entities and AB 198 (Ackerman, Chapter 437, Statutes of 1999) to permit the merger of California corporations with other types of business entities. AB 1894 (Ackerman, Chapter 201, Statutes of 2000) was a follow-up bill that clarified the conversion and merger bills of the previous year. AB 1894 added Corporations Code Section 25005.1 to define an “entity conversion transaction.” In addition, AB 1894 amended Corporations Code Section 25120 to prohibit any person from offering or selling any security in an “entity conversion transaction” unless the transaction is qualified or exempt.

Because of the legislative amendments, the proposal to amend the current application for qualification is necessary to ensure that the Department has the most up-to-date forms to accommodate those who seek to qualify securities, including securities issued in an entity conversion transaction, for sale in California.

Clarifying changes were also made to Section 260.121 to update the form for entities that may not be organized as a corporation. Other types of entities, such as limited liability companies or limited partnerships, may also, and do, use the form to qualify securities with the Department.

ALTERNATIVES CONSIDERED

No alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small business than the adopted regulations.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ADDENDUM REGARDING PUBLIC COMMENTS

No written comments were received during the 45-public comment period which ended on November 1, 2004.

No requests for hearing were received. No public hearing was scheduled or heard.

Although, there were no changes to the proposed regulations due to any public comments, the Department made minor grammatical and similar conforming changes to ensure consistency with the existing statutes and rules. The reference throughout the rule to "officer" was amended to "executive officer" to clarify that only the upper level of officers were to be included and not everyone with a title of "officer." Consequently, on July 18, 2005 these proposed regulations were sent for an additional 15-day comment period. There were no comments received during the 15-day comment period which ended on August 3, 2005. No additional changes were made to these regulations subsequent to the 15-day public comment period.

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