

THE CALIFORNIA CORPORATIONS COMMISSIONER HEREBY ADOPTS  
THE FOLLOWING CHANGES TO THE REGULATIONS UNDER THE  
CORPORATE SECURITIES LAW OF 1968  
AS SET FORTH IN CHAPTER 3, TITLE 10,  
CALIFORNIA CODE OF REGULATIONS  
EFFECTIVE: NOVEMBER 3, 2003

1. Section 260.102.14 is amended to read:

260.102.14. Limited Offering Exemption Notice of Transaction

(a) An issuer who conducts a transaction under section 25102(f) of the Code shall file a notice with the Commissioner as follows:

(1) If in connection with the transaction the issuer is filing a notice with the Securities and Exchange Commission pursuant to section 4(6) of the Securities Act of 1933 or Regulation D (Rule 230.503), the notice may be a copy of the form first filed pursuant to those provisions. The fee required by section 25608(c) of the Code must accompany the filing. Each issuer (other than a California corporation) must also file a consent to service of process (Form 260.165), unless it already has a consent to service on file with the Commissioner. The filing should be accompanied with a cover letter indicating that the filing is pursuant to section 25102(f), and if a consent to service is not included, a statement that the issuer already has a consent to service on file with the Commissioner.

(2) Unless a notice is filed pursuant to paragraph (1), the notice shall be in the form and contain the information specified by subsection (c) and in accordance with the instructions in subsection (d).

(b) A notice required by this section shall be filed with the Commissioner no later than 15 calendar days after the first sale of a security in the transaction in this state. No notice is required if none of the securities offered are purchased in this state.

(c) Form of Notice. The following form is to be used for transactions covered by subsection (a)(2):

(Department of Corporations Use Only)

DEPARTMENT OF CORPORATIONS FILE NO., if any:

Fee paid \$ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Receipt No. \_\_\_\_\_

Insert File number(s) of Previous Filings Before the Department, if any.

Fee: \$25.00 \$35.00 \$50.00 \$150.00 \$300.00

(Circle the appropriate amount of fee. See Corporations Code Section 25608(c))

COMMISSIONER OF CORPORATIONS

STATE OF CALIFORNIA

NOTICE OF TRANSACTION PURSUANT TO CORPORATIONS CODE SECTION 25102(f)

A. Check one: Transaction under ( ) Section 25102(f) ( ) Rule 260.103.

1. Name of Issuer:

\_\_\_\_\_

2. Address of Issuer:

_____	_____	_____	_____
Street	City	State	Zip

Mailing Address:

_____	_____	_____	_____
Street	City	State	Zip

3. Area Code and Telephone Number: \_\_\_\_\_

4. Issuer's state (or other jurisdiction) of incorporation or organization:

\_\_\_\_\_

5. Title of class or classes of securities sold in transaction:

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6. The value of the securities sold or proposed to be sold in the transaction, determined in accordance with Corporations Code Sec. 25608(g) in connection with the fee required upon filing this notice, is (fee based on amount shown in line (iii) under "Total Offering"):

	<i>California</i>	<i>Total Offering</i>
(a)(i) in money	\$ _____	
		\$ _____
(ii) in consideration other than money	\$ _____	
		\$ _____
(iii) total of (i) and (ii)	\$ _____	
		\$ _____

(b) (  ) Change in rights, preferences, privileges or restrictions of or on outstanding securities (\$25.00 fee.) (See Rule 260.103.)

7. Type of filing under Securities Act of 1933, if applicable: \_\_\_\_\_

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8. Date of Notice: \_\_\_\_\_

Issuer

(  ) Check if issuer already has a consent to service of process on file with the Commissioner.

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Authorized Signature on behalf of issuer

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Print name and title of signatory

Name, Address and Phone number of contact person:

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Instruction: Each issuer (other than a California Corporation) filing a notice under Section 25102(f) must file a consent to service of process (Form 260.165), unless it already has a consent to service on file with the Commissioner.

(d) Instructions. The following instructions apply to the form specified in subsection (c):

COMMISSIONER OF CORPORATIONS  
STATE OF CALIFORNIA NOTICE OF TRANSACITON  
PURSUANT TO CORPORATIONS CODE SECTION 25102(f)  
INSTRUCTIONS

1. This Notice is to provide information on transactions conducted under the section 25102(f) exemption from the qualification requirements of Section 25110 of the Corporate Securities Law of 1968 and under the Rule 260.103 exemption from the qualification requirements of Section 25120 of that Law. The form is not designed to indicate whether or not the transaction complies with the requirements of those exemptions but only to provide notice to the commissioner that the exemption is being relied on.

2. When to File Notice. The Notice must be filed with, or mailed to, the Commissioner within 15

calendar days after the first sale of a security in the transaction in this state, or, if the issuer has failed to file a notice, within 15 business days after demand by the Commissioner. The first sale in this state occurs when the issuer has obtained a contractual commitment in this state to purchase one or more of the securities the issuer intends to sell in connection with the transaction. No notice is required if none of the securities offered are purchased in this state. No subsequent notices are required for sales in connection with the same transaction. The information required by the form is to relate to the entire transaction, not just the first sale or sales in this state.

3. The Notice may be filed in person or by mail at any office of the Department. The Heading. If the issuer has previously qualified securities with the Department, insert the file number of the qualification in the upper right hand corner of the form in the space provided. Circle the appropriate fee for filing this Notice. The fee is based on the value of all securities sold or intended to be sold in the entire transaction as follows (see Item 6 for valuing securities):

<i>Value of Securities</i>	<i>Filing Fee</i>
\$25,000 or less	\$25
\$25,001 - \$100,000	\$35
\$100,001 - \$500,000	\$50
\$500,001 - \$1,000,000	\$150
Over \$1,000,000	\$300

Item A. Check appropriate box for exemption being relied on.

Item 1. Give the issuer's legal name.

Item 2. Give the street address, and the mailing address if different, of the issuer's principal place of business.

Item 3. Give the telephone number of issuer's principal place of business.

Item 4. Give the name of the state or other jurisdiction under whose laws the issuer is incorporated or organized. If the issuer is not incorporated or organized under the laws of any jurisdiction, provide the name of the jurisdiction where issuer is domiciled and include parenthetical "(domicile)."

Item 5. Set forth the name or title of each class or type of security to be sold in the transaction.

Item 6. See Corp. Code sec. 25608(g). Generally, the value of the securities shall be the price at which the issuer proposes to sell the securities, as alleged in the notice, or the actual value of the consideration (if other than money) to be received in exchange for the securities. See sec. 25608(g) for valuing voting trust certificates, warrants, rights, and share dividends.

Item 7. If the transaction was registered under the Securities Act of 1933, insert "registered." If conducted pursuant to an exemption from registration under that Act which requires a filing with the Securities and Exchange Commission, indicate the number of the rule pursuant to which such filing was made. If no such filing was required, insert "none."

Item 8. Date and Signature. The notice should be signed by an authorized officer, director, general partner or trustee of the issuer (or a person occupying a position with the issuer of equivalent responsibility) or by the authorized attorney of the issuer. If the person the Department is to contact in the event of questions concerning the transaction or the notice is different than the signer, insert the contact person's name, telephone number and correspondence address in the spaces provided. Otherwise, provide this information with respect to the signer.

Filing Fee. Each notice, whether under 25102(f) or Rule 260.103, must be accompanied by the

filing fee required by section 25608(c) of the Code.

Corporations Code section 25165 requires each issuer, other than a California corporation, to file a consent to service of process with the notice filed pursuant to section 25102(f) unless it already has a consent to service on file with the Commissioner. Use Form 260.165 (see Rule 260.165, Title 10, California Administrative Code).

(e) In lieu of filing a notice by mail or in person under subsection (a), an issuer may file a notice electronically through the Internet process made available by the Department.

The following shall apply to any person filing electronically:

- (1) In addition to the information requested in subsection (c), an issuer that files a notice electronically shall provide a Federal Employer Identification Number for the issuer and, if applicable, a Federal Employer Identification Number for a representative filing on behalf of the issuer.
- (2) The instructions and explanations in subsection (d) are applicable to the same information requested through the electronic filing.
- (3) An issuer (other than a California Corporation) filing a notice electronically shall file electronically an irrevocable consent appointing the Commissioner to be the issuer's attorney to receive service of process under Section 25165 of the Code.
- (4) An issuer filing the notice electronically shall print a copy of the notice and manually sign and date the notice pursuant to the instructions in Item 8 of subsection (d). The notice shall be executed before or at the time the electronic filing is made and shall be retained by the issuer for a period of five years from the date of filing.

(5) Upon request, the issuer shall provide to the Commissioner the manually signed notice.

NOTE: Authority cited: Sections 25165 and 25610, Corporations Code. Reference:  
Sections 25102(f), 25165 and 25608, Corporations Code.



TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS  
Notice of Proposed Action

**NOTICE IS HEREBY GIVEN**

The Commissioner of Corporations ("Commissioner") proposes to amend a regulation under the CORPORATE SECURITIES LAW OF 1968 ("CSL") relating to notice filings for securities transactions exempt from qualification pursuant to Corporations Code Section 25102(f). The Commissioner proposes to amend Section 260.102.14 of the California Code of Regulations.

**PUBLIC HEARING**

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department addressed to Kathy Womack, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., January 5, 2004. Written comments may also be sent to Kathy Womack (1) via electronic mail at [regulations@corp.ca.gov](mailto:regulations@corp.ca.gov) or (2) via fax (916) 322-3205.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The CSL (Corporations Code Section 25000, et seq.) requires the offer or sale of securities in this state to be either qualified or exempt from qualification. Section 25102(f) of the Corporations Code sets forth an exemption from the qualification requirement for transactions where (1) the sale is to 35 or fewer persons, (2) each purchaser has a preexisting relationship with the securities issuer or business or financial experience to protect his or her own interests, (3) each purchaser represents the purchase is for that person's own account, (4) the offer or sale is not accomplished through advertising, and (5) the issuer files a notice with the Department within 15 days of the first transaction. Rule 260.102.14 sets forth the form for the filing of the notice, and the accompanying instructions.

The proposed amendments to Rule 260.102.14 allow for the online filing of the notice in lieu of the paper form. The objective of the amendments is to allow for the online filing of the notice to improve government efficiency and service to the public, and to reduce operating costs. The proposed amendments also make some clarifying changes to the rule, and incorporate changes to the rule as a result of AB 1031 (Correa, Chap. 473, Stats. 2003).

**AUTHORITY**

Sections 25165 and 25610, Corporations Code.

**REFERENCE**

Sections 25102, 25102.1, 25165 and 25608, Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 17/01-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 17/01-C. These documents are also available at the Department's Website [www.corp.ca.gov](http://www.corp.ca.gov). As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file which is available for public inspection at the Department of Corporations, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- ?? Cost or Savings to any State Agency: None.
- ?? Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- ?? Other nondiscretionary cost or savings are imposed on local agencies: None.

## DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- ?? Does not have an effect on housing costs.
- ?? Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- ?? Does not impose a mandate on any local agency or school district or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- ?? Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

## COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The ability to electronically file the notice required under Corporations Code Section 25102(f) does not change the filing fee for the form, and the public will not pay any additional fee to file the form online.

## EFFECT ON SMALL BUSINESS

It has been determined that the amendment of this regulation will not affect small business. This rulemaking merely adds provisions to file a notice, under the limited offering exemption, electronically through the internet in addition to already existing filing methods.

## CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the text of the proposed regulations or questions regarding timelines or rulemaking status, may be directed to Kathy Womack at (916) 322-3553. The backup contact person is Karen Fong at (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to Colleen E. Monahan, Corporations Counsel at (916) 323-7384. Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814-4052.

Dated: November 7, 2003  
Sacramento, California

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TIMOTHY L. Le BAS  
Deputy Commissioner and General Counsel  
Office of Law and Legislation

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS

TEXT OF PROPOSED CHANGES  
UNDER THE  
CORPORATE SECURITIES LAW OF 1968  
PURSUANT TO NOTICE  
DATED: November 7, 2003

1. Section 260.102.14 is amended to read:

260.102.14. Limited Offering Exemption Notice of Transaction.

(a) An issuer who conducts a transaction under ~~§~~Section 25102(f) of the Code shall file a notice with the Commissioner as follows:

(1) If in connection with the transaction the issuer is filing a notice with the Securities and Exchange Commission pursuant to ~~§~~Section 4(6) of the Securities Act of 1933 or Regulation D (Rule 230.503), the notice may be a copy of the form first filed pursuant to those provisions. The fee required by ~~§~~Section 25608(c) of the Code must accompany the filing. Each issuer (other than a California corporation) must also file a consent to service of process (Form 260.165), unless it already has a consent to service on file with the Commissioner. The filing should be accompanied with a cover letter indicating that the filing is pursuant to Section 25102(f), and if a consent to service is not included, a statement that the issuer already has a consent to service on file with the Commissioner. (An issuer that files a notice with the Securities and Exchange Commission pursuant to Rule 506 (17 C.F.R. § 230.506) should file the notice required by Section 25102.1(d) of the Code in the form of a copy of Form D, pay the fee required by Section 25608.1 of the Code, and file a consent to service of process (Form 260.165), unless it already has a consent to service on file with the Commissioner or it is a California corporation. The Section 25102.1(d) filing should be accompanied by a cover letter indicating that the filing is pursuant to Section 25102.1(d) of the Code, and should not indicate that the filing is pursuant to Section

25102(f) of the Code.)

(2) Unless a notice is filed pursuant to paragraph (1), the notice shall be in the form and contain the information specified by subsection (c) and in accordance with the instructions in subsection (d).

(b) A notice required by this section shall be filed with the Commissioner no later than 15 calendar days after the first sale of a security in the transaction in this state. No notice is required if none of the securities offered are purchased in this state.

(c) Form of Notice. The following form is to be used for transactions covered by subsection (a)(2):

(Department of Corporations Use Only)

DEPARTMENT OF CORPORATIONS FILE NO., if any:

Fee paid \$ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Receipt No. \_\_\_\_\_

Insert File number(s) of Previous Filings Before the Department, if any.

Fee: \$25.00 \$35.00 \$50.00 \$150.00 \$300.00 Other \$ \_\_\_\_\_

(Circle or insert the appropriate amount of fee. See subdivisions (c) and (e) of Corporations Code Section 25608(e).)

COMMISSIONER OF CORPORATIONS  
STATE OF CALIFORNIA

NOTICE OF TRANSACTION PURSUANT TO CORPORATIONS CODE SECTION 25102(f)

A. Check one: Transaction under ( ) Section 25102(f) ( ) Rule 260.103:

B. Date of First Sale in this State: \_\_\_\_\_

1. Name of Issuer:

\_\_\_\_\_

2. Address of Issuer:

_____	_____	_____	_____
Street	City	State	Zip

Mailing Address:

_____	_____	_____	_____
Street	City	State	Zip

3. Area Code and Telephone Number: \_\_\_\_\_

4. Issuer's state (or other jurisdiction) of incorporation or organization:

\_\_\_\_\_

5. Title of class or classes of securities sold in transaction:

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6. The value of the securities sold or proposed to be sold in the transaction, determined in accordance with Corporations Code Section 25608(g) in connection with the fee required upon filing this notice, is (fee based on amount shown in line (iii) under "Total Offering"):

	<i>California</i>	<i>Total Offering</i>
(a)(i) in money	\$ _____	
	\$ _____	
(ii) in consideration other than money	\$ _____	
	\$ _____	
(iii) total of (i) and (ii)	\$ _____	
	\$ _____	

(b) (  ) Change in rights, preferences, privileges or restrictions of or on outstanding securities (\$25.00 fee.) (See Rule 260.103. For all other Rule 260.103 transactions, provide the value of the securities in Item 6(a).)

7. Type of filing under Securities Act of 1933, if applicable: \_\_\_\_\_

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8. Date of Notice: \_\_\_\_\_

Issuer

(  ) Check if issuer already has a consent to service of process on file with the Commissioner.

\_\_\_\_\_  
Authorized Signature on behalf of issuer

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Print name and title of signatory

Name, Address and Phone number of contact person:

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Instruction: Each issuer (other than a California Corporation) filing a notice under Section 25102(f) must file a consent to service of process (Form 260.165), unless it already has a consent to service on file with the Commissioner.

(d) Instructions. The following instructions apply to the form specified in subsection (c):

COMMISSIONER OF CORPORATIONS  
STATE OF CALIFORNIA NOTICE OF TRANSACTION  
PURSUANT TO CORPORATIONS CODE SECTION 25102(f)  
INSTRUCTIONS

1. This Notice is to provide information on transactions conducted under the ~~s~~Section 25102(f) exemption from the qualification requirements of Section 25110 of the Corporate Securities Law of 1968 and under the Rule 260.103 exemption from the qualification requirements of Section 25120 of that Law. The form is not designed to indicate whether or not the transaction complies with the requirements of those exemptions but only to provide notice to the ~~e~~Commissioner that the exemption is being relied on.

2. When to File Notice. The Notice must be filed with, or mailed to, the Commissioner within 15



calendar days after the first sale of a security in the transaction in this state, or, if the issuer has failed to file a notice, within 15 business days after the discovery of the failure to file the notice or demand by the Commissioner, whichever comes first. The first sale in this state occurs when the issuer has obtained a contractual commitment in this state to purchase one or more of the securities the issuer intends to sell in connection with the transaction. No notice is required if none of the securities offered are purchased in this state. No subsequent notices are required for sales in connection with the same transaction. The information required by the form is to relate to the entire transaction, not just the first sale or sales in this state.

3. The Notice may be filed in person or by mail at any office of the Department. The Heading. If the issuer has previously qualified securities with the Department, insert the file number of the qualification in the upper right hand corner of the form in the space provided. Circle the appropriate fee for filing this Notice. The fee is based on the value of all securities sold or intended to be sold in the entire transaction as follows (see Item 6 for valuing securities):

<i>Value of Securities</i>	<i>Filing Fee</i>
\$25,000 or less	\$25
\$25,001 - \$100,000	\$35
\$100,001 - \$500,000	\$50
\$500,001 - \$1,000,000	\$150
Over \$1,000,000	\$300

If the Notice is filed more than 15 days after the first sale of a security in the transaction in this state, the fee is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state (Item 6) up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500). Enter the appropriate fee for filing this notice under "Other."

Item A. Check appropriate box for exemption being relied on.

Item B. Provide the date of the first sale of a security in the transaction in this state.

Item 1. Give the issuer's legal name.

Item 2. Give the street address, and the mailing address if different, of the issuer's principal place of business.

Item 3. Give the telephone number of issuer's principal place of business.

Item 4. Give the name of the state or other jurisdiction under whose laws the issuer is incorporated or organized. If the issuer is not incorporated or organized under the laws of any jurisdiction, provide the name of the jurisdiction where issuer is domiciled and include parenthetical "(domicile)."

Item 5. Set forth the name or title of each class or type of security to be sold in the transaction.

Item 6. See Corp. Code ~~sec. Section~~ 25608(g). Generally, the value of the securities shall be the price at which the issuer proposes to sell the securities, as alleged in the notice, or the actual value of the consideration (if other than money) to be received in exchange for the securities. See ~~sec. Section~~ 25608(g) for valuing voting trust certificates, warrants, rights, and share dividends.

Item 7. If the transaction was registered under the Securities Act of 1933, insert "registered." If conducted pursuant to an exemption from registration under that Act which requires a filing with the Securities and Exchange Commission, indicate the number of the rule pursuant to which such filing was made. If no such filing was required, insert "none."

Item 8. Date and Signature. The notice should be signed by an authorized officer, director, general partner or trustee of the issuer (or a person occupying a position with the issuer of equivalent responsibility) or by the authorized attorney of the issuer. If the person the Department is to contact in the

event of questions concerning the transaction or the notice is different than the signer, insert the contact person's name, telephone number and correspondence address in the spaces provided. Otherwise, provide this information with respect to the signer.

Filing Fee. Each notice, whether under

Section 25102(f) or Rule 260.103, must be accompanied by the filing fee required by sSection 25608(c) of the Code. The fee for filing a notice under Rule 260.103 for a change in rights, preferences, privileges or restrictions of or on outstanding securities is \$25. The fee for filing a notice under Rule 260.103 for any exchange of securities by the issuer with its existing securities holders exclusively is the filing fee required by Section 25608(c) of the Code. The fee for filing a notice more than 15 days after the first sale of a security in a transaction in this state is an amount equal to the fee payable had the transaction been qualified under Section 25110 of the Corporations Code (Corporations Code Section 25608(e)).

Corporations Code sSection 25165 requires each issuer, other than a California corporation, to file a consent to service of process with the notice filed pursuant to sSection 25102(f) unless it already has a consent to service on file with the Commissioner. Use Form 260.165 (see Rule 260.165, Title 10, California Administrative Code Code of Regulations).

(e) In lieu of filing a notice by mail or in person under subsection (a), an issuer may file a notice electronically through the Internet process made available by the Department.

The following shall apply to any person filing electronically:

- (1) In addition to the information requested in subsection (c), an issuer that files a notice electronically shall provide a Federal Employer Identification Number for the issuer and, if applicable, a Federal Employer Identification Number for a representative filing on behalf of the issuer.
- (2) The instructions and explanations in subsection (d) are applicable to the same information requested through the electronic filing.
- (3) An issuer (other than a California Corporation) filing a notice electronically shall file electronically an irrevocable consent appointing the Commissioner to be the issuer's attorney to receive service of process under Section 25165 of the Code.
- (4) An issuer filing the notice electronically shall print a copy of the notice and manually sign and date the notice pursuant to the instructions in Item 8 of subsection (d). The notice shall be executed before or at the time the electronic filing is made and shall be retained by the issuer for a period of five years from the date of filing.
- (5) Upon request, the issuer shall provide to the Commissioner the manually signed notice.

NOTE: Authority cited: Sections 25165 and 25610, Corporations Code. Reference: Sections 25102(f), 25102.1, 25165 and 25608, Corporations Code.

INITIAL STATEMENT OF REASONS  
FOR PROPOSED ACTION 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 260.102.14 of Title 10 of the California Code of Regulations (10 C.C.R. Section 260.102.14).

The Corporate Securities Law of 1968 (the "CSL," Corporations Code Section 25000, et seq.) requires the offer or sale of securities in this state to be either qualified, exempt from qualification, or not subject to qualification. Section 25102(f) of the Corporations Code sets forth an exemption from the qualification requirement for transactions where (1) the sale is to 35 or fewer persons, (2) each purchaser has a preexisting relationship with the securities issuer or business or financial experience to protect his or her own interests, (3) each purchaser represents the purchase is for that person's own account, (4) the offer or sale is not accomplished through advertising, and (5) the issuer files a notice with the Department of Corporations ("Department") within 15 days of the first transaction. Rule 260.102.14 sets forth the form for the filing of the notice, and the accompanying instructions.

The proposed amendments to Rule 260.102.14 allow for the online filing of the notice in lieu of the paper form. The amendments provide for the submission of a Federal Employer Identification Number ("FEIN") by an issuer filing electronically, and that issuer's representative. A FEIN is necessary as a means of assigning a unique identifier to these entities within the program database so that future filings by the same entity may be easily associated with the filing. The program allows for an issuer's representative, such as a law firm, to create an account and make filings on behalf of clients.

The proposed amendments additionally provide that the existing instructions for the paper form of the filing are equally applicable to requests for the same information electronically, and that an electronic filing will require an irrevocable consent appointing the Commissioner to be the issuer's attorney to receive service of process under Section 25165 of the Corporations Code for issuers other than California corporations. The statute requiring the consent to service of process upon the Commissioner does not require such consent from a California corporation, and therefore the rule and online program do not require this consent. The statute further does not require the consent to service of process upon the Commissioner if the issuer already has a consent on file with the Department. However, the online program does not have the ability to confirm the existence of a consent to service of process prior to accepting the online filing, and therefore all online filings require the submission of a new consent. Because the law does not require this consent from an issuer that already has the consent on file with the Department, an issuer that does not want to resubmit the consent may file the 25102(f) form with the Department in its paper format and forgo online filing.

The proposed amendments further require an issuer to print a copy of the notice

and manually sign and date the notice pursuant to the instructions in the existing rule, which specifies the individuals who may sign on behalf of an issuer. The amendments require the notice to be executed before or at the time the electronic filing is made, and to be retained by the issuer for five years from the date of filing. Finally, the amendments require the issuer provide the manually signed notice to the Commissioner upon request. The purpose of these provisions is to ensure that the issuer signs the form, and to ensure the Commissioner has access to the form for a reasonable period of time. Five years was determined to be a reasonable period of time to require the signed notice be kept in the issuer's books and records based upon the Securities and Exchange Commission's rule regarding forms submitted electronically which requires signed documents to be kept for 5 years. (See 17 C.F.R. Section 232.302.)

The proposed amendments to Rule 260.102.14 further clarify the filing fee under Rule 260.103 and clean-up other provisions of the rule. In particular, the amendments clarify that the filing fee under Rule 260.103 for a change in rights, preferences, privileges or restrictions of or on outstanding securities is \$25. However, the filing fee under Rule 260.103 for any exchange of securities by the issuer with its existing security holders exclusively is the fee required by Section 25608(c) of the Corporations Code. The Department has identified confusion in this area caused by the reference to Rule 260.103 next to the \$25 fee on the form. Therefore, the amendments clarify on the form and in the instructions the proper fees for a filing under Rule 260.103.

The proposed amendments also clarify that a filing under Section 25102(f) is to be made upon the discovery of the failure to file the notice within 15 days of the first issuance of securities in reliance on that exemption. The Department has identified that some issuers have disregarded the obligation to file the notice in reliance upon the provision in the Corporations Code which provides that the failure to file the notice will not cause the issuer to lose the exemption. Therefore, AB 1031 (Chap. 473, Stats. 2003) amended Section 25102(f) to clarify that the issuer is obligated to file the notice upon the discovery that the notice had not been filed timely. The amendments to this rule incorporate the changes to the law made by AB 1031, including clarifying that the fee for filing the notice after 15 days of the first issuance of securities in reliance on the exemption is the fee set forth in Corporations Code Section 25608(e).

The proposed amendments to Rule 260.102.14 further clarify that issuers who file Form D with the Securities and Exchange Commission and rely upon the exemption from registration in Rule 506 under the Securities Act of 1933 (17 C.F.R. Section 230.506) are to file a copy of Form D with the Department under Corporations Code Section 25102.1(d), not Corporations Code Section 25102(f). The Department has discovered that issuers frequently file the form under Section 25102(f) instead of making the proper filing under Corporations Code Section 25102.1(d).

The 25102(f) filing is a notice that the issuer is relying upon the exemption from the qualification requirement in Corporations Code Section 25110. However, issuers relying upon the exemption from federal registration in Rule 506 are not subject to the qualification requirement on Corporations Code Section 25110 (see Section 18(b)(4)(D) of the

Securities Act of 1933), and therefore the exemption from qualification in Corporations Code Section 25102(f) is not applicable. The proper filing is the notice required by Section 25102.1(d) of the Corporations Code, and the proper fee for the filing is the fee set forth in Corporations Code Section 25608.1(c), whereas the fee for a filing under Corporations Code Section 25102(f) is set forth in Corporations Code Section 25608(c). These proposed amendments to Rule 260.102.14 clarify that a notice under Section 25102(f) should not be used for a Rule 506 notice filing.

#### ECONOMIC IMPACT GOVERNMENT CODE SECTION 11346.2(b)(4))

The Department has made an initial determination that the proposed regulations will not have a significant adverse economic impact on business.

#### ALTERNATIVES CONSIDERED

No reasonable alternative considered by the Department or that otherwise has been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

#### FISCAL IMPACT

Cost to Local Agencies and School Districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

No other nondiscretionary cost or savings are imposed on local agencies.

#### 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.