

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations (“Commissioner”) proposes to amend a regulation under the CORPORATE SECURITIES LAW OF 1968 relating to entity conversion transactions. The Commissioner proposes to amend Section 260.121 of the California Code of Regulations. (10 C.C.R. § 260.121).

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 of Corporations, addressed to Kathy Womack, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m. on October 13, 2003. Written comments may also be sent to Kathy Womack (1) via e-mail at regulations@corp.ca.gov or (2) via fax (916) 322-3205.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 260.121: Under the Corporate Securities Law of 1968 (“CSL”), 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 § 25120). In order to qualify a security offering, an application for qualification must comply with Corporations Code Section 25121 and regulations promulgated thereunder.

Section 260.121 of the Commissioner's rules sets forth an application form for the qualification of securities transactions under Corporations Code Section 25120, but the application form does not include entity conversion transactions. The Commissioner proposes to amend the qualification application form in Section 260.121 to include entity conversion transactions.

The Commissioner also proposes clarifying changes to Section 260.121 to update the form for entities that are not organized as a corporation seeking to qualify securities.

AUTHORITY

Corporations Code Sections 25610 and 25612.

REFERENCE

Corporations Code Sections 25005.1, 25120, and 25121.

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 REGULATION/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 36/01-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 36/01-C. These documents are also available at www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 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 at the web-site listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (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 non-discretionary 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 California; or (3) the expansion of businesses currently doing business within the State of California.

COST IMPACTS OF REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any new costs that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulatory action merely implements clarifying changes to a form.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations will not affect small business. This regulatory action simply makes clarifying changes to an already existing form.

CONTACT PERSON

Nonsubstantive inquires concerning this action, such as requests for copies of the text of the proposed regulations or questions regarding the

timelines or rulemaking status, may be directed to Kathy Womack at (916) 322-3553. The backup contact is Karen Fong at (916) 322-3553. Inquires regarding the substance of the proposed regulation may be directed to Kimberly Willy, Corporations Counsel, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814-4052, (916) 324-9687.

Dated: August 18, 2003
Sacramento, California

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
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: AUGUST 18, 2003

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 or entity conversion transaction in consideration wholly or in part of the issuance of securities 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 entity conversion:

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, partners or members of each ~~corporation~~ business entity involved, the vote needed for its approval, the proposed date for the mailing of proxies and the proposed date of the shareholders', partners' or members' 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~~ business 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~~ business entity of which he or she is an 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~~ business entity of which he or she is an 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~~ business 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~~ business 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~~ business 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~~ officers, and other similar positions of the issuer and of each other ~~corporation~~ business 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~~ business entity of which he or she is an 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~~ business entity of which he or she is an 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~~ business entity involved in the transaction, is a director, ~~or~~ 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~~ business 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~~ business 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 of the securities of the issuer ~~corporation~~ business entity for the securities of the constituent ~~corporation~~ business entity(s).

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~~ business 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 business 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~~ business entity involved in a merger or consolidation or business entity conversion.

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~~ business entity of which ~~he~~ such person is an officer, ~~or~~ director, or any other 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~~ business entity of which ~~he~~ any such person is an officer, ~~or~~ director, or occupies a similar status or performs 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 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~~ business

entity of which he such person is an 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~~ business entity of which he such person is an 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 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~~ business 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)

AUTHORITY:

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

Reference: Sections 25120, 25121 and 25160, Corporations Code.