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**AB-511 Securities transactions: qualification requirements, exemptions, and liability.** (2021-2022)

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**Assembly Bill No. 511**

**CHAPTER 617**

An act to amend Sections 25102, 25501, 25503, and 25608 of the Corporations Code, relating to securities.

[ Approved by Governor October 07, 2021. Filed with Secretary of State October 07, 2021. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 511, Muratsuchi. Securities transactions: qualification requirements, exemptions, and liability.

The Corporate Securities Law of 1968 requires securities offered or sold in this state in an issuer or nonissuer transaction to be qualified through an application, as specified, unless exempt from the qualification requirements. That law exempts, among other transactions, certain transactions not involving any public offering, as prescribed. That law also makes it unlawful, for a person in connection with the offer, sale, or purchase of a security, to engage in fraudulent or misleading acts or omissions.

This bill would establish a new exemption from the qualification provisions for an offer or sale of any security for which the issuer is a California or foreign corporation that is not a "blind pool" company, as defined by the Commissioner of Financial Protection and Innovation, is not issuing fractional undivided interests in oil or gas rights or other similar mineral rights, is not an investment company subject to the federal Investment Company Act of 1940, and is not subject to certain reporting requirements of the Securities Exchange Act of 1934. The bill would require, among other criteria, that the offer or sale be conducted in accordance with certain requirements of federal law, except as provided, and that the issuer file a notice of transaction at least 15 days prior to the publication of an initial offer of these securities.

Existing law provides that any person who violates a condition of qualification of the offer or sale of a security is liable to any person acquiring the security sold in violation, who may sue to recover the consideration paid for the security with interest thereon at the legal rate or for damages, as specified.

This bill would provide for the recovery of reasonable attorney's fees, as specified.

Existing law imposes liability on any person who engages in specified unlawful activity to the person who purchases a security from them or sells a security to them, and authorizes the purchaser or seller to sue either for rescission or for damages.

The bill would require the court to award reasonable attorney's fees, as specified.

The bill would also make technical changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 25102 of the Corporations Code is amended to read:

**25102.** The following transactions are exempted from the provisions of Section 25110:

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

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

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

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

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

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

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

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

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

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

The failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of the exemption. Any issuer that fails to file the notice as provided by rule of the commissioner shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110. Neither the filing of the notice nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action that the commissioner deems necessary or appropriate under this division with respect to the offer and sale of the securities.

(g) Any offer or sale of conditional sale agreements, equipment trust certificates, or certificates of interest or participation therein or partial assignments thereof, covering the purchase of railroad rolling stock or equipment or the purchase of motor vehicles, aircraft, or parts thereof, in a transaction not involving any public offering.

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

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

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

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

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

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

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

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

(4) A notice in a form prescribed by rule of the commissioner, signed by an active member of the State Bar of California, is filed with or mailed for filing to the commissioner not later than 10 business days after receipt of consideration for the securities by the issuer. That notice shall contain an opinion of the member of the State Bar of California that the exemption provided by this subdivision is available for the offer and sale of the securities. The failure to file the notice as required by this subdivision and the rules of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice within the time specified by this subdivision shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110. The notice, except when filed on behalf of a California corporation, shall be accompanied by an irrevocable consent, in the form that the commissioner by rule prescribes, appointing the commissioner or the commissioner's successor in office to be the issuer's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against it or its successor that arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the issuer. An issuer on whose behalf a consent has been filed in connection with a previous qualification or exemption from qualification under this law (or application for a permit under any prior law if the application or notice under this law states that the consent is still effective) need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (A) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at its last address on file with the commissioner, and (B) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within the further time as the court allows.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

recent audited financial statements.

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

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

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

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

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

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

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

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

(iii) The anticipated suitability standards for prospective purchasers.

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

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

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

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

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

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

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

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

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

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

(7) The issuer files a notice of transaction under this subdivision both (A) concurrent with the publication of a general announcement of proposed offering or at the time of the initial offer of the securities, whichever occurs first, accompanied by a filing fee, and (B) within 10 business days following the close or abandonment of the offering, but in no case more than 210 days from the date of filing the first notice. The first notice of transaction under subparagraph (A) shall contain an undertaking, in a form acceptable to the commissioner, to deliver any disclosure statement required by paragraph (4) to be delivered to prospective purchasers, and any supplement thereto, to the commissioner within 10 days of the commissioner's request for the information. The exemption from qualification afforded by this subdivision is unavailable if an issuer fails to file the first notice required under subparagraph (A) or to pay the filing fee. The commissioner has the authority to assess an administrative penalty of up to one thousand dollars (\$1,000) against an issuer that fails to deliver the disclosure statement required to be delivered to the commissioner upon the commissioner's request within the time period set forth above. Neither the filing of the disclosure statement nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action deemed necessary or appropriate under this division with respect to the offer and sale of the securities.

(o) An offer or sale of any security issued by a corporation or limited liability company pursuant to a purchase plan or agreement, or issued pursuant to an option plan or agreement, where the security at the time of issuance or grant is exempt from registration under the Securities Act of 1933, as amended, pursuant to Rule 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions of which are hereby incorporated by reference into this section, provided that (1) the terms of any purchase plan or agreement shall comply with Sections 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, (2) the terms of any option plan or agreement shall comply with Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, and (3) the issuer files a notice of transaction in accordance with rules adopted by the commissioner no later than 30 days after the initial issuance of any security under that plan, accompanied by a filing fee as prescribed by subdivision (y) of Section 25608. The failure to file the notice of transaction within the time specified in this subdivision shall not affect the availability of this exemption. An issuer that fails to file the notice shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay the commissioner a fee equal to the maximum aggregate fee payable had the transaction been qualified under Section 25110.

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

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

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

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

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

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

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

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

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

Each natural person specified above, by reason of that person's business or financial experience, or the business or financial experience of that person's professional adviser, who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer or any affiliate or selling agent of the issuer, can be reasonably assumed to have the capacity to protect that person's interests in connection with the transaction.

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

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

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

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

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

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

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

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

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

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

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign country governmental agency or administrator, or of any state, federal, or foreign country court of competent jurisdiction (i) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (ii) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (iii) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement,

fraudulent conversion, or misappropriation of property, or (iv) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subparagraph does not apply to any order, judgment, or decree that has been vacated, overturned, or is more than 10 years old.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) Any offer or sale of any security that meets each of the following criteria:

(1) The issuer meets all of the following criteria:

(A) Is a California corporation or a foreign corporation, which at the time of filing an application under this subdivision is subject to Section 2115, and neither corporation is a "blind pool" company, as that term is defined by the commissioner.

(B) Is not issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights.

(C) Is not an investment company subject to the Investment Company Act of 1940.

(D) Is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.

(2) The offering is conducted in accordance with the requirements of Section 3(a)(11) of the Securities Act of 1933 and Rule 147 (17 C.F.R. 230.147) or Rule 147A (17 C.F.R. 230.147A) under that act.

(3) The offering is conducted in accordance with the requirements of Subpart B of Regulation CF (17 C.F.R. 227.100 to 227.206, inclusive), except as follows:

(A) The aggregate amount of securities sold to all investors by the issuer in reliance on this subdivision during the 12-month period preceding the date of such offer or sale, including the securities offered in such transaction, shall not exceed three hundred thousand dollars (\$300,000).



(B) The issuer may comply with the requirements of paragraph (t)(1), instead of paragraph (t)(2), of Section 227.201 of Title 17 of the Code of Federal Regulations.

(C) Such issuer shall prominently provide a statement that financial information certified by the principal executive officer of the issuer has been provided instead of financial statements reviewed by a public accountant that is independent of the issuer. The aggregate offering price for all securities sold (within the 12 months before the start, and during the offering, of the securities) under Rule 147 or Rule 147A under the Securities Act of 1933 or in violation of subdivision (a) of Section 5 of that act shall be included in the aggregate offering price for purposes of this paragraph.

(4) Integration of offers and sales made in reliance on this section shall be governed by Section 230.152 of Title 17 of the Code of Federal Regulations.

(5) The issuer has taken reasonable steps to ensure that each purchaser who is a natural person who is not an accredited investor as defined in Rule 501 (17 C.F.R. 230.501) under the Securities Act of 1933, either alone or with their purchaser representative or representatives, has knowledge and experience in financial and business matters and that they are capable of evaluating the merits and risks of the prospective investment.

(6) The purchaser shall have a three-day right to rescind any investment made in any security offered under this subdivision. The three-day period shall end at 11:59 p.m. Pacific standard time on the third business day after the date on which the issuer's confirmation of its acceptance of the purchaser's investment is communicated in writing and received by the purchaser.

(7) The issuer shall set aside in a separate third-party escrow account all funds raised as part of the offering, to be held in escrow until the time that the minimum offering amount, if any, is reached. If the minimum offering amount is not reached within one year of the effective date of the offering, the issuer shall return all funds to purchasers.

(8) The issuer shall not, itself or through any third party not licensed as a broker-dealer, conduct any direct solicitation of the securities offered by this subdivision.

(9) The issuer shall not require or impose an obligation on any purchaser or potential purchaser to do any of the following:

(A) Waive the right to a jury trial in a court action.

(B) Be bound by or subject to any law other than California law.

(C) File or resolve any claim or dispute in any forum other than California.

(10) The issuer shall file, on a form prescribed by the commissioner, a notice of transactions under this subdivision at least 15 days prior to the publication of an initial offer of the securities. The failure to file the notice or the failure to file the notice within the time specified shall not affect the availability of the exemption so long as the issuer, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, files the notice and pays to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110. Neither the filing of the notice nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action that the commissioner deems necessary or appropriate under this division with respect to the offer and sale of the securities.

(11) The issuer submits all state, federal, or other filings related to the offer or sale of securities under this subdivision to the Commissioner of the Department of Financial Protection and Innovation. The filings shall be submitted electronically and in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and the Web Content Accessibility Guidelines 2.0, or its subsequent versions.

(12) The issuer pays any fees required by subdivision (c) of Section 25608.

(13) Any other requirement set forth by rule adopted by the commissioner.

(14) To the extent allowable, any inconsistency between federal and state law shall be interpreted to the benefit of investors or potential investors.

**SEC. 2.** Section 25501 of the Corporations Code is amended to read:

**25501.** Any person who violates Section 25401 shall be liable to the person who purchases a security from, or sells a security to, that person, who may sue either for rescission or for damages (if the plaintiff or the defendant, as the case may be, no longer owns the security), unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know (or if the defendant had exercised reasonable care, would not have known) of the untruth or omission. Upon rescission, a purchaser may recover the consideration paid for the security, plus interest at the legal rate, less the amount of any income received on the security, upon tender of the security. Upon rescission, a seller may recover the security, upon tender of the consideration paid for the security plus interest at the legal rate, less the amount of

any income received by the defendant on the security. Damages recoverable under this section by a purchaser shall be an amount equal to the difference between (a) the price at which the security was bought plus interest at the legal rate from the date of purchase and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any income received on the security by the plaintiff. Damages recoverable under this section by a seller shall be an amount equal to the difference between (1) the value of the security at the time of the filing of the complaint plus the amount of any income received by the defendant on the security and (2) the price at which the security was sold plus interest at the legal rate from the date of sale. Any tender specified in this section may be made at any time before entry of judgment. In addition to the relief described above, the court shall award reasonable attorney's fees and costs to a prevailing purchaser or seller who succeeds in establishing a right to the relief provided by this section.

**SEC. 3.** Section 25503 of the Corporations Code is amended to read:

**25503.** Any person who violates Section 25110, 25130, or 25133, or a condition of qualification under Chapter 2 (commencing with Section 25110) of this part, imposed pursuant to Section 25141, or an order suspending trading issued pursuant to Section 25219, shall be liable to any person acquiring from them the security sold in violation of that section, who may sue to recover the consideration they paid for that security with interest thereon at the legal rate, and reasonable attorney's fees, less the amount of any income received therefrom, upon the tender of that security, or for damages, if they no longer own the security, or if the consideration given for the security is not capable of being returned. Damages, if the plaintiff no longer owns the security, shall be equal to the difference between (a) the purchase price plus interest at the legal rate from the date of purchase, plus reasonable attorney's fees, and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any income received therefrom by the plaintiff.

Damages, if the consideration given for the security is not capable of being returned, shall be equal to the value of that consideration plus interest at the legal rate from the date of purchase, provided the security is tendered, plus reasonable attorney's fees; and if the plaintiff no longer owns the security, damages in that case shall be equal to the difference between (a) the value of the consideration given for the security plus interest at the legal rate from the date of purchase, plus reasonable attorney's fees; and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any income received therefrom by the plaintiff. Any person who violates Section 25120 or a condition of qualification under Chapter 3 (commencing with Section 25120) of this part imposed pursuant to Section 25141, shall be liable to any person acquiring from them the security sold in violation of that section who may sue to recover the difference between (a) the value of the consideration received by the seller and (b) the value of the security at the time it was received by the buyer, with interest thereon at the legal rate from the date of purchase, plus reasonable attorney's fees. Any person on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this section, but in no event shall any underwriter (unless that underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interest in the underwriting) be liable in any suit or suits authorized under this section for damages in excess of the total price at which the securities underwritten by them and distributed to the public were offered to the public. Any tender specified in this section may be made at any time before entry of judgment. No person shall be liable under this section for violation of Section 25110, 25120 or 25130 if the sale of the security is qualified prior to the payment or receipt of any part of the consideration for the security sold, even though an offer to sell or a contract of sale may have been made or entered into without qualification.

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

**25608.** (a) The commissioner shall charge and collect the fees fixed in this section and Section 25608.1. All fees charged and collected under this section and Section 25608.1 shall be transmitted to the Treasurer at least weekly, accompanied by a detailed statement thereof and shall be credited to the Financial Protection Fund.

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

(c) The fee for filing a notice pursuant to paragraph (5) of subdivision (h) of Section 25102, for filing a notice pursuant to paragraph (4) of subdivision (f) of Section 25102, or for filing a notice pursuant to paragraph (10) of subdivision (r) of Section 25102, in addition to the fee prescribed in those paragraphs, if applicable, shall be determined based on the value of the securities proposed to be sold in the transaction for which the notice is filed and in accordance with subdivision (g), and shall be as follows:

Value of Securities Proposed to be Sold	Filing Fee
\$25,000 or less	\$ 25
\$25,001 to \$100,000	\$ 35

\$100,001 to \$500,000	\$ 50
\$500,001 to \$1,000,000	\$150
Over \$1,000,000	\$300

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

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

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

(f) The fee for filing an application for qualification of the sale of securities by coordination under Section 25111 or a notice of intention to sell under subdivision (t) of Section 25100 is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

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

(1) The value of the securities shall be the price at which the company proposes to sell the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor, or of the securities when sold, whichever is greater.

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

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

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

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

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

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

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

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

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

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

transfer in escrow.

(m) The fee for filing an application for an order (1) consenting to the transfer in escrow of securities or (2) consenting to the transfer of securities subject to any condition imposed by the commissioner requiring the commissioner's consent to the transfer is twenty dollars (\$20) for each transfer.

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

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

(2) Each broker-dealer shall pay to the commissioner its pro rata share of all costs and expenses, reasonably incurred in the administration of the broker-dealer program under this division, as estimated by the commissioner for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion that the broker-dealer and the number of its agents in this state bears to the aggregate number of broker-dealers and agents in this state as shown by records maintained by or on behalf of the commissioner. The pro rata share may include the costs of any examinations, audit, or investigation provided for in subdivision (r).

(3) Every broker-dealer who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a minimum assessment of seventy-five dollars (\$75) on or before the 31st of December in each year.

(4) The commissioner may assess and levy against each broker-dealer any additional amount above the minimum assessment amount of seventy-five dollars (\$75) that is reasonable and necessary to support the broker-dealer program under this division. If an additional amount is assessed, the commissioner shall notify each broker-dealer by mail of any additional amount assessed and levied against it on or before the 30th day of May in each year, and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

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

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

(p) (1) The commissioner shall charge a fee of twenty-five dollars (\$25) for the filing of a notice or report required by rules adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(2) The commissioner may charge a fee up to thirty-five dollars (\$35) to keep in effect for the following year any notice or report required by rules adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(3) No person shall, on behalf of a broker-dealer licensed pursuant to Section 25211, effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless the broker-dealer pays the annual fee required by paragraph (2) of this subdivision on or before the day upon which payment is due.

(4) No person may, in this state, on behalf of an investment adviser licensed pursuant to Section 25231, offer or negotiate for the sale of investment advisory services of the investment adviser, determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser, or determine the reports or analyses concerning securities to be published by the investment adviser, unless the investment adviser pays the annual fee required by paragraph (2) on or before the day upon which payment is due.

(5) The commissioner may by order summarily enjoin an individual from performing any activity under paragraph (3) or (4) if the annual fee in paragraph (2) is not paid on or before the day upon which payment is due. An order under this paragraph may not be made before 10 days after notice by the commissioner that the fee is due and unpaid.

(q) (1) Except as provided for in paragraph (2), the fee for filing an application for an investment adviser under Section 25231 is one hundred twenty-five dollars (\$125), and payment of this amount shall keep the certificate, if granted, in effect during the calendar year during which it is granted. Every investment adviser who has secured from the commissioner a certificate shall, in

order to keep the certificate in effect for an additional period, pay a renewal fee of one hundred twenty-five dollars (\$125) on or before the 31st day of December.

(2) Paragraph (1) shall not apply to a broker-dealer licensed under Section 25210.

(r) (1) Except as provided for in paragraph (2), the fee for any routine or nonroutine regulatory examination, audit, or investigation is the amount of the salary or other compensation paid to the persons making the examination, audit, or investigation plus the amount of expenses including overhead reasonably incurred in the performance of the work. In determining the costs associated with an examination, audit, or investigation, the commissioner may use the estimated average hourly cost for all persons performing examinations, audits, or investigations for the fiscal year.

(2) An investment adviser licensed under Section 25230 pursuant to the Investment Adviser Registration Depository shall not be subject to paragraph (1) only in regard to the fee for a routine regulatory examination of its investment advisory services for which it is licensed under Section 25230.

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

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

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

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

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

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

(y) The fee for filing a notice of transaction under subdivision (o) of Section 25102 shall be the fee for filing an application for qualification of the sale of securities by permit under paragraph (1) of subdivision (b) of Section 25113 as set forth in subdivision (e) of this section.

(z) The fee for filing a notice of transaction under subdivision (h) of Section 25103 shall be six hundred dollars (\$600).