



State Of California
Business, Transportation And Housing Agency
DEPARTMENT OF CORPORATIONS
California's Investment and Financing Authority

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California Corporations Commissioner

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**Requests for Variances From Compensatory Benefit Plan Regulations
Under the Corporate Securities Law of 1968**

On November 3, 2006, the Commissioner of Corporations published a notice of intent to amend the compensatory benefit plan regulations under the Corporate Securities Law of 1968 (Corporations Code Section 25000 et seq.). The proposed rulemaking action would amend the compensatory benefit plan rules in California Code of Regulations Sections 260.140.41, 260.140.42, 260.140.45 and 260.140.46 (10 C.C.R. §§ 260.140.41, 260.140.42, 260.140.45 & 260.140.46) to provide companies greater flexibility in crafting plans that meet the regulatory requirements of multiple jurisdictions.

The existing compensatory benefit plan rules may not be uniform and consistent with those in other states or in federal securities laws and may impose a burden on businesses seeking to create jobs and expand operations in California, thereby restricting the ability of Californians to participate in compensatory benefit plans.

Compensatory benefit plans play an important and positive role in the development of businesses; especially newer and emerging businesses that seek to utilize capital for growth rather than for individual compensation. These plans provide the opportunity for employees, officers, directors, consultants and others to participate in a company's growth. Options, when awarded and exercised in a lawful and proper manner, can serve as a powerful incentive for employees to enhance business growth and create shareholder value.

Many companies are now considering year-end grants of options to employees. As of the date of this release, however, the period for public comment on the pending rules has not closed, and the Commissioner has not adopted the proposed amendments. In

the interim, the Commissioner will exercise his authority under Corporations Code Section 25610 to waive certain requirements in the compensatory benefit plans seeking qualification pursuant to Corporations Code Section 25110.¹

The Commissioner will consider requests for variances from the existing compensatory plan rules, on a case-by-case basis, under the following circumstances:

1. The variance request accompanies an application for qualification filed on or before February 28, 2007;
2. The variance is not requested for a notice of exemption under Corporations Code Section 25102(o);
3. The applicant has not violated any statute or accompanying regulation of the Corporate Securities Law of 1968 within the past four years;
4. The variance requested is limited to the amendments proposed in the Commissioner's published compensatory benefit plan rulemaking action; and
5. The applicant represents that the granting of any options pursuant to the compensatory benefit plan will conform with all applicable corporate by-laws or comparable operating documents, and that the dates such options are issued are accurately reflected in the applicant's books, records and financial statements.

An applicant requesting a variance of any compensatory plan provision in Section 260.140.41, 260.140.42, 260.140.45, or 260.140.46 of Title 10, Chapter 3 of the California Code of Regulations should include the following in its cover letter: (1) that the applicant is requesting a rule variance pursuant to Corporations Code Section 25610, (2) the specific rules for which the applicant is seeking a variance, and (3) confirmation that the applicant's variance request complies with each of the requirements in items 1 through 5 above.

Preston DuFauchard
California Corporations Commissioner

¹ Under Corporations Code Section 25610, the Commissioner may waive any requirement of any rule, in situations where in his opinion such requirement is not necessary in the public interest or for the protection of investors.