

FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
CORPORATE SECURITIES ALW OF 1968

As required by Section 11346.2 of the Government Code, the California Corporations Commissioner ("Commissioner") sets forth below the reasons for the adoption of amendments to Sections 260.004, 260.017.1, 260.101, 260.102.14, 260.165, 260.210, 260.211, 260.230.1, 260.236, 260.236.1, 260.237.2, 260.240, and 260.241.3; and repeal of Sections 260.103.3 and 260.237.1 of Title 10 of the California Code of Regulations (10 C.C.R. Sections 260.004, 260.017.1, 260.101, 260.102.14, 260.103.3, 260.165, 260.210, 260.211, 260.230.1, 260.236, 260.236.1, 260.237.1, 260.237.2, 260.240, and 260.241.3).

This rulemaking action is based on a request by the Corporations Committee of the Business Law Section of the State Bar of California ("Committee"). By letter dated August 24, 2008, the Committee notified the Commissioner of the need for various technical corrections to several sections of the Code of Regulations administered by the Commissioner. The Committee explained the need for the changes and provided sample language to implement the changes, which the Commissioner has incorporated into this rulemaking action.

Based on a review of several sections of Title 10 the California Code of Regulations, the Commissioner has determined that a number of references and sections in the Code are either incorrect or outdated, and others have been rendered inapplicable as a result of the passage of time or revisions to other provisions in Title 10 of the California Code of Regulations or the Corporations Code (the "Code"). Consequently, the Commissioner is amending the following rules for the reasons set forth below.

The reasons for the changes are as follows:

Sections 260.102.14, 260.236.1, 260.237.2, and 260.241.3

These sections of the regulations are no longer accurate and therefore minor, technical, and clean up changes are necessary.

Section 260.004

The first sentence of Section 260.004(a) addresses securities exchanges that desire to be certified as excluded from the definition of a "broker-dealer" pursuant to "subdivision (d) of Section 25004" of the Code. However, Section 25004 of the Code does not contain a subdivision (d). The only reference to an "exchange" in Section 25004 of the Code appears in subdivision (a)(7) thereof, which provides that a "broker-dealer" does not include an exchange certified by the Commissioner pursuant to Section 25004 of the Code when it is issuing or guaranteeing options. Accordingly, the reference to "subdivision (d) of Section 25004" in the first sentence of Section 260.004(a) is replaced with "subdivision (a)(7) of Section 25004".

Section 260.004(b), which was adopted in 1975, refers to “a plan filed pursuant to Rule 9b-1 under the Securities Exchange Act of 1934”. The U.S. Securities and Exchange Commission (the “SEC”) adopted Rule 9b-1 in 1973 to require exchanges to file plans regulating transactions in options. (See Securities Exchange Act Release No. 10,552 (December 13, 1973).) But after the adoption of Section 260.004(b), the SEC repealed Rule 9b-1 because its procedures were largely duplicated by the new Section 19(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 19b-4 promulgated thereunder with respect to the filing of self-regulatory organizations' rule changes generally. (See Securities Exchange Act Release No. 11,604 (August 19, 1975).) In 1982, the SEC adopted a new Rule 9b-1 promulgated under the Exchange Act. This new rule was part of a package of new rules designed to make the disclosure of information about standardized options more meaningful to investors and less burdensome to registrants and others. Accordingly, Section 260.004(b) is amended to refer to “Rule 19b-4” rather than “Rule 9b-1” and reference a “filing” under it rather than a “plan” filed pursuant to it.

Sections 260.017.1 and 260.103.3

Section 260.017.1 defines the term “voting shares” as used in subdivision (f) of Section 25103 of the Code. Similarly, Section 260.103.3 refers to “the term ‘voting shares’ as used in subdivision (f) of Section 25103 of the Code”. Formerly, clause (1) of Section 25103 of the Code required qualification of any stock split or reverse stock split only if “the corporation ha[d] more than one class of *voting* shares outstanding” (italics added). As a result of amendments to Section 25103 of the Code enacted in 1976, the term “voting shares” no longer appears in Section 25103(f) of the Code. However, the term “voting shares” is included in Sections 260.105.6(b), 260.105.6(c) and 260.105.17(a)(4)(A). Accordingly, the reference to “Subsection (f) of Section 25103 of the Code” in Section 260.017.1 is replaced with references to Sections 260.105.6(b), 260.105.6(c) and 260.105.17(a)(4)(A) of the rules, and Section 260.103.3 is repealed.

Section 260.101

Section 260.101 addresses the exemption from qualification of securities issued by nonadmitted insurance companies. Specifically, this section provides that nonadmitted insurance companies that do not meet certain security holder or asset tests contained in Section 12(g)(1)(B) of the Exchange Act are not exempted from registration by Section 12(g)(2)(G) of the Exchange Act within the meaning of Section 25101(b) of the Code, and their securities are ineligible for exemption pursuant to Section 25101(b) of the Code from the provisions of Section 25130 of the Code. Prior to August 27, 1997, Section 25101(b) of the Code (“Former 25101(b)”) exempted from the provisions of Section 25130 of the Code securities issued by, among others, any person who was an issuer of any security registered under Section 12(g) of the Exchange Act or exempt from registration under Section 12 thereof by Section 12(g)(2)(G) of the Exchange Act, or any person that was registered under the Investment Company Act of 1940, subject to certain filing obligations. Effective August 27, 1997, the provisions constituting Former Section 25101(b) were deleted from the Code. (Chapter 391, Section 7, Statutes 1997.) As part of these amendments, a revised version of former Section 25101(c) of the Code that addresses the circumstances under which certain securities issued by a person that is an issuer of a

security listed on a national securities exchange, or on the National Market System of the Nasdaq Stock Market (or any successor to that entity), would not be exempt from the provisions of Section 25130 of the Code, was renumbered as Section 25101(b) of the Code. As a result of the 1997 amendments to Section 25101 of the Code, Section 260.101 has been rendered meaningless and is deleted in its entirety.

Section 260.165

Section 260.165 sets forth the form of consent to service of process. The form includes a form of notarial acknowledgment. California Assembly Bill 886 (Chapter 399, Statutes of 2007) was signed into law and makes several significant changes in current notarial law, including the amendment of California Civil Code Sections 1185 and 1189 as described below. Effective January 1, 2008, Section 1185 of the California Civil Code was amended to provide that the identity of the person making an acknowledgment may no longer be established by personal knowledge alone and instead must be established by specified documents or a credible witness who is personally known to the notary public and proves their identity by specified documents. The certificate of acknowledgment is now executed under penalty of perjury and must be in the form set forth in California Civil Code Section 1189. Accordingly, the “Acknowledgment” section of Section 260.165 is amended to conform to current law.

In addition, Section 260.165 is amended to provide that the consent to service of process under Corporations Code Section 26165 may be the consent included in the SEC’s Form D, or any consent included in an electronic filing. The SEC recently amended Regulation D and Form D, and the amended version of Form D now contains a consent to service of process that is similar to the consent contained in the current Form U-2. (See Securities and Exchange Commission Release Nos. 33-8891; 34-57280; 39-2453; IC-28145; File No. S7-12-07.) Under Sections 25102.1(d) and 25102(f) of the Corporations Code, securities issuers may file the federal Form D to provide the Commissioner with notice of these securities offerings. Because the amended version of Form D includes a consent to service of process, no separate state form is needed, and accordingly, the rule is revised to eliminate the separate consent form for electronic filings including a consent, and to provide a consent may be included in any electronic filing authorized by the Commissioner, in lieu of the form set forth in Section 260.165.

Section 260.210

Section 260.210(a) relating to agent procedures for broker-dealers refers to “the Uniform Application for Securities Industry Registration and Transfer Form (Revised 11/97) (‘Form U-4’)”. Pursuant to SEC Release No. 34–48161, July 10, 2003, effective July 14, 2003, as amended by SEC Release No. 34–48161A, July 16, 2003, effective July 14, 2003, the SEC changed the title of the Uniform Application for Securities Industry Registration or Transfer Form from “U-4” to “U4” (“Form U4”). The correct title of Form U4 is the “Uniform Application for Securities Industry Registration **or** Transfer Form” (bold added). In addition, in 2003, Section 25612.3 was added to the Code to mandate the use of Form U4. Accordingly, the reference to “the Uniform Application for Securities Industry Registration and Transfer Form (Revised 11/97) (‘Form U-4’)” in Section 260.210(a) is restated as “the Uniform Application for Securities Industry

Registration or Transfer Form ('Form U4'). In addition, the references to "Form U-4" appearing elsewhere in Section 260.210 and in Sections 260.236.1 and 260.241.3 are restated as "Form U4". In addition, Section 260.210(a) contains a reference to Section 260.141.1, which was repealed effective April 6, 2008. Accordingly, the reference to "Section 260.141.1" appearing in Section 260.210(a) is deleted.

Section 260.210(b)(4) refers to "the Uniform Termination Notice for Securities Industry Registration Form (Revised 11/97) ('Form U-5')". Pursuant to SEC Release No. 34- 48161, July 10, 2003, effective July 14, 2003, as amended by SEC Release No. 34- 48161A, July 16, 2003, effective July 14, 2003, the SEC changed the title of the Uniform Termination Notice for Securities Industry Registration Form from "U-5" to "U5" ("Form U5"). In addition, in 2003, Section 25612.3 was added to the Code to mandate the use of Form U5. Accordingly, the reference to "the Uniform Termination Notice for Securities Industry Registration Form (Revised 11/97) ('Form U-5')" in Section 260.210(b)(4) is restated as "the Uniform Termination Notice for Securities Industry Registration Form ('Form U5')". In addition, the references to "Form U-5" appearing elsewhere in Section 260.210 and in Section 260.236.1 is restated as "Form U5".

Section 260.211

Sections 260.211(a)(1)(A) and 260.211(b)(1)(B)5 refer to "Customer Authorization of Disclosure of Financial Records (Form QR 500.261 (1/00))". The State of California Department of Corporations Customer Authorization of Disclosure of Financial Records form is contained in Section 260.231(i). Accordingly, the references to "Customer Authorization of Disclosure of Financial Records (Form QR 500.261 (1/00))" in Sections 260.211(a)(1)(A) and 260.211(b)(1)(B)5 is restated as "Customer Authorization of Disclosure of Financial Records in Section 260.231(i) of these rules".

Section 260.230.1

Section 260.230.1(a) relating to notice filing requirements of registered investment advisors and Section 260.240(a) relating to consent to service of process each refer to "Form ADV (Uniform Application for Investment Adviser Registration), as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001". Effective April 7, 2006, the SEC adopted technical amendments to Form ADV. In addition, in 2003, Section 25612.3 was added to the Code to mandate the use of Form ADV. Accordingly, the references to "Form ADV (Uniform Application for Investment Adviser Registration), as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001" in Sections 260.230.1(a) and 260.240(a) are restated as "Form ADV (Uniform Application for Investment Adviser Registration).

Section 260.236

Section 260.236(c)(3)(A) relating to qualifications of investment advisors and investment adviser representatives refers to the "Association for Investment Management and Research" and Section 260.236(c)(3)(D) refers to the "Investment Counsel Association of America". On May 10, 2004, the Association for Investment Management and Research changed its name to the "CFA Institute". On April 19, 2005,

the Investment Counsel Association of America changed its name to the “Investment Adviser Association”. Accordingly, the reference to “Association for Investment Management and Research” in Section 260.236(c)(3)(A) is proposed to be restated as “CFA Institute”. In addition, the reference to “Investment Counsel Association of America” in Section 260.236(c)(3)(D) is restated as “Investment Adviser Association”.

Section 260.237.1

Pursuant to its terms, Section 260.237.1 became inoperative effective January 1, 2005. Therefore, Section 260.237.1 is deleted in its entirety. In addition, the introductory sentence of Section 260.237.2 is eliminated and the reference to Section 260.237.1 in Sections 260.241.3(a)(6) and 260.241.3(j) are deleted, as well as accompanying inoperative language.

Section 260.240

Section 260.240(b) relating to consent to service of process refers to “Form BD (Uniform Application for Broker-Dealer Registration), as amended by Securities and Exchange Commission Release No. 41594 (July 2, 1999), effective July 30, 1999”. Effective April 23, 2007, the SEC adopted technical amendments to Form BD, the uniform broker-dealer registration form pursuant to SEC Release No. 34-55643, dated April 19, 2007. In addition, in 2003, Section 25612.3 was added to the Code to mandate the use of Form BD. Accordingly, the reference to “Form BD (Uniform Application for Broker-Dealer Registration), as amended by Securities and Exchange Commission Release No. 41594 (July 2, 1999), effective July 30, 1999” in Section 260.240(b) is restated as “Form BD (Uniform Application for Broker-Dealer Registration).

DETERMINATION GOVERNMENT CODE SECTION 11346.9(2)

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

ALTERNATIVES CONSIDERED

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

ADDENDUM, REGARDING PUBLIC COMMENTS

No request for hearing was received during the 45-day public comment period, which ended on April 27, 2009. Accordingly, no hearing was scheduled or held.

COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

The Department received one public comment letter during the 45-day public comment period.

COMMENTOR: Letter dated April 13, 2009, from Corporations Committee of the Business Law Section of the State Bar of California.

COMMENT: Commentor recommends the Department amend Rule 260.165 to include the electronic Form D Consent to Service Process as a permissible consent service of process.

RESPONSE: the Department agrees with the Commentor and made the requested change.

COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

No written comments were received during the 15-day public comment period, which ended on June 17, 2009.

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