

THE CALIFORNIA CORPORATIONS COMMISSIONER HEREBY ADOPTS  
THE FOLLOWING CHANGES IN THE REGULATIONS UNDER THE  
CORPORATE SECURITIES LAW OF 1968  
AS SET FORTH IN CHAPTER 3, TITLE 10  
EFFECTIVE: OCTOBER 24, 2009

1. Amend Section 260.004 to read:

§ 260.004. Certification of Exchanges.

(a) Any exchange ~~which~~that desires to be certified as excluded from the definition of a "broker-dealer" pursuant to subdivision ~~(d)~~(a)(7) of Section 25004 of the Code shall file a written request for certification with the Commissioner. In addition to the most recent audited financial statement of the exchange, ~~such~~the request shall include the provisions of the governing documents of the exchange regarding the following:

(1) the rights and obligations imposed upon holders and writers of options;

(2) the requirements for approval of underlying stock and the issuers thereof;

(3) the limitations on the number of options covering a given stock which may be exercised by a holder or group of holders within a specified period;

(4) the limitations imposed upon the number of options which may be written, held or exercised by a single writer or investor, or group of investors;

(5) the restrictions on trading in options upon the occurrence of specified conditions;

(6) the requirements imposed upon members of the exchange, including net capital requirements, margin requirements applicable to accounts of member firms and their customers and recordkeeping requirements;

(7) the requirements imposed upon exchange members regarding the approval of a prospective customer's account, including information required as to the customer's investment objectives, financial status and needs; and

(8) the procedures for the suspension of members.

(b) To the extent that the matters specified in subsection (a) are set forth in an application for registration under the Securities Act of 1933 and/or in a ~~plan~~filed filing pursuant to Rule ~~9b-1~~

19b-4 under the Securities Exchange Act of 1934, a copy of such application and plan that filing should be filed in fulfilling the requirement of this section.

Note: Authority cited: Section 25610, Corporations Code. Reference: Sections 25004 and 25210, Corporations Code.

2. Amend Section 260.017.1 to read:

§260.017.1. Voting Stock.

The term "voting stock" as used in subdivision (f) of Section 25017 and the term "voting shares" as used in ~~subsection (f) of Sections 25103 of the Code~~ 260.105.6(b), 260.105.6(c) and 260.105.17(a)(4)(A) of these rules mean any stock presently entitling the owner or holder thereof to vote in elections of directors. Such terms do not include any security which entitles the owner or holder thereof to vote in elections of directors only upon the happening of an event or contingency which has not yet occurred.

Note: Authority cited: Section 25610, Corporations Code. Reference: Sections 25017 ~~and 25103~~, Corporations Code.

3. Section 260.101 is repealed:

~~§260.101. Insurance Company Securities.~~

~~A nonadmitted insurance company which does not meet the security holders or asset tests contained in Section 12(g)(1)(B) of the Securities Exchange Act of 1934 is not exempted from registration by Section 12(g)(2)(G) of that Act within the meaning of Subdivision (b) of Section 25101 of the Code and its securities for that reason are not eligible for exemption pursuant to Subdivision (b) of Section 25101 from the provisions of Section 25130 of the Code, even though it may be subject to the various state regulatory requirements referred to in Section 12(g)(2)(G) of the Securities Exchange Act of 1934.~~

~~Note: Authority cited: Section 25610, Corporations Code. Reference: Section 25101, Corporations Code.~~

4. Amend Section 260.102.14 to read:

§ 260.102.14. Limited Offering Exemption Notice of Transaction.

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

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

(2) Unless a notice is filed pursuant to paragraph (1), the notice shall be filed electronically through the Internet process made available by the Department ~~on~~ at [www.corp.ca.gov](http://www.corp.ca.gov). If the issuer claims the exception under subsection (f), the notice shall be in the form and contain the information specified by subsection (c) and in accordance with the instructions in subsection (d).

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

(c) Form of Notice. The following form is to be used for transactions covered by subsection (a)(2) that are subject to the hardship exception to electronic filing under subsection (f):

(Department of Corporations Use Only)

DEPARTMENT OF CORPORATIONS FILE NO., if any:

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

COMMISSIONER OF CORPORATIONS

STATE OF CALIFORNIA

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

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

**ELECTRONIC FILING REQUIREMENT AND HARDSHIP EXCEPTION:**

**This notice must be filed electronically through the Internet process made available by the Department of Corporations on ~~on~~ at [www.corp.ca.gov](http://www.corp.ca.gov), unless the issuer claims the hardship exception as described in Number 8 below.**

1. Name of Issuer:

\_\_\_\_\_

2. Address of Issuer:

\_\_\_\_\_

Street	City	State	Zip
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Mailing Address:

\_\_\_\_\_

Street	City	State	Zip
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3. Area Code and Telephone Number: \_\_\_\_\_

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

\_\_\_\_\_

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

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6. The value of the securities sold or proposed to be sold in the transaction, determined in accordance with

Corporations Code Sec. 25608(g) in connection with the fee required upon filing this notice, is (fee based on amount shown in line (iii) under "Total Offering"):

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

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

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

8. **Hardship Exception for electronic filing.** An issuer may file this paper notice in person or by mail only if either of the following exceptions apply. The issuer shall check applicable box and include the reason(s) and description(s) for the hardship exception in the space provided.

Computer equipment including hardware and software is unavailable to the issuer without unreasonable burden or expense. If this is the case, describe below both of the following; the reason(s) that the computer equipment including hardware and software is unavailable without unreasonable burden or expense, and the description(s) of the unreasonable burden or expense.

The issuer cannot obtain and provide information (including credit card or other identifying information) requested on the Department's electronic notice or through the Internet filing process. If this is the case, describe below both of the following: the reason(s) that the issuer cannot obtain and provide the requested information on the electronic notice or through the Internet filing process without unreasonable burden or expense, and the description(s) of the unreasonable burden or expense to the issuer to make the electronic filing.

After checking the applicable hardship exception above, the issuer shall describe below the reason(s) and description(s) for that hardship exception. (If additional space is needed, attach a separate sheet to this notice.)

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9. ( ) Check if issuer already has a consent to service of process on file with the Commissioner. (Instruction: Each issuer (other than a California Corporation) filing a notice under Section 25102(f) must file a consent to service of process (Form 260.165), unless it already has a consent to service on file with the Commissioner. If no consent to service of process is on file with the Commissioner, attach the consent to this notice.)

10. \_\_\_\_\_

Authorized Signature on behalf of issuer

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Print name and title of signatory

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Date

Name, Address and Phone number of contact person:

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

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

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

exemptions but only to provide notice to the ~~commissioner~~ Commissioner that the exemption is being relied on.

2. When to File Notice. The Notice must be filed with, or mailed to, the Commissioner within 15 calendar days after the first sale of a security in the transaction in this state. However, for purposes of determining the filing fee, a filing received before demand by the Commissioner shall be deemed filed as provided by rule of the Commissioner, provided that the obligation to file within 15 calendar days after the first sale of a security in the transaction in this state has not been intentionally disregarded. (See Corporations Code section 25102(f)(4).) The first sale in this state occurs when the issuer has obtained a contractual commitment in this state to purchase one or more of the securities the issuer intends to sell in connection with the transaction. No notice is required if none of the securities offered are purchased in this state. No subsequent notices are required for sales in connection with the same transaction. The information required by the form is to relate to the entire transaction, not just the first sale or sales in this state.

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

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

\$500,001 - \$1,000,000	\$150
Over \$1,000,000	\$300

Filing Fee: Each notice, whether under 25102(f) or Rule 260.103, must be accompanied by the filing fee required by Section 25608(c) of the Code as described above.

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

Item 1. Give the issuer's legal name.

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

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

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

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

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

Item 7. If the transaction was registered under the Securities Act of 1933, insert "~~registered.~~" "Registration Statement". If conducted pursuant to an exemption from registration under that Act which requires a filing with the Securities and Exchange

Commission, indicate the number of the rule pursuant to which such filing was made. If no such filing was ~~made required~~, insert "none."

Item 8. If the notice is not filed electronically through the Internet process made available by the Department at [www.corp.ca.gov](http://www.corp.ca.gov), then complete the hardship exception by checking the applicable box and describing the reason(s) and description(s) for the hardship exception, as specified.

Item 9. Consent to Service of Process. Corporations Code section 25165 requires each issuer, other than a California corporation, to file a consent to service of process with the notice filed pursuant to section 25102(f) unless it already has a consent to service on file with the Commissioner. If the issuer already has a consent to service of process on file with the Commissioner, check the box. If no consent to service of process is on file with the Commissioner, attach the consent to this notice. Use Form 260.165 (see Rule 260.165, Title 10, California Administrative Code of Regulations).

Item 10. Date, Signature and Contact. The notice shall be signed and dated by an authorized officer, director, general partner or trustee of the issuer (or a person occupying a position with the issuer of equivalent responsibility) or by the authorized attorney of the issuer. If the person the Department is to contact in the event of questions concerning the transaction or the notice is different than the signer, insert the contact person's name, telephone number and correspondence address in the spaces provided. Otherwise, provide this information with respect to the signer.

(e) Electronic Filing. An issuer shall file a notice electronically through the Internet process made available by the Department, except as provided in subdivision (f).

The following shall apply to any person filing electronically:

(1) In addition to the information requested in subsection (c), an issuer that files a notice electronically shall provide a Federal Employer Identification Number for the issuer and, if applicable, a Federal Employer Identification Number for a representative filing on behalf of the issuer.

(2) The instructions and explanations in subsection (d) are applicable to the same information requested through the electronic filing.

(3) An issuer (other than a California Corporation) filing a notice electronically shall file electronically an irrevocable consent appointing the Commissioner to be the issuer's attorney to receive service of process under Section 25165 of the Code.

(4) An issuer filing the notice electronically shall print a copy of the notice and manually sign and date the notice pursuant to the instructions in Item 8 of subsection (d). The notice shall be executed before or at the time the electronic filing is made and shall be retained by the issuer for a period of five years from the date of filing.

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

(6) An issuer filing the notice electronically shall pay the filing fee electronically by credit card. A notice is not deemed filed until the filing fee is submitted.

(f) Hardship exception for electronic filing. An issuer may file the paper notice in person or by mail only if: (1) computer equipment including hardware and software is unavailable to the issuer without unreasonable burden or expense, and the issuer describes in the notice both of the following: (A) the reason(s) that the computer equipment including hardware and software is unavailable without unreasonable burden or expense; and (B) the description(s) of the unreasonable burden or expense to the issuer to make the electronic filing; or (2) the issuer cannot obtain and provide information requested on the Department's electronic notice or through the Internet filing

process, and the issuer describes in the notice both of the following: (A) the reason(s) that the issuer cannot obtain and provide the requested information on the electronic notice or through the Internet filing process without unreasonable burden or expense; and (B) the description(s) of the unreasonable burden or expense to the issuer to make the electronic filing.

Note: Authority cited: Sections 25102, 25165 and 25610, Corporations Code.

Reference: Sections 25102, 25165, 25608 and 25620, Corporations Code.

5. Section 260.103.3 is repealed.

~~§260.103.3. Voting Shares.~~

~~For the meaning of the term "voting shares" as used in subdivision (f) of Section 25103 of the Code, see Section 260.017.1 of these rules.~~

~~Note: Authority cited: Section 25610, Corporations Code. Reference: Section 25103, Corporations Code.~~

6. Amend Section 260.165 to read:

§ 260.165. Consent to Service of Process.

The consent to service of process required by Section 25165 of the Code shall be either: (1) pursuant to the Uniform Consent to Service of Process (Form U-2), (2) pursuant to Form D (17 CFR 239.500) filed with the Commissioner in connection with the transaction, (3) included in an electronic submission of a filing, or (2)(4) in the following form:

TO THE COMMISSIONER OF CORPORATIONS OF  
THE STATE OF CALIFORNIA

CONSENT TO SERVICE OF PROCES

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned,

[ \_\_\_\_\_  
\_\_\_\_\_ (a corporation, partnership or limited liability company  
organized under the laws of the State of \_\_\_\_\_),

OR

\_\_\_\_\_ (an individual),

OR

\_\_\_\_\_ (other entity),]

hereby irrevocably appoints the Commissioner of Corporations of the State of California, or the Commissioner's successor in office, to be the undersigned's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the undersigned, or the undersigned's successor, executor, or administrator which arises under the Corporate Securities Law of 1968 or any rule or order thereunder after this consent has been filed, with the same force and validity as if served personally on the undersigned.

For the purpose of compliance with the Corporate Securities Law of 1968 of the State of California, notice of the service and a copy of the process should be sent by registered or certified mail to the undersigned at the following address:

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(Name and Address)

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Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
[Insert name of corporation,  
partnership, limited liability company  
or other entity]

By \_\_\_\_\_

Title \_\_\_\_\_

OR

[Insert name of individual]

\_\_\_\_\_

State of California )

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,

(Name of Notary)

personally appeared \_\_\_\_\_ (~~personally~~

(Here, insert Name and Title of the Officer)

~~known to me~~ OR who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Any certificate of acknowledgement taken in another ~~state~~place shall be sufficient in the State of California if it is taken in accordance with the laws of the place where the acknowledgment is made.

Note: Authority cited: Sections 25165 and 25610, Corporations Code. Reference:

Section 25165, Corporations Code and Section 1189, Civil Code.

7. Amend Section 260.210 to read:

§ 260.210. Agent Procedures for Broker-Dealers.

The procedures set forth in this section are applicable to broker-dealers licensed pursuant to subdivisions (a) and (b) of Section 25211 of the Code.

(a) Upon employment of an individual as an agent, a broker-dealer shall (1) obtain a properly executed application for registration, on the Uniform Application for Securities Industry Registration and Transfer Form (Revised 11/97) ("~~Form U-4~~"), or Transfer Form ("Form U4"), (2) obtain for its records, evidence that such agent meets the qualification requirements of Section 260.217 of these rules, and (3) ascertain (by investigation) the character, business reputation and experience of any individual, prior to executing any transaction on behalf of the broker-dealer. Evidence of compliance with Section 260.217 and investigation of the agent, shall be maintained as a part of the records of the broker-dealer as required by Sections 260.241 and ~~260.241.1~~ of these rules.

(b) A broker-dealer who registers its agents with ~~NASD, Inc. ("NASD")~~ Financial Industry Regulatory Authority, Inc. ("FINRA"), shall:

(1) Upon the employment of an individual as an agent, file the Form ~~U-4~~ U4, through the Central Registration Depository (the "CRD") of ~~NASD~~ FINRA in accordance with its procedures, and pay, for transmission to the Commissioner, the fees prescribed by Section 260.608.2(a) of these rules. The filing of Form ~~U-4~~ U4 with the CRD does not constitute an automatic "approval" through the CRD. Broker-dealers should not consider an agent "registration" through the CRD approved until approved by the Commissioner and the approval has been received through the CRD. If requested by the Commissioner, additional information, documentation or details pertaining to the Form ~~U-4~~ U4 or properly executed fingerprint information of the agent must be filed directly with the Commissioner within 15 days from the date of the request. In accordance with Section 250.16, the Form ~~U-4~~ U4 may be abandoned if the Commissioner does not receive the requested information within the time prescribed. The Commissioner shall "reject" through the CRD an abandoned Form ~~U-4~~ U4.

(2) An agent registered through the CRD may comply with the requirements of this subsection through participation in the "Relicensing" program (the Relicensing program was

formerly known as "Temporary Agent Transfer" or "TAT") adopted by the North American Securities Administrators Association ("NASAA"), provided that the agent is eligible and qualifies for registration through the Relicensing program and the broker-dealer has complied with all of the requirements of the Relicensing program with respect to the agent in a timely manner. Agent CRD registration through the Relicensing program shall not waive any rights of the Commissioner to proceed in any disciplinary proceeding or sanction provided for under the Code.

(3) File an amendment to the Form ~~U-4~~ U4 through the CRD within 30 days when there are any changes to the information contained in the original Form ~~U-4~~ U4. If the Form ~~U-4~~ U4 is being amended due to a disciplinary occurrence, a copy of the amendment shall be filed with the Commissioner upon request.

(4) Within 30 days after the termination of an individual as an agent, file the Uniform Termination Notice for Securities Industry Registration Form (~~Revised 11/97~~) ("~~Form U-5~~" ("Form U5") through the CRD. The Form ~~U-5~~ U5 shall clearly state the reason(s) for termination. However, if an agent has been terminated for cause, the Form ~~U-5~~ U5 shall, upon request, be filed directly with the Commissioner.

A broker-dealer shall be responsible for the acts, practices, and conduct of an agent in connection with the purchase or sale of securities until such time as they have been properly terminated and the Form ~~U-5~~ U5 has been filed with the CRD of ~~NASD~~ FINRA.

(c) A broker-dealer who is not subject to the provisions of subsection (b) shall:

(1) Upon the employment of an individual as an agent, file the Form ~~U-4~~ U4 with the Commissioner. The filing of Form ~~U-4~~ U4, with the Commissioner, does not constitute an automatic approval. Broker-dealers should not consider an agent registration approved until such approval has been received from this Department. If requested by the Commissioner, additional documentation or details pertaining to the Form ~~U-4~~ U4 must be filed directly with the

Commissioner within 15 days from the date of the request. In accordance with Section 250.16, the Form ~~U-4~~ U4 may be abandoned if the Commissioner does not receive the requested information within the time prescribed.

(2) File an amendment to the Form ~~U-4~~ U4 with the Commissioner within 30 days, when there are any changes to the information (including information relating to a disciplinary action) contained in the original Form ~~U-4~~ U4.

(3) Within 30 days after the termination of employment of an individual as an agent, file the Form ~~U-5~~ U5 with the Commissioner. The Form ~~U-5~~ U5 shall clearly state the reason(s) for termination. A broker-dealer shall be responsible for the acts, practices, and conduct of an agent in connection with the purchase or sale of securities until such time as they have been properly terminated and the Form ~~U-5~~ U5 has been filed with the Commissioner.

(4) If the fingerprints of an individual employed as an agent are not on file with the Commissioner, such broker-dealer shall file with the Form ~~U-4~~ U4 required under subsection (c)(1), fingerprint information pursuant to California Penal Code Section 11077.1 for such individual. Information about whether an individual's fingerprints are on file with the Commissioner may be obtained from any office of the Commissioner.

Note: Authority cited: Section 25610, Corporations Code. Reference: Sections 25210, 25213, 25213.3, ~~and~~ 25217 and 25612.3, Corporations Code; and Section 11077.1, Penal Code.

8. Amend Section 260.211 to read:

§ 260.211. Application for Broker-Dealer Certificate.

(a) For any broker-dealer that participates in the Central Registration Depository ("CRD"), the application for a certificate as a broker-dealer shall be filed as follows:

(1) INITIAL APPLICATION: The application for a certificate as a broker-dealer pursuant to subsection (a) of Section 25211 of the Code and an amendment to such application

pursuant to Section 260.241.4 shall be filed upon Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. s 249.501) in accordance with the form instructions and by filing the form with CRD for transmission to the Commissioner.

(A) An applicant that files an application through CRD shall complete a Customer Authorization of Disclosure of Financial Records (~~Form QR 500.261 (1/00)~~, set forth in section 260.231(i) of these rules, ~~hereby incorporated by reference~~) and maintain the form in the applicant's books and records as provided in Section 25241 of the Code. The applicant shall provide the form to the Commissioner upon request.

(B) Upon reviewing the application, the Commissioner may require the applicant to submit the following information:

1. A balance sheet as of a date within 45 days prior to the filing of the application, which need not be audited. If the balance sheet is not audited, the applicant shall file, in addition, an audited balance sheet as of the end of applicant's last fiscal year.

2. A calculation of the net capital and the ratio of net capital to aggregate indebtedness of the applicant, in accordance with Section 260.216.12 of these rules, as of the same date as the balance sheets submitted under paragraph (B)1. above.

3. Copies of all currently effective subordination agreements. If any are substantially similar, attach one copy of the most standard form(s) and a schedule(s) showing the name and address of each lender and the dollar value of the subordinated items on each agreement.

(C) The Commissioner may request additional information, documentation or detail pertaining to Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. § 249.501) to be filed directly with the Commissioner.

(2) FILING FEE: The fee for filing an initial application is \$300 as prescribed in Section

25608(o) of the Code. The applicant shall remit the fee directly with CRD in accordance with its procedures for transmission to the Commissioner. Fees are not refundable except pursuant to Section 250.15 of these rules.

(3) COMPLETION OF FILING: For the purposes of Sections 250.51, an application for a certificate as a broker-dealer is not deemed filed until the required fee and all required submissions are received by the Commissioner. The filing of Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. § 249.501) with CRD does not constitute automatic approval. The broker-dealer shall not consider the application approved until approved by the Commissioner and the approval is received through CRD.

(b) For any broker-dealer that does NOT participate in the CRD, the application for a certificate as a broker-dealer shall be filed as follows:

(1) INITIAL APPLICATION: The application for a certificate as a broker-dealer pursuant to subsection (a) of Section 25211 of the Code and an amendment to such application pursuant to Section 260.241.4(a) of these rules shall be filed upon Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. § 249.501) in accordance with the form instructions and by filing the form directly with the Commissioner at the Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052. In addition to Form BD, the application shall include the additional documentation prescribed in subsections (b)(1)(A) through (b)(1)(D) of this rule.

(A) Financial Statements:

1. Attach a balance sheet as of a date within 45 days prior to the filing of the application, which need not be audited. If the balance sheet is not audited, the applicant shall file, in addition, an audited balance sheet as of the end of applicant's last fiscal year.

2. Attach a calculation of the net capital and the ratio of net capital to aggregate indebtedness of the applicant, in accordance with Section 260.216.12 of these rules, as of the same date as the balance sheets submitted under paragraph (A)1. above.

3. Attach copies of all currently effective subordination agreements. If any are substantially similar, attach one copy of the most standard form(s) and a schedule(s) showing the name and address of each lender, and the dollar value of the subordinated items on each agreement.

4. Furnish the date applicant's fiscal year ends.

5. Furnish applicant's minimum net capital requirement.

A broker-dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 may file a copy of its most recent annual report of financial condition and its most recent quarterly financial report required under 17 CFR 240.17a-5 in lieu of paragraphs (A)1. and (A)2. above.

(B) Organizational Information and Other Exhibits.

1. If applicant is a corporation, attach copies of articles, by-laws, amendments and certification.

2. If applicant is a partnership, attach partnership agreement and amendments.

3. If applicant is a limited liability company, attach copies of its articles of organization and amendments.

4. If applicant will conduct business under a fictitious name, attach a certified copy of the Fictitious Business Name Statement required by Business and Professions Code Section 17910.

5. Attach a completed Customer Authorization of Disclosure of Financial Records (~~Form QR 500.261 (1/00)~~, set forth in Section 260.231 (i) of these rules, hereby incorporated by reference).

(C) Exhibits Required by Applicants Not Registered Under The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or Applicants Whose Agent Records are not on File with CRD.

1. Attach a statement demonstrating compliance with the examination requirements of Section 260.217 of these rules.

2. Attach fingerprint information pursuant to California Penal Code Section 11077.1 for each person listed on Schedule A, B or C of Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. § 249.501).

(D) The Commissioner may request additional information, documentation or detail pertaining to Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. § 249.501) to be filed with the Commissioner.

(2) FILING FEE: The fee for filing an initial application is \$300 as prescribed in Section 25608(o) of the Code. Checks shall be made payable to the DEPARTMENT OF CORPORATIONS. Fees are not refundable except pursuant to Section 250.15 of these rules.

(3) COMPLETION OF FILING: For the purposes of Sections 250.51 of these rules, an application for a certificate as a broker-dealer is not considered filed until the required fee and all required submissions are received by the Commissioner.

(c) AMENDMENTS TO FORM BD: Any amendments to Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. § 249.501) shall be filed pursuant to Section 260.241.4 of these rules.

(d) ANNUAL ASSESSMENT: The annual assessment shall consist of the fee prescribed in Section 25608(o) of the Code. The minimum assessment of \$75 shall be filed through CRD in accordance with its procedures by the 31st of December for transmission to the Commissioner. This fee shall keep the certificate in effect for an additional period. Broker-dealers not filing through CRD shall pay the minimum assessment of \$75 directly to the Commissioner by the 31st of December.

(e) SUCCESSIONS: In the event that a broker-dealer succeeds to and continues the business of a broker-dealer holding a current certificate, both the predecessor broker-dealer and the successor broker-dealer shall follow Rule 15b1-3 under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15b1-3) for the filing of Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. § 249.501), an amendment to Form BD, or Form BDW (Uniform Application for Broker-Dealer Withdrawal, 17 C.F.R. § 249.501a), as applicable. Form BD shall be filed in the manner set forth in subsection (a) or (b) of this section, as applicable. An amendment to Form BD shall be filed in the manner set forth in subsection (c) of this section. Form BDW shall be filed in the manner set forth in Section 260.242 of these rules.

Note: Social Security Account Numbers: In accordance with Section 7 of the Privacy Act of 1974 (PL. 93-579), the following information is provided in connection with the disclosure of a social security account number in the Schedules to Form BD (Uniform Application for Broker-Dealer Registration, 17 C.F.R. § 249.501).

Disclosure of a social security account number shall be considered a voluntary disclosure, except as provided below. A social security account number is solicited pursuant to one or more of the following authorities:

Section 25211, Corporations Code.

Section 260.211, Title 10, California Code of Regulations.

Section 17520, Family Code.

Uses to be made of social security account numbers solicited by Form BD and the Schedules thereto are:

A. For all persons disclosing a social security account number, the number may be used, in addition to other information provided, to conduct a background investigation of the individual by the Department of Justice's Identification and Information Branch or by other

federal, state or local law enforcement agencies. The social security number may also be used to respond to requests for this number made by child support agencies.

B. The completed form, except any disclosed social security account numbers, shall become a public record and available to members of the public pursuant to the provisions of the Public Records Act (Government Code Sections 6250 et seq.).

Note: Authority cited: Sections 25211 and 25610, Corporations Code. Reference: Section 1798.17, Civil Code; Sections 25210, 25211, 25216, 25217, 25241, 25608, 25612.3, 25612.5 and 25613, Corporations Code; Section 17520, Family Code; and Section 11077.1, Penal Code.

9. Amend Section 260.230.1 to read:

§ 260.230.1. Notice Filing Requirements for Investment Advisers Registered Under Section 203 of the Investment Advisers Act of 1940.

(a) Initial notice: A person subject to subsection (a) of Corporations Code Section 25230.1 shall file an initial notice consisting of 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, and hereby incorporated by reference)~~, (17 CFR 279.1) in accordance with the instructions in Form ADV within thirty (30) days of conducting business in the state. The notice shall be deemed filed when the fee required by Section 25608.1(d) and Form ADV are filed with and accepted by IARD on behalf of this state.

(b) Portions of Form ADV not yet accepted by IARD: If an investment adviser agrees to provide, within five (5) days of a request, Part 2 of Form ADV to the Commissioner, an investment adviser is not required to file Part 2 of Form ADV with the Commissioner until IARD provides for the filing of Part 2 of Form ADV.

(c) Annual renewal: The notice expires December 31st unless renewed. The annual renewal shall be filed with IARD in accordance with its procedures. The renewal of the notice filing shall be deemed filed when the fee required by Section 25608.1(d) is filed with and accepted by IARD on behalf of the state.

(d) Amendments to Form ADV: Any changes to the information contained in Form ADV shall be filed with IARD in accordance with the instructions in Form ADV.

(e) Investment Adviser Representatives: Each investment adviser representative, as defined in Section 25009.5(b) of the Code, with a place of business in the state shall be reported in the manner prescribed in Section 260.236.1(b) of these rules.

(f) Switching to state registration: Upon the filing of Form ADV-W (Notice of Withdrawal from Registration as an Investment Adviser, ~~as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001, and hereby incorporated by reference~~) withdrawing registration with the Securities and Exchange Commission under the Investment Advisers Act of 1940, an investment adviser may not conduct business in this state as an investment adviser until the investment adviser has secured a certificate from the Commissioner or unless the investment adviser is otherwise exempt. An investment adviser may file an application for an investment adviser certificate in accordance with the instructions in Section 260.231 prior to the date the investment adviser's registration with the Securities and Exchange Commission is subject to termination.

Note: Authority cited: Sections 25230.1, 25610 and 25612.5, Corporations Code.

Reference: Sections 25230.1, 25231, 25608.1(d), 25612.3 and 25612.5, Corporations Code.

10. Amend Section 260.236 to read:

§ 260.236. Qualifications of Investment Advisers and Investment Adviser Representatives.

References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in Section 25009.5(a) and (b) of the Code.

(a) Qualification Requirements. An investment adviser and each investment adviser representative shall pass, within two years prior to the date of filing the application for an investment adviser certificate or becoming engaged as an investment adviser representative:

(1) the Series 65/Uniform Investment Adviser Law Examination in effect on January 1, 2000 ("2000 Series 65 Examination"), or

(2) the Series 7/General Securities Representative Examination ("Series 7 Examination") and the Series 66/Uniform Combined State Law Examination ("2000 Series 66 Examination").

(b) Waivers: The requirements of subsection (a) do not apply to:

(1) Any investment adviser or individual employed or engaged as an investment adviser representative registered, reported or licensed in any state of the United States as of December 31, 1999. However, the Commissioner may require additional examinations for any individual found to have violated the Corporate Securities Law of 1968 or the rules promulgated thereunder.

(2) Any investment adviser or investment adviser representative who has been actively and continuously engaged in the securities business as a broker-dealer, an agent of a broker-dealer, an investment adviser, or an investment adviser representative without substantial interruption (two or more years) since passing the qualifying examination(s) and who has:

(A) passed the Series 2 Examination (SEC/NASD/FINRA Nonmember General Securities Examination) or passed the Series 7 Examination before January 1, 1998, or

(B) passed the Series 65 Examination or Series 66 Examination before January 1, 2000 and has passed the Series 7 Examination.

(c) Exemptions. Subsection (a) shall not apply to:

(1) any individual who has been registered as an investment adviser or employed or engaged as an investment adviser representative in any state for two consecutive years immediately before the date of filing an application or notice pursuant to Corporations Code Section 25230(b) or 25230.1(c) in this state. This provision shall not apply to an individual using the exemption in subsection (c)(2).

(2) any investment adviser representative employed by or engaged by an investment adviser only to offer or negotiate for the sale of investment advisory services of the investment adviser.

(3) any individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst ("CFA") granted by the ~~Association for Investment Management and Research~~ CFA Institute;

(B) Chartered Financial Consultant ("ChFC") awarded by The American College, Bryn Mawr, Pennsylvania;

(C) Certified Financial Planner ("CFP") issued by the Certified Financial Planner Board of Standards, Inc.;

(D) Chartered Investment Counselor ("CIC") granted by the ~~Investment Counsel~~ Adviser Association of America; or

(E) Personal Financial Specialist ("PFS") administered by the American Institute of Certified Public Accountants.

(d) An individual who has not been registered in any state for a period of two years shall be required to comply with the examination requirements of this rule. This provision shall not apply to an individual using the exemption in subsection (c)(2) or (c)(3).

Note: Authority cited: Sections 25236(a) and 25610, Corporations Code. Reference: Sections 25230, 25230.1 and 25236, Corporations Code.

11. Amend Section 260.236.1 to read:

§ 260.236.1. Reporting Requirements for Investment Adviser Representatives.

(a) The procedures set forth in this subsection are applicable to investment advisers licensed pursuant to Section 25230 of the Code. References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in Section 25009.5(a) of the Code.

(1) Upon employment of an individual as an investment adviser representative, the investment adviser shall:

(A) Obtain a properly executed application for registration, Form ~~U-4~~ U4,

(B) Obtain for its records evidence that such investment adviser representative meets the qualification requirements of Section 260.236 of these rules, and

(C) Have the responsibility and duty to ascertain by reasonable investigation the good character, business reputation, qualifications, and experience of an individual upon employment or engagement as an investment adviser representative. Where an individual has previously been reported to the Central Registration Depository ("CRD"), the investment adviser shall obtain and review a copy of Form ~~U-5~~ U5 filed with CRD by such individual's most recent previous employer, together with any amendments thereto.

The investment adviser shall conduct the investigation required by this section no later than thirty (30) days following the filing of Form ~~U-4~~ U4 with CRD, or demonstrate that it has made a reasonable effort to comply with this section. Upon completion of the investigation, the investment adviser shall take whatever action is deemed appropriate in accordance with sound business practice and the protection of investors.

Evidence of compliance with Section 260.236 and investigation of the investment adviser representative shall be maintained as a part of the records of the investment adviser as required by Section 260.241.3 of these rules.

(2) Upon employment or engagement of an individual as an investment adviser representative, the investment adviser shall file Form ~~U-4~~U4 with CRD in accordance with its procedures, and pay the fee prescribed by Section 25608(p) for transmission to the Commissioner. Form ~~U-4~~U4, including any Disclosure Reporting Page(s), shall be completed in accordance with the form instructions. The filing of Form ~~U-4~~U4 with CRD does not constitute an automatic "approval" of the filing by the Commissioner. Investment advisers shall not consider an investment adviser representative "registration" with CRD approved until approved by the Commissioner and the approval has been received by CRD. If requested by the Commissioner, additional information, documentation or detail pertaining to Form ~~U-4~~U4 or the investment adviser representative's compliance with the qualification requirements shall be filed directly with the Commissioner within 15 days from the date of the request. In accordance with Section 250.16, Form ~~U-4~~U4 may be abandoned if the Commissioner does not receive the requested information within the time prescribed. The Commissioner shall "reject" with CRD an abandoned Form-~~U-4~~U4.

(3) Within thirty (30) days of any changes to the information contained in Form ~~U-4~~U4 an amendment to Form ~~U-4~~U4 shall be filed with CRD. If Form ~~U-4~~U4 is being amended due to a disciplinary occurrence, a copy of the amendment shall be filed with the Commissioner upon request.

(4) Within thirty (30) days after the termination of an individual as an investment adviser representative, Form ~~U-5~~U5 shall be filed with CRD in accordance with the form instructions. Form ~~U-5~~U5 shall clearly state the reason(s) for termination. If an investment adviser representative has been terminated for cause, Form ~~U-5~~U5 shall, upon request, be filed directly with the Commissioner.

An investment adviser shall be responsible for the acts, practices, and conduct of an investment adviser representative in connection with acting as an investment adviser

representative on its behalf until such time as the investment adviser representative has been terminated and Form ~~U-5U5~~ has been filed with CRD. No civil liability in favor of any private party shall arise against any person as a result of this provision, except as expressly provided in the Code.

(b) The procedures set forth in this subsection are applicable to investment adviser representatives subject to the provisions of Section 25230.1(c) of the Code.

(1) The reporting of an investment adviser representative shall be made by completing Form ~~U-4U4~~ in accordance with the form instructions and by filing Form ~~U-4U4~~ with CRD in accordance with its procedures, and by paying the fee prescribed by Section 25608.1(d) for transmission to the Commissioner.

The filing of Form ~~U-4U4~~ with CRD does not constitute an automatic "approval" of the filing by the Commissioner. An investment adviser representative "registration" with CRD shall not be considered approved until approved by the Commissioner and the approval has been received by CRD. If requested by the Commissioner, additional information, documentation or detail pertaining to Form ~~U-4U4~~ or the investment adviser representative's compliance with the qualification requirements shall be filed directly with the Commissioner within 15 days from the date of the request. In accordance with Section 250.16, Form ~~U-4U4~~ may be abandoned if the Commissioner does not receive the requested information within the time prescribed. The Commissioner shall "reject" with CRD an abandoned Form ~~U-4U4~~.

(2) Within thirty (30) days of any changes to the information contained in Form ~~U-4U4~~, an amendment to Form ~~U-4U4~~ shall be filed with CRD. If Form ~~U-4U4~~ is amended due to a disciplinary occurrence, a copy of the amendment shall be filed directly with the Commissioner upon request.

(3) Within thirty (30) days after the termination of an individual as an investment adviser representative, Form ~~U-5U5~~ shall be filed with IARD in accordance with the form instructions.

Form ~~U-5U5~~ shall clearly state the reason(s) for termination. If an investment adviser representative is terminated for cause, Form ~~U-5U5~~ shall, upon request, be filed directly with the Commissioner.

(c) The notices in subsection (j) of Section 260.231 are hereby made part of Form ~~U-4U4~~ and Form ~~U-5U5~~.

Note: Authority cited: Sections 25230, 25230.1, 25231 and 25610, Corporations Code.  
Reference: Sections 25230, 25230.1, 25231, 25236, 25241, 25510, 25608(p), 25612.3 and 25612.5, Corporations Code.

12. Section 260.237.1 is repealed:

~~§ 260.237.1. Alternative Minimum Financial Requirements (Until 1/1/05).~~

~~An investment Adviser licensed prior to 03/01/03 may comply with either the minimum financial requirements in this section or in Section 260.237.2 until January 1, 2005, at which time this section shall become inoperative and an investment adviser shall comply with the minimum financial requirements in Section 260.237.2.~~

~~(a) No investment adviser who has any power of attorney from any investment advisory client to execute transactions or has regular or periodic custody of any of its investment advisory clients' securities or funds, including fees for periodic publications or other investment advisory services paid six months or more in advance of the services, shall permit its total aggregate indebtedness to exceed 500% of its tangible net capital or permit its current aggregate indebtedness to exceed its current net capital; and,~~

~~(1) The investment adviser shall at all times have and maintain tangible net capital of not less than \$25,000.00; or,~~

~~(2) If the investment adviser has any power of attorney from any investment advisory client to execute transactions and does not have regular or periodic custody or possession of any of its investment advisory clients' securities or funds, except the receipt of prepaid~~

~~subscriptions for periodic publications, or other investment advisory services, it shall at all times have and maintain tangible net capital of not less than \$5,000.00; or,~~

~~(3) If the investment adviser receives fees for periodic publications or other investment advisory services paid six months or more in advance of the services and it does not have the authority described in subsection (a)(2) of this section or does not otherwise have regular or periodic custody or possession of any of its investment advisory clients' securities or funds, it shall at all times have and maintain tangible net capital of not less than \$1,000.00.~~

~~(b) Exemptions.~~

~~(1) The provisions of subsection (a) of this section shall not apply to any investment adviser licensed as a broker-dealer under Section 25210 of the Code and subject to the capital requirements of Section 260.216.12 of these rules.~~

~~(2) The Commissioner may, upon written application, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any investment adviser who satisfies the Commissioner that, because of the special nature of the investment adviser's business, its financial position, and the safeguards it has established for the protection of clients' funds and securities, it is not necessary in the public interest or for the protection of investors to subject the particular investment adviser to the provisions of this section.~~

~~(c) Definitions. For the purposes of subsection (a) of this section, all financial information shall be determined in accordance with generally accepted accounting principles; and,~~

~~(1) The term "tangible net capital" shall mean the net worth of the investment adviser, after excluding~~

~~(A) intangible assets and~~

~~(B) indebtedness which is subordinated to the claims of creditors pursuant to a satisfactory subordination agreement as hereinafter defined;~~

~~(2) The term "total aggregate indebtedness" shall mean the total money liabilities of the investment adviser including all unearned income and other deferred credits and excluding indebtedness which is subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as hereinafter defined;~~

~~(3) The term "current net capital" shall mean the current assets of the investment adviser and~~

~~(A) includes all unpledged, readily marketable securities and~~

~~(B) excludes all advances, loans or other receivables from any subsidiary, holding company, parent, or other affiliate or the officers, directors or controlling persons of such entities or the investment adviser;~~

~~(4) The term "current aggregate indebtedness" shall mean the sum of~~

~~(A) 20% of the deferred or unearned income from receipts or revenues received on subscriptions for future periods and~~

~~(B) the total of all other current liabilities;~~

~~(5) The term "satisfactory subordination agreement" shall mean a written agreement duly executed by the investment adviser and the lender which effectively subordinates any right of the lender to demand or receive payment or return of the cash or securities loaned to the claims of all present and future creditors of the investment adviser. The agreement shall provide that the cash or securities are loaned for a term of not less than one year and shall be in the form approved by the Commissioner.~~

~~(d) The computation of "total aggregate indebtedness," "tangible net capital," "current net capital," and "current aggregate indebtedness" shall include the consolidation of assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities. The assets and liabilities of any subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed, directly or~~

~~indirectly, by the investment adviser shall not be so consolidated and the investment shall be valued at the underlying tangible value of the equity in such subsidiary or affiliate.~~

~~Note: Authority cited: Sections 25237 and 25610, Corporations Code. Reference:~~

~~Section 25237, Corporations Code.~~

13. Amend Section 260.237.2 to read:

§ 260.237.2. Minimum Financial Requirements.

~~An investment adviser licensed prior to 03/01/03 may comply with either the minimum financial requirements in this section or in Section 260.237.1 until January 1, 2005, at which time Section 260.237.1 shall become inoperative and an investment adviser shall comply with the minimum financial requirements in this section.~~

(a) Every investment adviser who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(b) Every investment adviser who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth.

(c) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser shall, by the close of business on the next business day following the discovery that the investment adviser's net worth is less than the minimum required, notify the Commissioner that the investment adviser's net worth is less than the minimum required. After transmitting such notice, by the close of business on the next business day each investment adviser shall file a report with the Commissioner of its financial condition, including the following:

(1) A trial balance of all ledger accounts;

(2) A statement of all client funds or securities which are not segregated;

(3) A computation of the aggregate amount of client ledger debit balances; and

(4) A statement as to the number of client accounts.

(d) For purposes of this rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(e) For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(f) For purposes of this rule, an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if

(1) the investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that the investment adviser must secure client permission prior to effecting securities transactions for the client in the client's brokerage account(s), and

(2) the investment adviser in fact does not exercise discretion with respect to the account, and

(3) a third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(g) The Commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.

(h) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

(i) This section shall not apply to an investment adviser that has secured a certificate as a broker-dealer from the Commissioner under Section 25210 of the Code.

(j) For purposes of subsection (c) of this rule, if the failure to discover that an investment adviser's net worth is less than the minimum required is the result of the investment adviser's failure to keep true, accurate and current the books and records required under Section 260.241.3, the investment adviser will be deemed to have discovered that the investment adviser's net worth is less than the minimum required by this section.

Note: Authority cited: Sections 25237 and 25610, Corporations Code. Reference: Sections 25237 and 25613, Corporations Code.

14. Amend Section 260.240 to read:

§ 260.240. Consent to Service of Process

(a) An investment adviser's electronic signature on the Execution Page of 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, and hereby incorporated by reference~~) (17 CFR 279.1), filed with the Investment Adviser Registration Depository ("IARD"), shall constitute the consent to service of

process required under Section 25240 of the Code. If an investment adviser has not filed Form ADV with IARD, then the consent to service of process required by Section 25240 of the Code shall be the investment adviser's written signature on the Execution Page of Form ADV filed with the Commissioner.

(b) A broker-dealer's electronic signature on the Execution Page of 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, and hereby incorporated by reference~~) (17 CFR 249.501) in the Central Registration Depository ("CRD") shall constitute the consent to service of process required under Section 25240 of the Code. If the broker-dealer does not file its Form BD with CRD, then the consent to service of process required by Section 25240 of the Code shall be the broker-dealer's written signature on the Execution Page of Form BD filed with the Commissioner.

Note: Authority cited: Sections 25240, 25610 and 25612.5, Corporations Code.

Reference: Section 1633.7, Civil Code; and Sections 25211, 25231, 25240, 25612.3 and 25612.5, Corporations Code.

15. Amend Section 260.241.3 to read:

§ 260.241.3. Books and Records to Be Maintained by Investment Advisers.

(a) Every licensed investment adviser shall make and keep true, accurate and current the following books and records relating to such person's investment advisory business:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client

concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate.

Orders entered pursuant to the exercise of a power of attorney shall be so designated.

(4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements, worksheets that contain computations of minimum financial requirements required under ~~Section 260.237.1~~ or Section 260.237.2, as applicable, of these rules, and internal audit working papers relating to the business of such investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security; provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and provided that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the

persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record of all accounts in which the investment adviser is vested with any power of attorney with respect to the funds, securities or transactions of any client.

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such

record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

For purposes of this subsection (12):

(A) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with such person's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (i) any person in a control relationship to the investment adviser, (ii) any affiliated person of such controlling person and (iii) any affiliated person of such affiliated person.

(B) The term "control" shall mean the power to exercise a controlling influence over the management and policies of a person, unless such power is solely the result of an official position with such person.

An investment adviser shall not be deemed to have violated the provisions of this subsection (12) because of its failure to record securities transactions of any advisory representative if it establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded

(13) Notwithstanding the provisions of subsection (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

For the purposes of this subsection (13):

(A) The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with its duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such

recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations of the information concerning such recommendations:

(i) any person in a control relationship to the investment adviser, (ii) any affiliated person of such controlling person and (iii) any affiliated person of such affiliated person.

(B) The term "control" shall mean the power to exercise a controlling influence over the management and policies of a person, unless such power is solely the result of an official position with such person.

(C) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from other business or businesses.

An investment adviser shall not be deemed to have violated the provisions of this subsection (13) because of such person's failure to record securities transactions of any advisory representative if it establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded

(14) A properly completed and executed Customer Authorization of Disclosure of Financial Records (Section 260.231(i)).

(15) If the investment adviser is an individual owner (e.g., sole proprietorship), a properly completed and executed Statement of Citizenship, Alienage, and Immigration Status form (Section 250.61) and any documents establishing proof thereof.

(16) Evidence of compliance with Section 260.236 and the investigation of each investment adviser representative

(17) For investment advisers filing through IARD, copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form ~~U-4~~U4.

(b) If a licensed investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept under Subsection (a) above shall include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

(2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase or sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any such client.

(4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount of interest of each such client, and the location of each such security.

(c) Every licensed investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase or sale.

(2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount of the interest of such client.

(d) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e)(1) All books and records required to be made under the provisions of subsections (a) to (c)(1), inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

(2) Charter documents, minute books and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(f) A licensed investment adviser, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commissioner in writing of the exact address where such books and records will be maintained during such period.

(g)(1) The records required to be maintained and preserved pursuant to this rule may be produced or reproduced by photograph on film or, as provided in paragraph (g) (2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(A) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

(B) be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commissioner, the Commissioner's examiners or other representatives of the Commissioner may request;

(C) store separately from the original one other copy of the file or computer storage medium for the time required;

(D) with respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and

(E) with respect to records stored on photographic film, at all times have available for examination by the Commissioner, the Commissioner's examiners or other representatives of the Commissioner its records pursuant to Section 25241 of the Code facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to subsection (g) (1) an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h)(1) Any book or other record made, kept, maintained and preserved in compliance with sections 260.241 and 260.241.1 of these rules, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall satisfy the requirements of this section.

(2) A record made and kept pursuant to any provision of subsection (a) of this section, which contains all the information required under any other provision of subsection (a), need not be maintained in duplicate in order to meet the requirements of the other provision of subsection (a) of the section.

(i) As used in this section, the terms "power of attorney" and "discretionary authority" do not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(j) Any investment adviser who is subject to the minimum financial requirements of ~~Section 260.237.1 or Section 260.237.2, as applicable,~~ shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of ~~net capitals and aggregate indebtedness pursuant to Section 260.237.1 of these rules or~~ minimum net worth pursuant to Section 230.237.2 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month.

Note: Authority cited: Sections 25241 and 25610, Corporations Code. Reference: Sections 25230, 25236, 25237, 25241 and 25613, Corporations Code.