

FINAL STATEMENT OF REASONS
FOR PROPOSED ACTION UNDER THE
CORPORATE SECURITIES LAW OF 1968

As required by Section 11346.2(b) of the Government Code, the Commissioner of Corporations ("Commissioner") sets forth below the final statement of reasons for the proposed amendments to Section 260.102.14 of Title 10 of the California Code of Regulations (10 C.C.R. Section 260.102.14).

The Corporate Securities Law of 1968 (the "CSL," Corporations Code Section 25000, et seq.) requires the offer or sale of securities in this state to be either qualified, exempt from qualification, or not subject to qualification. Section 25102(f) of the Corporations Code sets forth an exemption from the qualification requirement for transactions where (1) the sale is to 35 or fewer persons, (2) each purchaser has a preexisting relationship with the securities issuer or business or financial experience to protect his or her own interests, (3) each purchaser represents the purchase is for that person's own account, (4) the offer or sale is not accomplished through advertising, and (5) the issuer files a notice with the Department of Corporations ("Department") within the time specified by the rule of the Commissioner.

Rule 260.102.14 provides instructions on the filing of the notice, requires the notice to be filed no later than 15 calendar days after the first sale of a security in the transaction in this state, and sets forth a form for the notice. Section 25102(f) of the Corporations Code provides that the exemption is not lost by the failure to file the notice as set forth by rule of the Commissioner, but upon demand by the Commissioner for the notice an issuer must file the notice and pay an alternative fee within 15 business days. The alternative fee is the fee required for the qualification of a security offering (Corporations Code Section 25608(e)). In response to the prevalent disregard of the obligation to file the notice and the ambiguity of the requirement to file after the initial 15 calendar days but before demand by the Commissioner, AB 1031 (Chap. 473, Stats. 2003) amended Section 25102(f) to clarify that an issuer must file the form and pay the alternative fee upon discovery of the failure to file the notice as set forth by rule of the Commissioner.

Pursuant to the Commissioner's authority under Section 25102(f) to set forth by rule the time period for the filing of the notice, this regulation provides that a notice filed 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 of the first sale of a security in the transaction in this state has not been intentionally disregarded. Thus, for purposes of determining the filing fee applicable to the filing of the notice, the alternative fee would be applicable where a filer intentionally disregards the obligation to file the notice within 15 calendar days of the first sale of a security in a transaction in this state.

SPECIFIC PURPOSE

The purpose of this change is to implement a time period for the filing of the notice that adequately addresses the variance in the sophistication of the issuers that rely on the exemption, and to avoid financially penalizing small businesses. By recognizing the distinction between unintentional late filers and intentional late filers, the amendment avoids the imposition of a higher filing fee on unintentional late filers.

The exemption in Section 25102(f) is the most common transaction exemption for securities offerings, and the issuers relying on the exemption range from the smallest single-shareholder company or proverbial “mom and pop shop” to multi-national organizations engaging in private placements. The changes to the law made by AB 1031 were intended to ensure that the Section 25102(f) notice filings are made by issuers, and are made timely. However, the changes made by AB 1031 are unlikely to impact the behavior of small issuers, since the failure to file by these issuers is generally inadvertent and due to the lack of knowledge of the obligation to file the notice. Therefore, for these issuers the alternative filing fee required under AB 1031 simply operates as a trap for the unwary, rather than an incentive to file timely.

The amendments to Rule 260.102.14 are necessary ensure that the AB 1031 amendments have their intended effect of increasing the timely filing of 25102(f) notices, while ensuring that small businesses are not inadvertently harmed. The amendments to Rule 260.102.14 provide that the notice required under Section 25102(f) will be deemed filed within 15 calendar days after the sale of a security in this state, provided that the obligation to file the notice within 15 calendar days of the sale of a security has not been intentionally disregarded. This amendment achieves the timely filing goal of AB 1031 by subjecting issuers that intentionally disregard the 15-day filing requirement to an alternative fee.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action 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.

ADDENDUM REGARDING PUBLIC COMMENTS

No request for hearing was received during the 45-day public comment period, which ended on September 6, 2004. Accordingly, no public hearing was scheduled or held.

SUMMARY OF COMMENTS

No comments were received during the public comment period.

ALTERNATIVES CONSIDERED

No reasonable alternative considered by the Department or that otherwise has been identified and brought to the attention of the Department would be more effective in

carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

The Department considered amending the filing date to allow a longer time to file the notice after the sale of a security in this state. However, the Department rejected this alternative because it did not meet the goal of ensuring that issuers do not disregard the obligation to file the notice. Further, the alternative chosen by the Department is more forgiving to small businesses that inadvertently file late than a longer filing period would be.