

STATE OF CALIFORNIA – DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
**LIMITED OFFERING EXEMPTION NOTICE PACKET CORPORATIONS CODE
SECTION 25102 (n)**

DFPI-25102(n) INSTRUCTIONS Packet (Rev. 03-25)



This booklet provides information and forms to assist in the preparation and filing of a Notice of Transaction Pursuant to Corporations Code Section 25102(n). Applicable statutes have been excerpted from the California Corporations Code and Title 10, Chapter 3, California Code of Regulations to assist in this process. Please review all material prior to completing the Notice. Please remove the Notice and Consent to Service of Process forms which are provided in this packet. The Department requires only one copy; the other is for your records. DO NOT RETURN THE ENTIRE PACKET; INFORMATION MATERIALS SHOULD BE RETAINED FOR YOUR FUTURE REFERENCE.

Please note that the Department does not supply a receipt for submitted filing fees nor any other form of acknowledgement to confirm receipt of your filing. Your canceled check will serve as your receipt for payment of fees. If you wish an endorsed copy of the filed Notice to be returned to you, you must include an additional copy of the form at the time of filing, a letter requesting return of an endorsed copy and an addressed envelope.

Your Notice may be filed at any of our office locations. If you have questions or need assistance, you may contact a member of our staff by telephoning the office nearest to your location.

Los Angeles 90013-2344
320 West 4th Street, Suite 750
(213) 576-7500

Sacramento 95811
651 Bannon Street, Suite 300
(916) 576-4941

San Diego 92108-4304
1455 Frazee Road, Suite 315
(619) 610-2093

San Francisco 94104-4428
One Sansome Street, Suite 600
(415) 972-8565

SECTION 25102 (n)

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Section 25102. Transactions exempt from provisions of Section 25110.

Section 25102(n) states that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The anticipated suitability standards for prospective purchasers.

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

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

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

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

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

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

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

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

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

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

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

Section 25608. Fees; charge and collection; disposition

Section 25608(x) states that: The fee for filing the first notice of transaction under subdivision (n) of Section 25102 is six hundred dollars (\$600).

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CALIFORNIA CODE OF REGULATIONS
TITLE 10
INVESTMENT
CHAPTER 3

260.103. Exemption from Qualification of Recapitalizations and Reorganizations

Section 260.103 states that:

(a) Pursuant to the authority contained in Section 25105 of the Code, the following transactions are exempted from the provisions of Section 25120 of the Code as not being comprehended within the purposes of the Corporate Securities Law of 1968 and the qualification of which is not necessary or appropriate in the public interest or for the protection of investors:

(1) Any change in the rights, preferences, privileges, or restrictions of or on outstanding securities, and any exchange of securities by the issuer with its existing security holders exclusively, if the transaction, had it involved the issuance of a new security containing the changed rights, preferences, privileges, or restrictions, or a new issuance of the exchange security, would have been exempt from the provisions of Section 25110 of the Code by any of the subdivisions of Section 25102 of the Code or Section 260.105.14 of these rules; and

(2) Any exchange of securities in connection with any merger or consolidation or sale of corporate assets in consideration wholly or in part of the issuance of securities under, or pursuant to, a plan of reorganization or arrangement which pursuant to the provisions of the Bankruptcy Code, has been confirmed or is subject to confirmation by the decree or order of a court of competent jurisdiction.

(b) A transaction conducted under this rule by reason of the provisions of subdivisions (f), (h) or (n) of Section 25102 requires the issuer to file the notice prescribed thereunder (see Rules 260.102.8, 260.102.14, and 260.102.16).

260.102.16. Limited Public Offering Exemption Notice of Transaction

Section 260.102.16 states that:

(a) An issuer who conducts a transaction under Section 25102(n) of the Code shall file the notices of transaction with the Commissioner as follows:

(1) A First Notice of Transaction must be filed with the Commissioner concurrently with the earlier of the publication of the general announcement of the proposed offering or at the time of the initial offer of securities. The fee required by Section 25608(x) 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(n), 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. The claim of exemption is available upon the filing of the First Notice of Transaction and the payment of the filing fee and terminates on the close or abandonment of the offering, but in no case more than 210 days from the date of the filing of the First Notice of Transaction.

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(2) A Second Notice of Transaction Pursuant to Corporations Code Section 25102(n) must be filed within ten business days after the close or abandonment of the proposed offering, but in any case, no more than 210 days from the date of the filing of the First Notice of Transaction.

(b) The term, "blind pool issuer," is defined to have the same meaning as the term, "blind pool company," found at Section 260.113.1(a)1. of these rules. However, for the purpose of the exemption from qualification provided by Section 25102(n) of the Code, the word "company" is used in a generic and comprehensive sense to include individuals, partnerships, corporations, and other forms of organization of an enterprise.

(c) This exemption is not available for transactions where the issuer has either failed to file the First Notice of Transaction or has failed to pay the required filing fee. However, failure to file the Second Notice of Transaction will not jeopardize the availability of the exemption.

(For the remaining wording of Section 260.102.16 refer to this Section 260.102.16 contained in California Code of Regulations, Title 10, Investment, Chapter 3)

260.102.17. Disclosure Statement Requirement for Section 25102(n)/Rule 504 Offerings Section 260.102.17 states that:

The written offering disclosure statement required to be received by each natural person (including a corporation, partnership, or other organization specifically formed by natural persons for the purpose of acquiring the securities offered by the issuer) under paragraph (4) of subdivision (n) of Section 25102 of the Code in an offering of securities exempt from federal registration under the Securities Act of 1933 by virtue of Rule 504 of Regulation D promulgated by the Securities and Exchange Commission shall be the information specified in paragraph (b)(2) of Rule 502 of Regulation D [Reg. Sec.230.502(b)(2)]. For the purposes of the written offering disclosure statement required by paragraph (4) of subdivision (n) of Section 25102 of the Code, the references to a transaction under Rule 505 or 506 in paragraph (b)(2) of Rule 502 shall include a transaction under Rule 504.

260.102.18. Distribution Under Securities and Exchange Commission Rule 144A

Section 260.102.18 states that:

Paragraph (3) of Section 25102(n) of the Code requires that each purchaser represent that the purchaser is purchasing for the purchaser's own account (or a trust account, if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security. For purposes of paragraph (3) of Section 25102(n) of the Code, an offer to resell or a resale made under Section 260.105.13.1 will not be viewed as inconsistent with such purchaser representation.

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INSTRUCTIONS FOR FILING THE FIRST NOTICE

1. The notices are to provide information on transactions conducted under the Section 25102(n) exemption from the qualification requirements of Section 25110 of the Corporate Securities Law of 1968. 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 that the exemption is being relied on. See Corporations Code Section 25163. This exemption is not available for transactions where the issuer has failed to file the First Notice of Transaction or has failed to pay the required filing fee.

2. When to File the First Notice. A First Notice of Transaction must be filed with the Commissioner of Corporations concurrent with the publication of the general announcement of the proposed offering or at the time of the initial offer of securities, whichever occurs first, accompanied by \$600 filing fee. A Second Notice of Transaction must be filed within ten business days following the close or abandonment of the proposed offering, but in any case, no more than 210 days from the date of the filing of the First Notice of Transaction.

3. The Notice may be filed in person or by mail at any office of the Department.

The Heading. 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. The fee for filing the First Notice of Transaction is \$600.00. There is no filing fee for the Second Notice of Transaction. A transaction under Rule 260.103 with a Notice pursuant to Section 25102(n) requires a \$600.00 filing fee.

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. Indicate the incorporation or organization of the issuer. Only entities organized in California (other than foreign corporations subject to Corporations Code Section 2115) may claim this exemption. If the issuer is a foreign corporation subject to Corporations Code Section 2115, provide the name of the jurisdiction where issuer is domiciled. If the issuer is another form of business entity organized under the laws of California, specify the type of business entity.

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

Item 6. If the transaction was registered under the Securities Act of 1933, insert "registered." 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 the filing was made. If no such filing was required, insert "none."

Item 7. Indicate whether or not disclosure statements will be distributed.

Item 8. Indicate if disclosure statements are attached to the notice or if they will be submitted within 10 days of the Commissioner's request for the information.

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Item 9. Indicate how the general announcement of the offering was made.

Item 10. Sets forth the undertaking language required by Corporations Code Section 25102(n)(7).

Item 11. Date and Signature. The notices should be signed 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 is different from 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.

Filing Fee. Each First Notice under 25102(n) must be accompanied by the filing fee required by Section 25608(x) of the Code.

Corporations Code Section 25165 requires each issuer, other than a California corporation, to file a consent to service of process with the Notices filed pursuant to Section 25102(n) unless it already has a consent to service on file with the Commissioner. Use Form 260.165 (see Rule 260.165, Title 10, California Code of Regulations).

(e) The Form of the Second Notice. The following form is to be used for transactions covered under subdivision (a)(2):

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INSTRUCTIONS FOR FILING THE SECOND NOTICE

1. When to File the Second Notice. A Second Notice of Transaction must be filed within ten business days following the close or abandonment of the proposed offering, but in any case, no more than 210 days from the date of the filing of the First Notice of Transaction.

2. The Notice may be filed in person or by mail at any office of the Department.

The Heading. If the issuer has previously qualified securities with the Department, insert the file number of the qualification in the upper righthand corner of the form in the space provided. There is no fee for filing the Second Notice of Transaction.

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 the issuer's principal place of business

Item 4. Give the date the First Notice was filed with the Department of Financial Protection and Innovation.

Item 5. Give the date the offering was closed or abandoned.

Item 6. Set forth the name or title of each class or type of security to be sold in the transaction.

Item 7. If the transaction was registered under the Securities Act of 1933, insert "registered". 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 required, insert "none".

Item 8. Date and Signature. The notice should be signed 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 is different from 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.

Corporations Code Section 25165 requires each issuer, other than a California corporation, to file a consent to service of process with the Notices filed pursuant to Section 25102(n) unless it already has a consent to service on file with the Commissioner. Use Form 260.165 (see Rule 260.165, Title 10, California Code of Regulations).

260.102.17. Disclosure Statement Requirements for Section 25102(n)/Rule 504 Offerings

260.102.18. Distribution Under Securities and Exchange Commission Rule 144A