

AMENDED IN ASSEMBLY APRIL 5, 2017

AMENDED IN ASSEMBLY MARCH 27, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1517

Introduced by Assembly Members Muratsuchi and Chiu
(Principal coauthor: Senator Allen)

February 17, 2017

An act to amend Sections 25102, 25104, 25110, 25501, 25503, and 25608 of, and to add Section 25113.1 to, the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as amended, Muratsuchi. Securities transactions: qualifications by permit: liability.

Existing law, the Corporate Securities Law of 1968, requires securities offered or sold in this state in an issuer or nonissuer transaction to be qualified through an application filed with the Commissioner of Business Oversight, unless exempt from the qualification requirements. That law makes it unlawful, for a person in connection with the offer, sale, or purchase of a security, to engage in fraudulent or misleading acts or omissions.

This bill would authorize an applicant to file an application for qualification of the offer or sale of a security by crowdfunding permit if certain conditions are met, including that the total offering of securities by the applicant to be sold in a 12-month period, within or outside this state, is limited to ~~\$1,000,000~~, \$2,000,000, less a specified amount; the aggregate amount of securities sold to any investor, including any amount sold during the 12-month period preceding the date of the

transaction, does not exceed the lesser of \$5,000 or 10% of the net worth of that natural person; the transaction is conducted through an intermediary, the issuer will not, directly or indirectly, conduct any unsolicited telephone solicitation of the securities offered; and the issuer will not require specified dispute procedures. This bill would impose a filing fee of \$200 plus 1/5 of 2% of the aggregate value of the securities sought to be sold in this state.

Existing law provides that any person who violates a condition of qualification of the offer or sale of a security is liable to any person acquiring the security sold in violation, who may sue to recover the consideration paid for such security with interest thereon at the legal rate or for damages, as specified.

This bill would provide for the recovery of reasonable attorney’s fees, as specified. The bill would extend that provision to a violation of a condition of qualification by permit authorized by this bill. The bill would authorize the award of treble and punitive ~~damages~~, *damages* against any person who violates those conditions of qualification by permit authorized by this bill if the court determines that the violation was willful.

Existing law imposes liability on any person who engages in specified unlawful activity to the person who purchases a security from him or her or sells a security to him or her, and authorizes the purchaser or seller to sue either for rescission or for damages.

This bill would provide that the plaintiff is not required to plead or prove that the defendant acted with scienter. The bill would ~~provide for the recovery of~~ *require the court to award* reasonable attorney’s fees, as specified. The bill also would authorize the court to award treble and punitive damages against a person who violates the above provision in an offer or sale of a security as authorized by this bill if the court determines the violation was willful.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25102 of the Corporations Code is
- 2 amended to read:
- 3 25102. The following transactions are exempted from the
- 4 provisions of Section 25110:

1 (a) Any offer (but not a sale) not involving any public offering
2 and the execution and delivery of any agreement for the sale of
3 securities pursuant to the offer if (1) the agreement contains
4 substantially the following provision: “The sale of the securities
5 that are the subject of this agreement has not been qualified with
6 the Commissioner of Corporations of the State of California and
7 the issuance of the securities or the payment or receipt of any part
8 of the consideration therefor prior to the qualification is unlawful,
9 unless the sale of securities is exempt from the qualification by
10 Section 25100, 25102, or 25105 of the California Corporations
11 Code. The rights of all parties to this agreement are expressly
12 conditioned upon the qualification being obtained, unless the sale
13 is so exempt”; and (2) no part of the purchase price is paid or
14 received and none of the securities are issued until the sale of the
15 securities is qualified under this law unless the sale of securities
16 is exempt from the qualification by this section, Section 25100,
17 or 25105.

18 (b) Any offer (but not a sale) of a security for which (1) a
19 registration statement has been filed under the Securities Act of
20 1933 but has not yet become effective, or for which an offering
21 statement under Regulation A has been filed but has not yet been
22 qualified, if no stop order or refusal order is in effect and (2) no
23 public proceeding or examination looking towards an order is
24 pending under Section 8 of the act and no order under Section
25 25140 or subdivision (a) of Section 25143 is in effect under this
26 law.

27 (c) Any offer (but not a sale) and the execution and delivery of
28 any agreement for the sale of securities pursuant to the offer as
29 may be permitted by the commissioner upon application. Any
30 negotiating permit under this subdivision shall be conditioned to
31 the effect that none of the securities may be issued and none of
32 the consideration therefor may be received or accepted until the
33 sale of the securities is qualified under this law.

34 (d) Any transaction or agreement between the issuer and an
35 underwriter or among underwriters if the sale of the securities is
36 qualified, or exempt from qualification, at the time of distribution
37 thereof in this state, if any.

38 (e) Any offer or sale of any evidence of indebtedness, whether
39 secured or unsecured, and any guarantee thereof, in a transaction
40 not involving any public offering.

1 (f) Any offer or sale of any security in a transaction (other than
2 an offer or sale to a pension or profit-sharing trust of the issuer)
3 that meets each of the following criteria:

4 (1) Sales of the security are not made to more than 35 persons,
5 including persons not in this state.

6 (2) All purchasers either have a preexisting personal or business
7 relationship with the offeror or any of its partners, officers,
8 directors or controlling persons, or managers (as appointed or
9 elected by the members) if the offeror is a limited liability
10 company, or by reason of their business or financial experience or
11 the business or financial experience of their professional advisers
12 who are unaffiliated with and who are not compensated by the
13 issuer or any affiliate or selling agent of the issuer, directly or
14 indirectly, could be reasonably assumed to have the capacity to
15 protect their own interests in connection with the transaction.

16 (3) Each purchaser represents that the purchaser is purchasing
17 for the purchaser’s own account (or a trust account if the purchaser
18 is a trustee) and not with a view to or for sale in connection with
19 any distribution of the security.

20 (4) The offer and sale of the security is not accomplished by
21 the publication of any advertisement. The number of purchasers
22 referred to above is exclusive of any described in subdivision (i),
23 any officer, director, or affiliate of the issuer, or manager (as
24 appointed or elected by the members) if the issuer is a limited
25 liability company, and any other purchaser who the commissioner
26 designates by rule. For purposes of this section, a husband and
27 wife (together with any custodian or trustee acting for the account
28 of their minor children) are counted as one person and a
29 partnership, corporation, or other organization that was not
30 specifically formed for the purpose of purchasing the security
31 offered in reliance upon this exemption, is counted as one person.
32 The commissioner shall by rule require the issuer to file a notice
33 of transactions under this subdivision.

34 The failure to file the notice or the failure to file the notice within
35 the time specified by the rule of the commissioner shall not affect
36 the availability of the exemption. Any issuer that fails to file the
37 notice as provided by rule of the commissioner shall, within 15
38 business days after discovery of the failure to file the notice or
39 after demand by the commissioner, whichever occurs first, file the
40 notice and pay to the commissioner a fee equal to the fee payable

1 had the transaction been qualified under Section 25110. Neither
2 the filing of the notice nor the failure by the commissioner to
3 comment thereon precludes the commissioner from taking any
4 action that the commissioner deems necessary or appropriate under
5 this division with respect to the offer and sale of the securities.

6 (g) Any offer or sale of conditional sale agreements, equipment
7 trust certificates, or certificates of interest or participation therein
8 or partial assignments thereof, covering the purchase of railroad
9 rolling stock or equipment or the purchase of motor vehicles,
10 aircraft, or parts thereof, in a transaction not involving any public
11 offering.

12 (h) Any offer or sale of voting common stock by a corporation
13 incorporated in any state if, immediately after the proposed sale
14 and issuance, there will be only one class of stock of the
15 corporation outstanding that is owned beneficially by no more than
16 35 persons, provided all of the following requirements have been
17 met:

18 (1) The offer and sale of the stock is not accompanied by the
19 publication of any advertisement, and no selling expenses have
20 been given, paid, or incurred in connection therewith.

21 (2) The consideration to be received by the issuer for the stock
22 to be issued consists of any of the following:

23 (A) Only assets (which may include cash) of an existing business
24 enterprise transferred to the issuer upon its initial organization, of
25 which all of the persons who are to receive the stock to be issued
26 pursuant to this exemption were owners during, and the enterprise
27 was operated for, a period of not less than one year immediately
28 preceding the proposed issuance, and the ownership of the
29 enterprise immediately prior to the proposed issuance was in the
30 same proportions as the shares of stock are to be issued.

31 (B) Only cash or cancellation of indebtedness for money
32 borrowed, or both, upon the initial organization of the issuer,
33 provided all of the stock is issued for the same price per share.

34 (C) Only cash, provided the sale is approved in writing by each
35 of the existing shareholders and the purchaser or purchasers are
36 existing shareholders.

37 (D) In a case where after the proposed issuance there will be
38 only one owner of the stock of the issuer, only any legal
39 consideration.

1 (3) No promotional consideration has been given, paid, or
2 incurred in connection with the issuance. Promotional consideration
3 means any consideration paid directly or indirectly to a person
4 who, acting alone or in conjunction with one or more other persons,
5 takes the initiative in founding and organizing the business or
6 enterprise of an issuer for services rendered in connection with the
7 founding or organizing.

8 (4) A notice in a form prescribed by rule of the commissioner,
9 signed by an active member of the State Bar of California, is filed
10 with or mailed for filing to the commissioner not later than 10
11 business days after receipt of consideration for the securities by
12 the issuer. That notice shall contain an opinion of the member of
13 the State Bar of California that the exemption provided by this
14 subdivision is available for the offer and sale of the securities. The
15 failure to file the notice as required by this subdivision and the
16 rules of the commissioner shall not affect the availability of this
17 exemption. An issuer who fails to file the notice within the time
18 specified by this subdivision shall, within 15 business days after
19 discovery of the failure to file the notice or after demand by the
20 commissioner, whichever occurs first, file the notice and pay to
21 the commissioner a fee equal to the fee payable had the transaction
22 been qualified under Section 25110. The notice, except when filed
23 on behalf of a California corporation, shall be accompanied by an
24 irrevocable consent, in the form that the commissioner by rule
25 prescribes, appointing the commissioner or his or her successor in
26 office to be the issuer's attorney to receive service of any lawful
27 process in any noncriminal suit, action, or proceeding against it
28 or its successor that arises under this law or any rule or order
29 hereunder after the consent has been filed, with the same force and
30 validity as if served personally on the issuer. An issuer on whose
31 behalf a consent has been filed in connection with a previous
32 qualification or exemption from qualification under this law (or
33 application for a permit under any prior law if the application or
34 notice under this law states that the consent is still effective) need
35 not file another. Service may be made by leaving a copy of the
36 process in the office of the commissioner, but it is not effective
37 unless (A) the plaintiff, who may be the commissioner in a suit,
38 action, or proceeding instituted by him or her, forthwith sends
39 notice of the service and a copy of the process by registered or
40 certified mail to the defendant or respondent at its last address on

1 file with the commissioner, and (B) the plaintiff's affidavit of
2 compliance with this section is filed in the case on or before the
3 return day of the process, if any, or within the further time as the
4 court allows.

5 (5) Each purchaser represents that the purchaser is purchasing
6 for the purchaser's own account, or a trust account if the purchaser
7 is a trustee, and not with a view to or for sale in connection with
8 any distribution of the stock.

9 For the purposes of this subdivision, all securities held by a
10 husband and wife, whether or not jointly, shall be considered to
11 be owned by one person, and all securities held by a corporation
12 that has issued stock pursuant to this exemption shall be considered
13 to be held by the shareholders to whom it has issued the stock.

14 All stock issued by a corporation pursuant to this subdivision as
15 it existed prior to the effective date of the amendments to this
16 section made during the 1996 portion of the 1995-96 Regular
17 Session that required the issuer to have stamped or printed
18 prominently on the face of the stock certificate a legend in a form
19 prescribed by rule of the commissioner restricting transfer of the
20 stock in a manner provided for by that rule shall not be subject to
21 the transfer restriction legend requirement and, by operation of
22 law, the corporation is authorized to remove that transfer restriction
23 legend from the certificates of those shares of stock issued by the
24 corporation pursuant to this subdivision as it existed prior to the
25 effective date of the amendments to this section made during the
26 1996 portion of the 1995-96 Regular Session.

27 (i) Any offer or sale (1) to a bank, savings and loan association,
28 trust company, insurance company, investment company registered
29 under the Investment Company Act of 1940, pension or
30 profit-sharing trust (other than a pension or profit-sharing trust of
31 the issuer, a self-employed individual retirement plan, or individual
32 retirement account), or other institutional investor or governmental
33 agency or instrumentality that the commissioner may designate
34 by rule, whether the purchaser is acting for itself or as trustee, or
35 (2) to any corporation with outstanding securities registered under
36 Section 12 of the Securities Exchange Act of 1934 or any wholly
37 owned subsidiary of the corporation that after the offer and sale
38 will own directly or indirectly 100 percent of the outstanding
39 capital stock of the issuer, provided the purchaser represents that
40 it is purchasing for its own account (or for the trust account) for

1 investment and not with a view to or for sale in connection with
2 any distribution of the security.

3 (j) Any offer or sale of any certificate of interest or participation
4 in an oil or gas title or lease (including subsurface gas storage and
5 payments out of production) if either of the following apply:

6 (1) All of the purchasers meet one of the following requirements:

7 (A) Are and have been during the preceding two years engaged
8 primarily in the business of drilling for, producing, or refining oil
9 or gas (or whose corporate predecessor, in the case of a corporation,
10 has been so engaged).

11 (B) Are persons described in paragraph (1) of subdivision (i).

12 (C) Have been found by the commissioner upon written
13 application to be substantially engaged in the business of drilling
14 for, producing, or refining oil or gas so as not to require the
15 protection provided by this law (which finding shall be effective
16 until rescinded).

17 (2) The security is concurrently hypothecated to a bank in the
18 ordinary course of business to secure a loan made by the bank,
19 provided that each purchaser represents that it is purchasing for
20 its own account for investment and not with a view to or for sale
21 in connection with any distribution of the security.

22 (k) Any offer or sale of any security under, or pursuant to, a
23 plan of reorganization under Chapter 11 of the federal bankruptcy
24 law that has been confirmed or is subject to confirmation by the
25 decree or order of a court of competent jurisdiction.

26 (l) Any offer or sale of an option, warrant, put, call, or straddle,
27 and any guarantee of any of these securities, by a person who is
28 not the issuer of the security subject to the right, if the transaction,
29 had it involved an offer or sale of the security subject to the right
30 by the person, would not have violated Section 25110 or 25130.

31 (m) Any offer or sale of a stock to a pension, profit-sharing,
32 stock bonus, or employee stock ownership plan, provided that (1)
33 the plan meets the requirements for qualification under Section
34 401 of the Internal Revenue Code, and (2) the employees are not
35 required or permitted individually to make any contributions to
36 the plan. The exemption provided by this subdivision shall not be
37 affected by whether the stock is contributed to the plan, purchased
38 from the issuer with contributions by the issuer or an affiliate of
39 the issuer, or purchased from the issuer with funds borrowed from
40 the issuer, an affiliate of the issuer, or any other lender.

1 (n) Any offer or sale of any security in a transaction, other than
2 an offer or sale of a security in a rollup transaction, that meets all
3 of the following criteria:

4 (1) The issuer is (A) a California corporation or foreign
5 corporation that, at the time of the filing of the notice required
6 under this subdivision, is subject to Section 2115, or (B) any other
7 form of business entity, including without limitation a partnership
8 or trust organized under the laws of this state. The exemption
9 provided by this subdivision is not available to a “blind pool”
10 issuer, as that term is defined by the commissioner, or to an
11 investment company subject to the Investment Company Act of
12 1940.

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

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

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

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

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

35 (E) With respect to the offer and sale of one class of voting
36 common stock of an issuer or of preferred stock of an issuer
37 entitling the holder thereof to at least the same voting rights as the
38 issuer’s one class of voting common stock, provided that the issuer
39 has only one-class voting common stock outstanding upon
40 consummation of the offer and sale, a natural person who, either

1 individually or jointly with the person's spouse, (i) has a minimum
2 net worth of two hundred fifty thousand dollars (\$250,000) and
3 had, during the immediately preceding tax year, gross income in
4 excess of one hundred thousand dollars (\$100,000) and reasonably
5 expects gross income in excess of one hundred thousand dollars
6 (\$100,000) during the current tax year or (ii) has a minimum net
7 worth of five hundred thousand dollars (\$500,000). "Net worth"
8 shall be determined exclusive of home, home furnishings, and
9 automobiles. Other assets included in the computation of net worth
10 may be valued at fair market value.

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

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

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

27 (4) Each natural person purchaser, including a corporation,
28 partnership, or other organization specifically formed by natural
29 persons for the purpose of acquiring the securities offered by the
30 issuer, receives, at least five business days before securities are
31 sold to, or a commitment to purchase is accepted from, the
32 purchaser, a written offering disclosure statement that shall meet
33 the disclosure requirements of Regulation D (17 C.F.R. 230.501
34 et seq.), and any other information as may be prescribed by rule
35 of the commissioner, provided that the issuer shall not be obligated
36 pursuant to this paragraph to provide this disclosure statement to
37 a natural person qualified under Section 260.102.13 of Title 10 of
38 the California Code of Regulations. The offer or sale of securities
39 pursuant to a disclosure statement required by this paragraph that
40 is in violation of Section 25401, or that fails to meet the disclosure

1 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall
2 not render unavailable to the issuer the claim of an exemption from
3 Section 25110 afforded by this subdivision. This paragraph does
4 not impose, directly or indirectly, any additional disclosure
5 obligation with respect to any other exemption from qualification
6 available under any other provision of this section.

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

- 11 (i) The name of the issuer of the securities.
- 12 (ii) The full title of the security to be issued.
- 13 (iii) The anticipated suitability standards for prospective
14 purchasers.
- 15 (iv) A statement that (I) no money or other consideration is
16 being solicited or will be accepted, (II) an indication of interest
17 made by a prospective purchaser involves no obligation or
18 commitment of any kind, and, if the issuer is required by paragraph
19 (4) to deliver a disclosure statement to prospective purchasers,
20 (III) no sales will be made or commitment to purchase accepted
21 until five business days after delivery of a disclosure statement
22 and subscription information to the prospective purchaser in
23 accordance with the requirements of this subdivision.
- 24 (v) Any other information required by rule of the commissioner.
- 25 (vi) The following legend: “For more complete information
26 about (Name of Issuer) and (Full Title of Security), send for
27 additional information from (Name and Address) by sending this
28 coupon or calling (Telephone Number).”

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

- 32 (i) A brief description of the business of the issuer.
- 33 (ii) The geographic location of the issuer and its business.
- 34 (iii) The price of the security to be issued, or, if the price is not
35 known, the method of its determination or the probable price range
36 as specified by the issuer, and the aggregate offering price.
- 37 (C) The general announcement of proposed offering shall
38 contain only the information that is set forth in this paragraph.
- 39 (D) Dissemination of the general announcement of proposed
40 offering to persons who are not qualified purchasers, without more,

1 shall not disqualify the issuer from claiming the exemption under
2 this subdivision.

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

6 (7) The issuer files a notice of transaction under this subdivision
7 both (A) concurrent with the publication of a general announcement
8 of proposed offering or at the time of the initial offer of the
9 securities, whichever occurs first, accompanied by a filing fee, and
10 (B) within 10 business days following the close or abandonment
11 of the offering, but in no case more than 210 days from the date
12 of filing the first notice. The first notice of transaction under
13 subparagraph (A) shall contain an undertaking, in a form acceptable
14 to the commissioner, to deliver any disclosure statement required
15 by paragraph (4) to be delivered to prospective purchasers, and
16 any supplement thereto, to the commissioner within 10 days of
17 the commissioner's request for the information. The exemption
18 from qualification afforded by this subdivision is unavailable if
19 an issuer fails to file the first notice required under subparagraph
20 (A) or to pay the filing fee. The commissioner has the authority
21 to assess an administrative penalty of up to one thousand dollars
22 (\$1,000) against an issuer that fails to deliver the disclosure
23 statement required to be delivered to the commissioner upon the
24 commissioner's request within the time period set forth above.
25 Neither the filing of the disclosure statement nor the failure by the
26 commissioner to comment thereon precludes the commissioner
27 from taking any action deemed necessary or appropriate under this
28 division with respect to the offer and sale of the securities.

29 (o) An offer or sale of any security issued by a corporation or
30 limited liability company pursuant to a purchase plan or agreement,
31 or issued pursuant to an option plan or agreement, where the
32 security at the time of issuance or grant is exempt from registration
33 under the Securities Act of 1933, as amended, pursuant to Rule
34 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions
35 of which are hereby incorporated by reference into this section,
36 provided that (1) the terms of any purchase plan or agreement shall
37 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of
38 Title 10 of the California Code of Regulations, (2) the terms of
39 any option plan or agreement shall comply with Sections
40 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the

1 California Code of Regulations, and (3) the issuer files a notice of
2 transaction in accordance with rules adopted by the commissioner
3 no later than 30 days after the initial issuance of any security under
4 that plan, accompanied by a filing fee as prescribed by subdivision
5 (y) of Section 25608. The failure to file the notice of transaction
6 within the time specified in this subdivision shall not affect the
7 availability of this exemption. An issuer that fails to file the notice
8 shall, within 15 business days after discovery of the failure to file
9 the notice or after demand by the commissioner, whichever occurs
10 first, file the notice and pay the commissioner a fee equal to the
11 maximum aggregate fee payable had the transaction been qualified
12 under Section 25110.

13 Offers and sales exempt pursuant to this subdivision shall be
14 deemed to be part of a single, discrete offering and are not subject
15 to integration with any other offering or sale, whether qualified
16 under Chapter 2 (commencing with Section 25110), or otherwise
17 exempt, or not subject to qualification.

18 (p) An offer or sale of nonredeemable securities to accredited
19 investors (Section 28031) by a person licensed under the Capital
20 Access Company Law (Division 3 (commencing with Section
21 28000) of Title 4), provided that all purchasers either (1) have a
22 preexisting personal or business relationship with the offeror or
23 any of its partners, officers, directors, controlling persons, or
24 managers (as appointed or elected by the members), or (2) by
25 reason of their business or financial experience or the business or
26 financial experience of their professional advisers who are
27 unaffiliated with and who are not compensated by the issuer or
28 any affiliate or selling agent of the issuer, directly or indirectly,
29 could be reasonably assumed to have the capacity to protect their
30 own interests in connection with the transaction. All nonredeemable
31 securities shall be evidenced by certificates that shall have stamped
32 or printed prominently on their face a legend in a form to be
33 prescribed by rule or order of the commissioner restricting transfer
34 of the securities in the manner as the rule or order provides. The
35 exemption under this subdivision shall not be available for any
36 offering that is exempt or asserted to be exempt pursuant to Section
37 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))
38 or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is
39 conducted by means of any form of general solicitation or general
40 advertising.

1 (q) Any offer or sale of any viatical or life settlement contract
2 or fractionalized or pooled interest therein in a transaction that
3 meets all of the following criteria:

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

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

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

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

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

27 (E) A natural person who, either individually or jointly with the
28 person's spouse, (i) has a minimum net worth of one hundred fifty
29 thousand dollars (\$150,000) and had, during the immediately
30 preceding tax year, gross income in excess of one hundred thousand
31 dollars (\$100,000) and reasonably expects gross income in excess
32 of one hundred thousand dollars (\$100,000) during the current tax
33 year or (ii) has a minimum net worth of two hundred fifty thousand
34 dollars (\$250,000). "Net worth" shall be determined exclusive of
35 home, home furnishings, and automobiles. Other assets included
36 in the computation of net worth may be valued at fair market value.

37 Each natural person specified above, by reason of his or her
38 business or financial experience, or the business or financial
39 experience of his or her professional adviser, who is unaffiliated
40 with and who is not compensated, directly or indirectly, by the

1 issuer or any affiliate or selling agent of the issuer, can be
2 reasonably assumed to have the capacity to protect his or her
3 interests in connection with the transaction.

4 The amount of the investment of each natural person shall not
5 exceed 10 percent of the net worth, as determined by this
6 subdivision, of that natural person.

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

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

13 (3) Each natural person purchaser, including a corporation,
14 partnership, or other organization specifically formed by natural
15 persons for the purpose of acquiring the securities offered by the
16 issuer, receives, at least five business days before securities
17 described in this subdivision are sold to, or a commitment to
18 purchase is accepted from, the purchaser, the following information
19 in writing:

20 (A) The name, principal business and mailing address, and
21 telephone number of the issuer.

22 (B) The suitability standards for prospective purchasers as set
23 forth in paragraph (1) of this subdivision.

24 (C) A description of the issuer's type of business organization
25 and the state in which the issuer is organized or incorporated.

26 (D) A brief description of the business of the issuer.

27 (E) If the issuer retains ownership or becomes the beneficiary
28 of the insurance policy, an audit report of an independent certified
29 public accountant together with a balance sheet and related
30 statements of income, retained earnings, and cashflows that reflect
31 the issuer's financial position, the results of the issuer's operations,
32 and the issuer's cashflows as of a date within 15 months before
33 the date of the initial issuance of the securities described in this
34 subdivision. The financial statements listed in this subparagraph
35 shall be prepared in conformity with generally accepted accounting
36 principles. If the date of the audit report is more than 120 days
37 before the date of the initial issuance of the securities described
38 in this subdivision, the issuer shall provide unaudited interim
39 financial statements.

- 1 (F) The names of all directors, officers, partners, members, or
2 trustees of the issuer.
- 3 (G) A description of any order, judgment, or decree that is final
4 as to the issuing entity of any state, federal, or foreign country
5 governmental agency or administrator, or of any state, federal, or
6 foreign country court of competent jurisdiction (i) revoking,
7 suspending, denying, or censuring for cause any license, permit,
8 or other authority of the issuer or of any director, officer, partner,
9 member, trustee, or person owning or controlling, directly or
10 indirectly, 10 percent or more of the outstanding interest or equity
11 securities of the issuer, to engage in the securities, commodities,
12 franchise, insurance, real estate, or lending business or in the offer
13 or sale of securities, commodities, franchises, insurance, real estate,
14 or loans, (ii) permanently restraining, enjoining, barring,
15 suspending, or censuring any such person from engaging in or
16 continuing any conduct, practice, or employment in connection
17 with the offer or sale of securities, commodities, franchises,
18 insurance, real estate, or loans, (iii) convicting any such person
19 of, or pleading nolo contendere by any such person to, any felony
20 or misdemeanor involving a security, commodity, franchise,
21 insurance, real estate, or loan, or any aspect of the securities,
22 commodities, franchise, insurance, real estate, or lending business,
23 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
24 conversion, or misappropriation of property, or (iv) holding any
25 such person liable in a civil action involving breach of a fiduciary
26 duty, fraud, deceit, embezzlement, fraudulent conversion, or
27 misappropriation of property. This subparagraph does not apply
28 to any order, judgment, or decree that has been vacated, overturned,
29 or is more than 10 years old.
- 30 (H) Notice of the purchaser's right to rescind or cancel the
31 investment and receive a refund pursuant to Section 25508.5.
- 32 (I) The name, address, and telephone number of the issuing
33 insurance company, and the name, address, and telephone number
34 of the state or foreign country regulator of the insurance company.
- 35 (J) The total face value of the insurance policy and the
36 percentage of the insurance policy the purchaser will own.
- 37 (K) The insurance policy number, issue date, and type.
- 38 (L) If a group insurance policy, the name, address, and telephone
39 number of the group, and, if applicable, the material terms and

1 conditions of converting the policy to an individual policy,
2 including the amount of increased premiums.

3 (M) If a term insurance policy, the term and the name, address,
4 and telephone number of the person who will be responsible for
5 renewing the policy if necessary.

6 (N) That the insurance policy is beyond the state statute for
7 contestability and the reason therefor.

8 (O) The insurance policy premiums and terms of premium
9 payments.

10 (P) The amount of the purchaser's moneys that will be set aside
11 to pay premiums.

12 (Q) The name, address, and telephone number of the person
13 who will be the insurance policy owner and the person who will
14 be responsible for paying premiums.

15 (R) The date on which the purchaser will be required to pay
16 premiums and the amount of the premium, if known.

17 (S) A statement to the effect that any projected rate of return to
18 the purchaser from the purchase of a viatical or life settlement
19 contract or a fractionalized or pooled interest therein is based on
20 an estimated life expectancy for the person insured under the life
21 insurance policy; that the return on the purchase may vary
22 substantially from the expected rate of return based upon the actual
23 life expectancy of the insured that may be less than, equal to, or
24 may greatly exceed the estimated life expectancy; and that the rate
25 of return would be higher if the actual life expectancy were less
26 than, and lower if the actual life expectancy were greater than the
27 estimated life expectancy of the insured at the time the viatical or
28 life settlement contract was closed.

29 (T) A statement that the purchaser should consult with his or
30 her tax adviser regarding the tax consequences of the purchase of
31 the viatical or life settlement contract or fractionalized or pooled
32 interest therein and, if the purchaser is using retirement funds or
33 accounts for that purchase, whether or not any adverse tax
34 consequences might result from the use of those funds for the
35 purchase of that investment.

36 (U) Any other information as may be prescribed by rule of the
37 commissioner.

38 SEC. 2. Section 25104 of the Corporations Code is amended
39 to read:

1 25104. The following transactions are exempted from the
2 provisions of Section 25130:

3 (a) Any offer or sale of a security by the bona fide owner thereof
4 for his or her own account if the sale (1) is not accompanied by
5 the publication of any advertisement and (2) is not effected by or
6 through a broker-dealer in a public offering.

7 (b) Any offer or sale effected by or through a licensed
8 broker-dealer pursuant to an unsolicited order or offer to buy. For
9 the purpose of this subdivision, an inquiry regarding a written bid
10 for a security or a written solicitation of an offer to sell a security
11 made by another broker-dealer within the previous 60 days shall
12 not be considered the solicitation of an order or offer to buy.

13 (c) Any offer or sale to a bank, savings and loan association,
14 trust company, insurance company, investment company registered
15 under the Investment Company Act of 1940, pension or
16 profit-sharing trust (other than a pension or profit-sharing trust of
17 the issuer, a self-employed individual retirement plan, or individual
18 retirement account), or such other institutional investor or
19 governmental agency or instrumentality as the commissioner may
20 designate by rule, whether the purchaser is acting for itself or as
21 trustee; provided the purchaser represents that it is purchasing for
22 its own account (or for the trust account) for investment and not
23 with a view to or for sale in connection with any distribution of
24 the security.

25 (d) Any transaction or agreement between a person on whose
26 behalf an offering is made and an underwriter or among
27 underwriters, if the sale of the securities is exempt from
28 qualification at the time of or qualified prior to distribution in this
29 state, if any.

30 (e) Any offer or sale of any security by or for the account of a
31 bona fide secured party selling the security in the ordinary course
32 of business to liquidate a bona fide debt.

33 (f) Any transaction by an executor, administrator, sheriff,
34 marshal, receiver, trustee in bankruptcy, guardian, or conservator.

35 (g) Any offer (but not a sale) of a security for which (1) a
36 registration statement has been filed under the Securities Act of
37 1933 but has not yet become effective, or for which an offering
38 statement under Regulation A has been filed but has not yet been
39 qualified, if no stop order or refusal order is in effect and no public
40 proceeding or examination looking toward such an order is pending

1 under Section 8 of that act and (2) no order under Section 25140
2 or subdivision (a) of Section 25143 is in effect under this division.

3 (h) Any offer or sale of a security if a qualification under
4 Chapter 2 (commencing with Section 25110) of this part for any
5 securities of the same class has become effective within 18 months,
6 or longer period as the commissioner may order provided that each
7 consecutive order shall be for no more than six months, prior to
8 the offer or sale or if a qualification under Chapter 3 (commencing
9 with Section 25120) or Chapter 4 (commencing with Section
10 25130) of this part for any securities of the same class has become
11 effective within 12 months prior to that offer or sale, provided no
12 order under Section 25140 or subdivision (a) of Section 25143 is
13 in effect under this division with respect to the qualification, and,
14 provided further, that this exemption does not apply to securities
15 offered pursuant to a registration under the Securities Act of 1933
16 or pursuant to an exemption under Regulation A under that act if
17 the aggregate offering price of the securities offered under such
18 exemption exceeds fifty thousand dollars (\$50,000). The
19 commissioner may, by rule or order, withhold this exemption with
20 respect to securities qualified only pursuant to a limited offering
21 qualification.

22 SEC. 3. Section 25110 of the Corporations Code is amended
23 to read:

24 25110. It is unlawful for any person to offer or sell in this state
25 any security in an issuer transaction (other than in a transaction
26 subject to Section 25120), whether or not by or through
27 underwriters, unless such sale has been qualified under Section
28 25111, 25112, 25113, or 25113.1 (and no order under Section
29 25140 or subdivision (a) of Section 25143 is in effect with respect
30 to such qualification) or unless such security or transaction is
31 exempted or not subject to qualification under Chapter 1
32 (commencing with Section 25100) of this part. The offer or sale
33 of such a security in a manner that varies or differs from, exceeds
34 the scope of, or fails to conform with either a material term or
35 material condition of qualification of the offering as set forth in
36 the permit or qualification order, or a material representation as
37 to the manner of offering which is set forth in the application for
38 qualification, shall be an unqualified offer or sale.

39 SEC. 4. Section 25113.1 is added to the Corporations Code,
40 to read:

1 25113.1. (a) Any offer or sale of any security that meets all
2 of the conditions in subdivision (b) may be qualified by permit
3 under this section.

4 (b) (1) An application for a crowdfunding permit under this
5 section shall contain any information and be accompanied by any
6 documents as shall be required by rule of the commissioner, in
7 addition to the information specified in Section 25160 and the
8 consent to service of process required by Section 25165. For this
9 purpose, the commissioner may classify issuers and types of
10 securities.

11 (2) An applicant may file an application for a crowdfunding
12 permit under this section if it meets all of the following conditions:

13 (A) The applicant is: (i) a California corporation or a foreign
14 corporation, which at the time of filing an application under this
15 subdivision is subject to Section 2115, and neither corporation is
16 a “blind pool” company, as that term is defined by the
17 commissioner; (ii) not issuing fractional undivided interests in oil
18 or gas rights, or a similar interest in other mineral rights; (iii) not
19 an investment company subject to the Investment Company Act
20 of 1940; and (iv) not subject to the reporting requirements of
21 Section 13 or 15(d) of the Securities Exchange Act of 1934.

22 (B) The total offering of securities by the applicant to be sold
23 in a 12-month period, within or outside this state, is limited to ~~one~~
24 ~~million dollars (\$1,000,000)~~, *two million dollars (\$2,000,000)* less
25 the aggregate offering price for all securities sold (within the 12
26 months before the start, and during the offering, of the securities)
27 under Rule 504 (17 C.F.R. 230.504) under the Securities Act of
28 1933 or in violation of subdivision (a) of Section 5 of that act.

29 (C) Offers and sales made in reliance on this section will not
30 be integrated with: (i) prior offers or sales of securities or (ii)
31 subsequent offers or sales of securities that are (I) registered under
32 the Securities Act of 1933; (II) made pursuant to Rule 701 (17
33 C.F.R. 230.701) under that act; (III) made pursuant to an employee
34 benefit plan; (IV) made pursuant to Regulation S (17 C.F.R.
35 230.901-905) under that act; (V) made in reliance on Regulation
36 CF (17 C.F.R. 227.100-503); or (VI) made more than six months
37 after the completion of the offering in reliance on this section.

38 (D) The aggregate amount of securities sold to any investor in
39 reliance on this section, including any amount sold during the
40 12-month period preceding the date of the transaction, does not

1 exceed the lesser of five thousand dollars (\$5,000) or 10 percent
2 of the net worth of that natural person, or such amount as the
3 commissioner may provide by rule or order. “Net worth” shall be
4 determined exclusive of home, home furnishings, and automobiles.
5 Other assets included in the computation of net worth may be
6 valued at fair market value.

7 (E) The applicant has taken reasonable steps to ensure that each
8 investor who is a natural person who is not an accredited investor
9 as defined in Rule 501 (17 C.F.R. 230.501) under the Securities
10 Act of 1933 either alone or with his or her purchaser representative
11 or representatives has such knowledge and experience in financial
12 and business matters that he or she is capable of evaluating the
13 merits and risks of the prospective investment.

14 (F) The applicant files with the commissioner, provides to
15 investors, and makes available to prospective investors: (i) a Small
16 Company Offering Registration disclosure document on Form
17 U-7, as adopted by the North American Securities Administrators
18 Association; and (ii) any other disclosures and documents deemed
19 necessary or desirable by the commissioner.

20 (G) For any offering made pursuant to this section, the applicant
21 shall provide to a prospective investor a disclosure document
22 meeting the requirements of Section 260.113.1 of Title 10 of the
23 California Code of Regulations, a permit application disclosure
24 document based on the Form U-7, as adopted by the North
25 American Securities Administrators Association, and any additional
26 requirements as the commissioner shall prescribe, that may include,
27 but not be limited to, investor suitability and due diligence
28 investigation requirements.

29 (H) The investor shall have a three-day right to rescind any
30 investment made in any security offered under this section. The
31 three-day period shall end at 11:59 p.m. Pacific standard time on
32 the third business day after the date on which the issuer’s
33 confirmation of its acceptance of the investor’s investment is
34 communicated in writing and received by the investor.

35 (I) The applicant sets aside in a separate third-party escrow
36 account all funds raised as part of the offering, to be held in escrow
37 until the time that the minimum offering amount is reached. If the
38 minimum offering amount is not reached within one year of the
39 effective date of the offering, the applicant shall return all funds
40 to investors.

1 (J) The applicant shall not, itself or through any third party,
2 conduct any direct solicitation of the securities offered by this
3 section. For purposes of this subparagraph, “direct solicitation”
4 means and includes the following: any in-person or face-to-face
5 conversation between the applicant or any of its founders,
6 promoters, officers, directors, controlling persons, agents, or other
7 persons acting directly or indirectly on behalf of the applicant and
8 any investor or prospective investor or any person acting directly
9 or indirectly on behalf of, or in regular communication with, the
10 investor. The applicant shall not, itself or through any third party,
11 conduct any unsolicited telephone solicitation of the securities
12 offered by this section.

13 (K) Each sales transaction shall meet the following requirements:

14 (i) The transaction is conducted through an intermediary that
15 complies with the requirements in Section 4A(a) of the Securities
16 Act (15 U.S.C. 77d–1(a)).

17 (ii) The transaction is conducted exclusively through the
18 intermediary’s platform.

19 (L) The applicant shall not conduct an offering or concurrent
20 offerings in reliance on this section using more than one
21 intermediary.

22 (M) The applicant shall comply with the following requirements
23 regarding its advertisements, as that term is defined in Section
24 25002, including, but not limited to, advertisement that is published
25 by electronic means:

26 (i) No applicant shall publish any advertisement in this state
27 concerning any security sold or offered for sale in this state unless
28 a true copy of the advertisement has first been filed in the office
29 of the commissioner at least three business days prior to the
30 publication or such shorter period as the commissioner may by
31 rule or order allow.

32 (ii) No applicant shall advertise, print, display, publish,
33 distribute, or broadcast, or cause or permit to be advertised, printed,
34 displayed, published, distributed, or broadcast, in any manner, any
35 statement or representation with regard to the business subject to
36 the provisions of this section, including the rates, terms, or
37 conditions for an offering or transaction that is false, misleading,
38 or deceptive, or that omits any statement necessary in order to
39 make the statement made, in the light of the circumstances under
40 which they were made, not misleading.

1 (iii) No applicant shall place an advertisement disseminated
2 primarily in this state unless the applicant discloses in the printed
3 text of the advertisement, or the oral text in the case of a radio or
4 television advertisement, that the applicant has a permit issued by
5 the department pursuant to this section.

6 (iv) The commissioner may require that rates of charges or fees,
7 if stated by the applicant, be stated fully and clearly in the manner
8 that the commissioner deems necessary to give adequate
9 information to, or to prevent misunderstanding by, prospective
10 investors.

11 (v) No advertisement shall be used after its use has been
12 disapproved by the commissioner and the applicant is notified in
13 writing of the disapproval. Such notification may be given
14 summarily without notice or hearing. At any time after the issuance
15 of a notification under this section, the person desiring to use the
16 advertisement may in writing request that the order be rescinded.
17 Upon the receipt of such a written request, the matter shall be set
18 down for hearing to commence within 15 business days after such
19 receipt unless the person making the request consents to a later
20 date. After such hearing, which shall be conducted in accordance
21 with the provisions of the Administrative Procedure Act (Chapter
22 5 (commencing with Section 11500) of Part 1 of Division 3 of
23 Title 2 of the Government Code) the commissioner shall determine
24 whether to affirm and continue or to rescind such order, and the
25 commissioner shall have all the powers granted under such act.

26 (vi) The commissioner may require applicants to maintain a file
27 of all advertisements for a period of three years from the date of
28 their use, unless by regulation, the commissioner specifies a
29 different period of time for retaining such advertisements. The file
30 shall be available to the commissioner upon request.

31 (N) The applicant or any person or entity selling an investment
32 to an investor pursuant to this section, including without limitation,
33 any issuer, securities broker-dealer, agent, or officer, director,
34 founder, promoter, controlling person, or other persons acting
35 directly or indirectly on behalf of the applicant shall have a
36 fiduciary obligation to any investor or prospective investor.

37 (O) The applicant, a predecessor of the applicant, an affiliated
38 applicant, a director, executive officer, or other officer participating
39 in the offering, a general partner or managing member of the
40 applicant, a beneficial owner of 20 percent or more of the

1 applicant's outstanding voting equity securities, calculated on the
2 basis of voting power, a promoter connected with the issuer in any
3 capacity at the time of the sale, an investment manager of an
4 applicant that is a pooled investment fund, a person that has been
5 or will be paid, directly or indirectly, remuneration for solicitation
6 of purchasers in connection with the sale of securities, a general
7 partner or managing member of the investment manager or
8 solicitor, or any director, executive officer, or other officer
9 participating in the offering of the investment manager or solicitor
10 or general partner or managing member of the investment manager
11 or solicitor shall not be disqualified as a "bad actor" under Rule
12 506(d) (17 C.F.R. 230.506(d)) under the Securities Act of 1933.

13 (P) The applicant undertakes that there will be no stock splits,
14 stock dividends, spinoffs, or mergers for a period of two years
15 from the close of the offering.

16 (Q) The applicant shall not require or impose an obligation on
17 any investor or potential investor to do any of the following:

18 (i) Arbitrate any claim or dispute.

19 (ii) Waive his or her right to file or participate in a class action
20 involving any claim or dispute.

21 (iii) Waive his or her right to a jury trial.

22 (iv) Be bound by or subject to any law other than California
23 law.

24 (v) File or resolve any claim or dispute in any forum other than
25 California.

26 (R) Any other requirement set forth by rule adopted by the
27 commissioner.

28 (c) The Department of Business Oversight shall either issue or
29 deny the permit within 60 days of the receipt of the application.
30 If the Department of Business Oversight fails to either issue or
31 deny the permit within 60 days, the applicant may demand a
32 hearing with the Department of Business Oversight. Upon the
33 receipt of such a written request, the matter shall be set down for
34 hearing to commence within 15 business days after such receipt
35 unless the person making the request consents to a later date. After
36 such hearing, which shall be conducted in accordance with the
37 provisions of the Administrative Procedure Act (Chapter 5
38 (commencing with Section 11500) of Part 1 of Division 3 of Title
39 2 of the Government Code) the commissioner shall determine
40 whether to affirm and continue or to rescind such order denying

1 the permit, and the commissioner shall have all the powers granted
2 under such act.

3 SEC. 5. Section 25501 of the Corporations Code is amended
4 to read:

5 25501. Any person who violates Section 25401 shall be liable
6 to the person who purchases a security from him or her or sells a
7 security to him or her, who may sue either for rescission or for
8 damages (if the plaintiff or the defendant, as the case may be, no
9 longer owns the security), unless the defendant proves that the
10 plaintiff knew the facts concerning the untruth or omission or that
11 the defendant exercised reasonable care and did not know (or if
12 he or she had exercised reasonable care would not have known)
13 of the untruth or omission. The plaintiff shall not be required to
14 plead or prove that the defendant acted with scienter. Upon
15 rescission, a purchaser shall recover the consideration paid for the
16 security, plus interest at the legal rate, less the amount of any
17 income received on the security, upon tender of the security, and
18 ~~shall recover reasonable attorney's fees determined by the court.~~
19 *security.* Upon rescission, a seller shall recover the security, upon
20 tender of the consideration paid for the security plus interest at the
21 legal rate, less the amount of any income received by the defendant
22 on the security. Damages recoverable under this section by a
23 purchaser shall be an amount equal to the difference between (a)
24 the price at which the security was bought plus interest at the legal
25 rate from the date of purchase and (b) the value of the security at
26 the time it was disposed of by the plaintiff plus the amount of any
27 income received on the security by the plaintiff. Damages
28 recoverable under this section by a seller shall be an amount equal
29 to the difference between (1) the value of the security at the time
30 of the filing of the complaint plus the amount of any income
31 received by the defendant on the security ~~plus reasonable attorney's~~
32 ~~fees determined by the court,~~ and (2) the price at which the security
33 was sold plus interest at the legal rate from the date of sale. Any
34 tender specified in this section may be made at any time before
35 entry of judgment. ~~The~~ *In addition to any of the relief described*
36 *above, the court shall award reasonable attorney's fees to a*
37 *prevailing purchaser or seller under this section. Additionally, the*
38 *court may in its discretion award three times the damages (other*
39 *than attorney's fees) determined as set forth above and award*
40 *punitive damages, in addition to those treble damages, against any*

1 person who violates Section 25401 if the court determines that the
2 violation was willful.

3 SEC. 6. Section 25503 of the Corporations Code is amended
4 to read:

5 25503. Any person who violates Section 25110, 25130, or
6 25133, or a condition of qualification under Chapter 2
7 (commencing with Section 25110) of this part, imposed pursuant
8 to Section 25141, or an order suspending trading issued pursuant
9 to Section 25219, shall be liable to any person acquiring from him
10 or her the security sold in violation of that section, who may sue
11 to recover the consideration he or she paid for such security with
12 interest thereon at the legal rate, and reasonable attorney's fees
13 determined by the court, less the amount of any income received
14 therefrom, upon the tender of such security, or for damages, if he
15 or she no longer owns the security, or if the consideration given
16 for the security is not capable of being returned. Damages, if the
17 plaintiff no longer owns the security, shall be equal to the
18 difference between (a) his or her purchase price plus interest at
19 the legal rate from the date of purchase plus reasonable attorney's
20 fees determined by the court, and (b) the value of the security at
21 the time it was disposed of by the plaintiff plus the amount of any
22 income received therefrom by the plaintiff.

23 Damages, if the consideration given for the security is not
24 capable of being returned, shall be equal to the value of that
25 consideration plus interest at the legal rate from the date of
26 purchase, provided the security is tendered, plus reasonable
27 attorney's fees determined by the court; and if the plaintiff no
28 longer owns the security, damages in such case shall be equal to
29 the difference between (a) the value of the consideration given for
30 the security plus interest at the legal rate from the date of purchase
31 plus reasonable attorney's fees determined by the court; and (b)
32 the value of the security at the time it was disposed of by the
33 plaintiff plus the amount of any income received therefrom by the
34 plaintiff. Any person who violates Section 25120 or a condition
35 of qualification under Chapter 3 (commencing with Section 25120)
36 of this part imposed pursuant to Section 25141, shall be liable to
37 any person acquiring from him or her the security sold in violation
38 of such section who may sue to recover the difference between (a)
39 the value of the consideration received by the seller and (b) the
40 value of the security at the time it was received by the buyer, with

1 interest thereon at the legal rate from the date of purchase plus
2 reasonable attorney's fees determined by the court. Any person
3 on whose behalf an offering is made and any underwriter of the
4 offering, whether on a best efforts or a firm commitment basis,
5 shall be jointly and severally liable under this section, but in no
6 event shall any underwriter (unless such underwriter knowingly
7 received from the issuer for acting as an underwriter some benefit,
8 directly or indirectly, in which all other underwriters similarly
9 situated did not share in proportion to their respective interest in
10 the underwriting) be liable in any suit or suits authorized under
11 this section for damages in excess of the total price at which the
12 securities underwritten by him or her and distributed to the public
13 were offered to the public. Any tender specified in this section
14 may be made at any time before entry of judgment. No person
15 shall be liable under this section for violation of Section 25110,
16 25120, or 25130 if the sale of the security is qualified prior to the
17 payment or receipt of any part of the consideration for the security
18 sold, even though an offer to sell or a contract of sale may have
19 been made or entered into without qualification. The court may in
20 its discretion award three times the damages (other than attorney's
21 fees) determined as set forth above and award punitive damages,
22 in addition to those treble damages, against any person who violates
23 Section 25110 in any offering qualified under Section 25113.1 if
24 the court determines that the violation was willful.

25 SEC. 7. Section 25608 of the Corporations Code is amended
26 to read:

27 25608. (a) The commissioner shall charge and collect the fees
28 fixed in this section and Section 25608.1. All fees charged and
29 collected under this section and Section 25608.1 shall be
30 transmitted to the Treasurer at least weekly, accompanied by a
31 detailed statement thereof and shall be credited to the State
32 Corporations Fund.

33 (b) The fee for filing an application for a negotiating permit
34 under subdivision (c) of Section 25102 is fifty dollars (\$50).

35 (c) The fee for filing a notice pursuant to paragraph (5) of
36 subdivision (h) of Section 25102 and the fee for filing a notice
37 pursuant to paragraph (4) of subdivision (f) of Section 25102, in
38 addition to the fee prescribed in those paragraphs, if applicable,
39 shall be determined based on the value of the securities proposed

1 to be sold in the transaction for which the notice is filed and in
2 accordance with subdivision (g), and shall be as follows:

3	Value of Securities	
4	Proposed to be Sold	Filing Fee
5	\$25,000 or less	\$ 25
6	\$25,001 to \$100,000	\$ 35
7	\$100,001 to \$500,000	\$ 50
8	\$500,001 to \$1,000,000	\$150
9	Over \$1,000,000	\$300
10		

11
12 (d) The fee for filing an application for designation of an issuer
13 pursuant to subdivision (k) of Section 25100 is fifty dollars (\$50).

14 (e) The fee for filing an application for qualification of the sale
15 of securities by notification under Section 25112 or by permit
16 under paragraph (1) of subdivision (b) of Section 25113 (except
17 applications for qualification by permit of the sale of any guarantee
18 of any security, the fees for which applications are fixed in
19 subdivision (k)) is two hundred dollars (\$200) plus one-fifth of 1
20 percent of the aggregate value of the securities sought to be sold
21 in this state up to a maximum aggregate fee of two thousand five
22 hundred dollars (\$2,500).

23 The fee for filing a small company application for qualification
24 of the sale of securities by permit under paragraph (2) of
25 subdivision (b) of Section 25113 is two thousand five hundred
26 dollars (\$2,500). In the case where the costs of processing a small
27 company application exceed the filing fee, an additional fee shall
28 be charged, not to exceed one thousand dollars (\$1,000), over and
29 above the filing fee based on the costs of the salary or other
30 compensation paid to persons processing the application plus
31 overhead costs reasonably incurred in the performance of the work.
32 In determining the costs, the commissioner may use the estimated
33 average hourly cost for all persons processing applications for the
34 fiscal year.

35 The fee for filing a crowdfunding application for qualification
36 of the sale of securities by permit under Section 25113.1 is two
37 hundred dollars (\$200) plus one-fifth of 2 percent of the aggregate
38 value of the securities sought to be sold in this state.

39 (f) The fee for filing an application for qualification of the sale
40 of securities by coordination under Section 25111 or a notice of

1 intention to sell under subdivision (t) of Section 25100 is two
2 hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate
3 value of the securities sought to be sold in this state up to a
4 maximum aggregate fee of two thousand five hundred dollars
5 (\$2,500).

6 (g) For the purpose of determining the fees fixed in subdivisions
7 (e) and (f):

8 (1) The value of the securities shall be the price at which the
9 company proposes to sell the securities, or the value, as alleged in
10 the application, or the actual value, as determined by the
11 commissioner, of the consideration (if other than money) to be
12 received in exchange therefor, or of the securities when sold,
13 whichever is greater.

14 (2) Interim or voting trust certificates shall have a value equal
15 to the aggregate value of the securities to be represented by the
16 interim or voting trust certificates.

17 (3) The value of a warrant or right to purchase or subscribe to
18 another security of the same or another issuer shall be an amount
19 equal to the consideration to be paid for that warrant or right plus
20 an amount equal to the consideration to be paid upon purchase of
21 the additional securities, provided that if the latter amount is not
22 determinable at the time of qualification, that amount shall then
23 be the value of the additional securities as determined by the
24 commissioner.

25 (4) In the case of a share dividend where the shareholders are
26 given an option to accept either cash or additional shares of
27 common stock, the value of the securities to be sold shall be the
28 maximum amount of cash that would be payable in the event that
29 all shareholders elected to accept cash.

30 (h) The fee for filing an application for qualification of the sale
31 of securities by permit under Section 25121 is:

32 (1) Two hundred dollars (\$200) in connection with any change
33 (including any stock split or reverse stock split or stock dividend,
34 except a stock dividend where the shareholders are given an option
35 to accept either cash or additional shares of common stock) in the
36 rights, preferences, privileges, or restrictions of or on outstanding
37 securities.

38 (2) Two hundred dollars (\$200) plus one-fifth of 1 percent of
39 the value, as alleged in the application, or the actual value, as
40 determined by the commissioner, of the consideration to be

1 received in exchange therefor, up to a maximum aggregate fee of
2 two thousand five hundred dollars (\$2,500), in any exchange of
3 securities by the issuer with its existing security holders
4 exclusively, or in any exchange in connection with any merger or
5 consolidation or purchase of corporate assets in consideration of
6 the issuance of securities, or any entity conversion transaction.

7 (i) The fee for filing an application for qualification of the sale
8 of securities by notification under Section 25131 shall be one
9 hundred dollars (\$100).

10 (j) The fee for an application for the removal of any condition
11 under Section 25141 is fifty dollars (\$50).

12 (k) The fee for filing any application for a permit to execute or
13 issue any guarantee of any security is fifty dollars (\$50).

14 (l) The fee for acting as escrowholder for securities under
15 Section 25149 is fifty dollars (\$50). In addition, a fee of two dollars
16 and fifty cents (\$2.50) shall be paid for the deposit with the
17 commissioner of each new certificate or other document resulting
18 from a transfer in escrow.

19 (m) The fee for filing an application for an order (1) consenting
20 to the transfer in escrow of securities or (2) consenting to the
21 transfer of securities subject to any condition imposed by the
22 commissioner requiring the commissioner's consent to the transfer
23 is twenty dollars (\$20) for each transfer.

24 (n) The filing fee for an amendment to an application filed after
25 the effective date of the qualification of the sale of securities is
26 fifty dollars (\$50) plus any additional fee that would have been
27 required to be paid with the original application for qualification
28 of the sale of securities under this section if the matters set forth
29 in the amendment had been included in the original application.

30 (o) (1) The fee for filing an application for a broker-dealer
31 certificate under Section 25211 is three hundred dollars (\$300).

32 (2) Each broker-dealer shall pay to the commissioner its pro
33 rata share of all costs and expenses, reasonably incurred in the
34 administration of the broker-dealer program under this division,
35 as estimated by the commissioner for the ensuing year and any
36 deficit actually incurred or anticipated in the administration of the
37 program in the year in which the assessment is made. The pro rata
38 share shall be the proportion that the broker-dealer and the number
39 of its agents in this state bears to the aggregate number of
40 broker-dealers and agents in this state as shown by records

1 maintained by or on behalf of the commissioner. The pro rata share
2 may include the costs of any examinations, audit, or investigation
3 provided for in subdivision (r).

4 (3) Every broker-dealer who has secured from the commissioner
5 a certificate shall, in order to keep the certificate in effect for an
6 additional period, pay a minimum assessment of seventy-five
7 dollars (\$75) on or before the 31st of December in each year.

8 (4) The commissioner may assess and levy against each
9 broker-dealer any additional amount above the minimum
10 assessment amount of seventy-five dollars (\$75) that is reasonable
11 and necessary to support the broker-dealer program under this
12 division. If an additional amount is assessed, the commissioner
13 shall notify each broker-dealer by mail of any additional amount
14 assessed and levied against it on or before the 30th day of May in
15 each year, and that amount shall be paid within 20 days thereafter.
16 If payment is not made within 20 days, the commissioner shall
17 assess and collect a penalty in addition to the assessment of 1
18 percent of the assessment for each month or part of a month that
19 the payment is delayed or withheld.

20 (5) If a broker-dealer fails to pay any assessment on or before
21 the 30th day of the month following the day upon which payment
22 is due, the commissioner may by order summarily suspend or
23 revoke the certificate issued to the broker-dealer. If, after that order
24 is made, a request for hearing is filed in writing and a hearing is
25 not held within 60 days thereafter, the order is deemed rescinded
26 as of its effective date. During any period when its certificate is
27 revoked or suspended, a broker-dealer shall not conduct business
28 pursuant to this division except as may be permitted by order of
29 the commissioner; provided, however, that the revocation,
30 suspension, or surrender of a certificate shall not affect the powers
31 of the commissioner as provided under this division.

32 (6) In determining the amount assessed, the commissioner shall
33 consider all appropriations from the State Corporations Fund for
34 the support of the broker-dealer program under this division and
35 all reimbursements applicable to the administration of the
36 broker-dealer program under this division.

37 (p) (1) The commissioner shall charge a fee of twenty-five
38 dollars (\$25) for the filing of a notice or report required by rules
39 adopted pursuant to subdivision (b) of Section 25210 or subdivision
40 (b) of Section 25230.

1 (2) The commissioner may charge a fee up to thirty-five dollars
2 (\$35) to keep in effect for the following year any notice or report
3 required by rules adopted pursuant to subdivision (b) of Section
4 25210 or subdivision (b) of Section 25230.

5 (3) No person shall, on behalf of a broker-dealer licensed
6 pursuant to Section 25211, effect any transaction in, or induce or
7 attempt to induce the purchase or sale of, any security in this state
8 unless the broker-dealer pays the annual fee required by paragraph
9 (2) of this subdivision on or before the day upon which payment
10 is due.

11 (4) No person may, in this state, on behalf of an investment
12 adviser licensed pursuant to Section 25231, offer or negotiate for
13 the sale of investment advisory services of the investment adviser,
14 determine which recommendations shall be made to, make
15 recommendations to, or manage the accounts of, clients of the
16 investment adviser, or determine the reports or analyses concerning
17 securities to be published by the investment adviser, unless the
18 investment adviser pays the annual fee required by paragraph (2)
19 on or before the day upon which payment is due.

20 (5) The commissioner may by order summarily enjoin an
21 individual from performing any activity under paragraph (3) or
22 (4) if the annual fee in paragraph (2) is not paid on or before the
23 day upon which payment is due. An order under this paragraph
24 may not be made before 10 days after notice by the commissioner
25 that the fee is due and unpaid.

26 (q) (1) Except as provided for in paragraph (2), the fee for filing
27 an application for an investment adviser under Section 25231 is
28 one hundred twenty-five dollars (\$125), and payment of this
29 amount shall keep the certificate, if granted, in effect during the
30 calendar year during which it is granted. Every investment adviser
31 who has secured from the commissioner a certificate shall, in order
32 to keep the certificate in effect for an additional period, pay a
33 renewal fee of one hundred twenty-five dollars (\$125) on or before
34 the 31st day of December.

35 (2) Paragraph (1) shall not apply to a broker-dealer licensed
36 under Section 25210.

37 (r) (1) Except as provided for in paragraph (2), the fee for any
38 routine or nonroutine regulatory examination, audit, or
39 investigation is the amount of the salary or other compensation
40 paid to the persons making the examination, audit, or investigation

1 plus the amount of expenses including overhead reasonably
2 incurred in the performance of the work. In determining the costs
3 associated with an examination, audit, or investigation, the
4 commissioner may use the estimated average hourly cost for all
5 persons performing examinations, audits, or investigations for the
6 fiscal year.

7 (2) An investment adviser licensed under Section 25230 pursuant
8 to the Investment Adviser Registration Depository shall not be
9 subject to paragraph (1) only in regard to the fee for a routine
10 regulatory examination of its investment advisory services for
11 which it is licensed under Section 25230.

12 (s) The fee for any hearing held by the commissioner pursuant
13 to Section 25142 shall be the sum determined by the commissioner
14 to cover the actual expense of noticing and holding the hearing.

15 (t) The commissioner may fix by rule a reasonable charge for
16 any publications issued under his or her authority. The charges
17 shall not apply to reports of the commissioner in the ordinary
18 course of distribution.

19 (u) The fee for filing an offer under subdivision (b) of Section
20 25507 shall be the amount of filing fee payable under subdivision
21 (e), (f), (h), or (i) of this section if an application had been filed to
22 qualify the transaction in which the securities upon which the offer
23 is to be made were sold in violation of the qualification provisions
24 of this law.

25 (v) The fee for filing an application for exemption pursuant to
26 subdivision (l) of Section 25100 is two hundred fifty dollars (\$250).

27 (w) The commissioner may by rule require payment of a fee
28 for filing a notice or report required by a rule adopted pursuant to
29 Section 25105. The fee required in connection with a transaction
30 as defined by that rule shall not exceed the fees specified in
31 subdivision (c) based on the value of the securities sold, but the
32 commissioner may permit a single notice for more than one
33 transaction.

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

36 (y) The fee for filing a notice of transaction under subdivision
37 (o) of Section 25102 shall be the fee for filing an application for
38 qualification of the sale of securities by permit under paragraph
39 (1) of subdivision (b) of Section 25113 as set forth in subdivision
40 (e) of this section.

- 1 (z) The fee for filing a notice of transaction under subdivision
- 2 (h) of Section 25103 shall be six hundred dollars (\$600).

O