STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

Pete Wilson
Governor

Keith Paul Bishop
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DATE: December 12, 1996

RELEASE No. 103-C

NOTICE FILING AND FEE PAYMENT REQUIREMENTS FOR SECURITIES OFFERINGS UNDER SEC RULE 506

The National Securities Markets Improvement Act of 1996 (the "NSMIA") was enacted on October 11, 1996. Section 102(a) of the NSMIA amended Section 18 of the Securities Act of 1933 (the "Securities Act") to provide generally for the preemption of state or local registration or qualification requirements with respect to a security that is either a "covered security" or will be a "covered security" upon completion of a transaction. Section 18(b)(4)(D) and (c) of the Securities Act, however, specifically reserve to the states the authority to impose notice filing requirements and to collect filing or registration fees. This release describes the Department of Corporations' requirements with respect to notice filing and fee payments with respect to securities that are "covered securities" pursuant to Section 18(b)(4)(D).

Section 18(b)(4)(D) of the Securities Act provides that a security is "covered security" with respect to a transaction involving a security exempt from federal registration under United States Securities and Exchange Commission (the "SEC") rules or regulations issued under Section 4(2) of the Securities Act. Because the SEC has issued Rule 506 (17 CFR 230.506) under Section 4(2) of the Securities Act, a security is "covered security" with respect to a transaction effected pursuant to Rule 506.

Nonetheless, Section 18(b)(4)(D) also provides that a state may impose a notice filing requirement that is substantially similar to the notice filing requirements imposed by rule or regulation under Section 4(2) of the Securities Act that are in effect on September 1, 1996. Moreover, Sections 18(c)(2)(A) and (B) of the Securities Act reserve to a state the authority to require the filing of a

notice and other documents, along with the payment of a fee, by an issuer in a Rule 506 offering of securities made in that state.

Rule 503 (17 CFR 230.503) as in effect on September 1, 1996, required an issuer offering or selling securities in reliance on Rule 506 to file with the SEC five copies of a notice on Form D (17 CFR 239.500) no later than 15 days after the first sale of securities.

Under the Corporate Securities Law of 1968 (the "Law"), since November 1, 1981, an exemption from qualification is afforded to an issuer that is substantially similar to the exemption from federal registration afforded by Rule 506; this exemption from the Law is the exemption afforded by Corporations Code Section 25102(f) and the rules of the Commissioner of Corporations promulgated thereunder (10 C.C.R. Secs. 260.102.12 through 260.102.15; 260.103). Moreover, since 1981, the Commissioner has accepted for filing from an issuer the Form D in lieu of filing the Notice of Transaction Pursuant to Corporations Code Section 25102(f) to claim the exemption under Section 25102(f). Accordingly, the Department of Corporations believes that in many instances there will be no conflict between the preemption established by the NSMIA and the Law.

If a security is exempt from registration under the Securities Act pursuant to Rule 506, the Department of Corporations will require in connection with a transaction involving a securities offering in this state the following notice and document filing, as well as fee payment:

> Issuers shall file the Form D, Notice of Sale of Securities Pursuant to Regulation D, within 15 calendar days after the first sale of a security in California under the exemption from federal registration afforded by Rule 506. No notice is required if none of the securities are purchased in California. The fee required by Corporations Code Section 25608(c) must accompany the filing of the Form D. Each issuer, other than a California corporation, must also file a consent to service of process (Form 260.165; 10 C.C.R. Sec. 260.165), unless the issuer already has a consent to service of process on file with the Commissioner.
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> The filing must also be accompanied by a letter of transmittal stating that the filing is pursuant to Rule 506 and Section 18(b)(4)(D) of the Securities Act of 1933, and if a consent to service of process is not

included, a statement that the issuer is a California corporation or already has a consent to service of process on file with the Commissioner.

This filing procedure for offers and sales of securities in this state that are exempt from registration under the Securities Act by Rule 506 shall be effective for issuers on and after this date. For Rule 506 offerings of securities made in this state during the period from the effective date of NSMIA and prior to the date of this release, the issuer shall comply with the notice and document filing, and fee payment, requirements under this procedure within 30 days of the date of this release.

The Department of Corporations recognizes that certain offers and sales may be exempt from registration under the Securities Act pursuant to Rule 506 and not meet the conditions for exemption pursuant to Section 25102(f). Under Article III, Section 3.5, of the California Constitution, the Department of Corporations does not have the power (absent an appellate court determination) to declare the Law unenforceable on the basis that federal law prohibits the enforcement of the Law.

The Department of Corporations reminds issuers that reliance on Section 4(2), generally, or other exemptions from registration under the Securities Act will not result in a security becoming a "covered security" within the meaning of Section 18(b)(4)(D).

By Order Of
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