



STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION & HOUSING AGENCY

DEPARTMENT OF CORPORATIONS

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LIMITED OFFERING EXEMPTION NOTICE PACKET  
CORPORATIONS CODE SECTION 25102(f)

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As of July 22, 2005, the Limited Offering Exemption Notice pursuant to Corporations Code Section 25102(f) is **required to be filed electronically** unless a hardship exception is claimed. Please see the enclosed instructions in Section 260.102.14(f) for the information on claiming an exception to filing electronically. To file electronically, see the Department of Corporations' Web site at <http://www.corp.ca.gov/loen/loen.htm>.

*This packet provides information and forms to assist in the preparation and filing of a Notice of Transaction Pursuant to Corporations Code Section 25102(f). 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. The current Notice and Consent to Service of Process forms are provided in this packet. **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. For confirmation of your filing, the Department's Cal-EASI database is available at [www.corp.ca.gov](http://www.corp.ca.gov) for filers to view their notice approximately 30-days after filing. Your canceled check will serve as your receipt for payment of fees. If you wish an endorsed copy of the filed Notice, 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.*

*If you are claiming an exception to filing electronically, your Notice may be filed at any of our office locations either in person or by mail. If you have questions or need assistance, you may call our toll-free number, 1-866-ASK-CORP (1-866-275-2677) or visit the office nearest to your location.*

LOS ANGELES 90013-2344  
320 West 4<sup>th</sup> Street, Suite 750

SACRAMENTO 95814-4052  
1515 K Street, Suite 200

SAN DIEGO 92101-3697  
1350 Front Street, Suite 2034

SAN FRANCISCO 94105-2980  
71 Stevenson Street, Suite 2100

## ***CALIFORNIA CORPORATIONS CODE***

### **Section 25102. Transactions exempt from the provisions of Section 25110.**

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

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

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

(3) Each purchaser represents 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.

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

The failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice as provided by rule of the commissioner shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110.

### **Section 25608. Fees, charge and collection; disposition**

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

value of the securities proposed to be sold in the transaction for which the notice is filed and in accordance with subdivision (g), and shall be as follows:

Value of Securities Proposed to be Sold	Filing Fee
\$25,000 or less	\$ 25
\$25,001 to \$100,000	\$ 35
\$100,001 to \$500,000	\$ 50
\$500,001 to \$1,000,000	\$150
Over \$1,000,000	\$300

### ***TITLE 10, CHAPTER 3, CALIFORNIA CODE OF REGULATIONS***

#### **260.103. Exemption from Qualification of Recapitalizations and Reorganizations.**

(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).

#### **260.102.12. Limited Offering Exemption-Interpretations.**

(a) The provisions of this section apply to the provisions of Section 25102(f) of the Code.

(b) **Integration.** The term "transaction" does not include

(1) any offer or sale of a security made more than 6 months before the start of an offering under the exemption or made more than six months after completion of an offering under the

exemption, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold pursuant to the exemption, other than those offers or sales of securities under any purchase, savings, option, bonus, appreciation, profit-sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers of the issuer or a subsidiary of the issuer (note: Section 25102(f) is not available for an offer or sale of a security to a pension or profit-sharing trust of the issuer),

(2) any offer or sale of a security pursuant to a qualification under Section 25110 or 25120 which became effective after the filing of the notice of the transaction pursuant to Rule 260.102.14, or in which the application for qualification discloses the transaction under the exemption, whether past, current or proposed. This subsection does not create any presumption that offers and sales not excluded from the transaction by its provisions are to be integrated for the purposes of the exemption and that determination shall be made without reference to this subsection.

(c) **Purchaser.** The term "purchaser" means a person who acquires the beneficial ownership of the security, whether individually or in joint ownership, in the transaction under the exemption. Each person who takes in joint ownership with another is to be counted as one except as otherwise provided in Section 25102(f).

(d) **Relationship.**

(1) The term "preexisting personal or business relationship" includes any relationship consisting of personal or business contacts of a nature and duration such as would enable a reasonably prudent purchaser to be aware of the character, business acumen and general business and financial circumstances of the person with whom such relationship exists. A relationship of employer-employee, or as a security holder of the issuer, or as a customer of a broker-dealer, investment adviser or other person, does not necessarily involve contacts of a nature which are sufficient to establish a "preexisting personal or business relationship" within the meaning of Section 25102(f). This subsection does not create any presumption that relationships not falling within its terms are not within the statutory language, and the determination of whether or not such a relationship is within the statutory language shall be made without reference to this subsection.

(2) The phrase "all purchasers" used in Section 25102(f)(2) of the Code does not include purchasers excluded from the count of purchasers by virtue of Section 25102(f)(4) or Rule 260.102.13.

(e) **Partners.** The term "partners" in Section 25102(f)(2) means general partners.

(f) **Controlling Person.** The term "controlling person of the offeror" includes but is not limited to a person who, in connection with transactions within one year of the formation of the issuer, is a "promoter" of the issuer. "Promoter" means a person who, acting alone or in conjunction with one or more other persons, takes the initiative in founding and organizing the business or enterprise of an issuer.

(g) **Professional Advisor.** The term "professional advisor" means a person who, as a regular part of such person's business, is customarily relied upon by others for investment recommendations or decisions, and who is customarily compensated for such services, either specifically or by way of compensation for related professional services, and attorneys and certified public accountants.

(1) The foregoing includes but is not limited to persons licensed or registered as broker-dealers, agents, investment advisers, banks and savings and loan associations. The foregoing also includes licensed real estate brokers with respect to those securities referred to in Section 25206 of the Code.

(2) A person is not the professional advisor of a purchaser unless designated as such by the purchaser.

(h) **Unaffiliated.** The relationships which will render a person not "unaffiliated" include

(1) a present or intended relationship of employment, either as an employee, employer, independent contractor or principal,

(2) any relationship within the definition of the term "affiliate" or as an officer or director of an affiliate and

(3) the beneficial ownership by the professional advisor of securities of the issuer or its affiliates or selling agent, except that the ownership of 1% or less of such securities shall not render a professional advisor not unaffiliated.

(i) **Affiliate.** "Affiliate" of the issuer means a person controlling, controlled by or under common control with, the issuer. A person controls another person within the meaning of this subsection through the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or actions of such other person.

(j) **Publication of Advertising.** Section 25102(f)(4) of the Code is to be interpreted so as to facilitate the circulation of disclosure materials to offerees and purchasers, so long as such materials are not disseminated to the public (see Sections 25002 and 25014 of the Code). Private placement memoranda, offering circulars and similar disclosure documents are not "disseminated to the public" for the purposes of Section 25102(f) of the Code if the issuer limits such circulation

(1) to persons reasonably believed to be interested in purchasing the securities or

(2) to persons whom the issuer believes may meet the qualifications required of purchasers pursuant to such section and the rules thereunder, provided with respect to clause (1) and clause (2) that neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(A) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(B) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. The preceding sentence does not create any presumption that a dissemination of materials otherwise than as described therein is a "publication of advertising," and the determination of that question shall be made without reference to that sentence.

(k) **Institutional Investors.** The reference in Section 25102(f) of the Code to purchasers described in Section 25102(i) includes those persons designated in Rule 260.102.10.

(l) For purposes of Section 25102(f), when a person is both an "affiliate of the issuer" or a purchaser excluded by Rule 260.102.13 and a partnership, corporation or other organization which was specifically formed for the purpose of purchasing the security offered in reliance upon the exemption, each beneficial holder of its securities shall be counted or excluded from the count in accordance with the provisions of Section 25102(f).

### **260.102.13 Limited Offering Exemption-Excluded Purchasers.**

For the purposes of Section 25102(f) of the Code, the following purchasers are excluded from the count of purchasers for purposes of Subparagraph (1) of that subdivision, except as provided in Subsection (l) of Rule 260.102.12:

(a) The trustee of an issuer which is a trust and the general partner of an issuer which is a partnership, who exercise managerial functions with respect to such entities, and any officer, director or general partner of a general partner of an issuer which is a partnership.

(b) Any person who occupies a position with the issuer, or with a general partner of an issuer which is a partnership, with duties and authority substantially similar to those of an executive officer of a corporation.

(c) (1) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(2) any trust or estate in which a purchaser and any of the persons related to such purchaser as specified in Clause (1) or Clause (3) collectively have more than 50% of the beneficial interest (excluding contingent interests); and

(3) any corporation or other organization of which a purchaser and any of the persons related to such purchaser as specified in Clause (1) or Clause (2) collectively are beneficial owners of more than 50% of the equity securities (excluding director's qualifying shares) or equity interests. "Relative" means a person related by blood, marriage or adoption.

(d) Any individual who is a "promoter" of the issuer, as defined in Subsection (f) of Section 260.102.12.

(e) Any person who purchases \$150,000 or more of the securities offered in the transaction, provided each such purchaser meets either one of the following, or who the issuer reasonably believes comes within either of the following:

(1) Such person, or such person's professional advisor, has the capacity to protect such person's own interests in connection with the transaction, as provided in Section 25102(f)(2).

(2) The investment (including mandatory assessments) does not exceed 10% of such person's net worth or joint net worth with that person's spouse.

(f) A small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Company Act of 1958, and a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940, and a private business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940.

(g) A person who comes within one of the categories of an "accredited investor" in Rule 501(a) of Regulation D adopted by the Securities and Exchange Commission under the Securities Act of 1933 (17 CFR Sec. 230.501(a)).

(h) Any entity in which all of the equity owners are persons specified in Section 25102(i) of the Code; Rule 260.102.10; or subsections (a), (b), (c), (d), (f) and (g) of this rule; or who are "officers, directors or affiliates of the issuer" as that term is used in Section 25102(f) of the Code.

#### **260.102.14 Limited Offering Exemption Notice of Transaction.**

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

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

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

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

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