



## BUSINESS LAW SECTION

### CORPORATIONS COMMITTEE

THE STATE BAR OF CALIFORNIA

180 Howard Street

San Francisco, CA 94105-1639

<http://www.calbar.org/buslaw/corporations>

### *CHANGES TO NAMES OF STOCK EXCHANGES*

#### LEGISLATIVE PROPOSAL (BLS-2009-01)

**TO:** Office of Governmental Affairs  
**FROM:** W. Derrick Britt, Vice-Chair, Legislation, Corporations Committee,  
Business Law Section (the "Section") Corporations Committee (the "Committee")  
**DATE:** July 9, 2008  
**RE:** Proposal to Amend California Corporations Code Provisions to Reflect Changes in  
Names of Stock Exchanges

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#### SECTION ACTION AND CONTACTS

Date of Approval by Section Executive Committee (the "Executive Committee"): December 14, 2007

Approval Vote:

For: 15 Against: 0

Date of Approval by Legislative Subcommittee of the Executive Committee: July 9, 2008

Approval Vote:

For: 6 Against: 0

Date of Approval by the Committee: December 7, 2007

Approval Vote:

For: 19 Against: 0

Date of Approval by Committee drafting subcommittee: December 7, 2007

Approval Vote:

For: 3 Against: 0

| <b>Executive Committee Contact:<sup>1</sup></b>  | <b>Committee Contact:<sup>1</sup></b>  |
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<sup>1</sup> Contact information is as of the date submitted. Contact information for the 2008-09 State Bar year is contained in the Supplemental Contacts Information sheet at the end of this document.

## HISTORY, DIGEST AND PURPOSE

The mission statement of the Committee provides that it shall study, consider, and take a position on and advocate that position with respect to, among other things, “[n]eeded changes to the California Corporations Code” and “[o]ther statutory changes that would promote efficiency or effectiveness in practice if made.” The Committee has concluded that it is consistent with that mission to propose amendments to various sections of the California Corporations Code (the “Code”) to reflect the recent designation of The NASDAQ Stock Market, LLC (“Nasdaq”) as a national securities exchange, changes in the names of certain national securities exchanges and changes in the names of some stock exchanges, markets and related regulatory entities.

### History.

Various provisions of the Code currently distinguish between entities identified or certified as a “national securities exchange” (e.g., the New York Stock Exchange and the American Stock Exchange), on the one hand, and the “National Market System of the NASDAQ Stock Market,” on the other hand. Other provisions of the Code refer to the “National or Small Cap Markets of the NASDAQ Stock Market” and the “Pacific Stock Exchange.” Similarly, some provisions refer to the “National Association of Securities Dealers” and the “National Association of Securities Dealers Regulation, Inc.,” while other provisions refer to the “Emerging Company Marketplace” of the American Stock Exchange and “Small Corporate Offering Registration securities” of the Pacific Exchange. Recent changes in the status of Nasdaq, re-branding or cessation of some markets, and corporate ownership and name changes involving the Pacific Stock Exchange, the National Association of Securities Dealers and the National Quotations Bureau have rendered all such references in the Code incorrect and out-of-date.

The need to correct certain references in the Code arises from the following events:

- On January 13, 2006, the Securities and Exchange Commission (the “SEC”) approved the application of Nasdaq to become a national securities exchange under Section 6 of the Securities Exchange Act of 1934, as amended (the “34 Act”). Pursuant to such authority, Nasdaq began operating as a national securities exchange on August 1, 2006. Previously, Nasdaq was not considered a national securities exchange, but securities quoted on Nasdaq's “National Market System” (which has certain listing standards) were treated similarly to securities listed on national securities exchanges for various purposes under California securities laws. With Nasdaq's change in status, it is no longer necessary to distinguish between national securities exchanges and Nasdaq.
- Effective July 1, 2006, Nasdaq renamed the “Nasdaq National Market” (sometimes referred to as the “National Market System of the NASDAQ Stock Market”) as the “Nasdaq Global Market” and created a new segment within the Nasdaq Global Market called the “Nasdaq Global Select Market.” (References to the Nasdaq Global Market include those securities listed on the Nasdaq Global Market and the Nasdaq Global Select

Market.) Similarly, on September 27, 2005, Nasdaq renamed the “Nasdaq Small Cap Market” as the “Nasdaq Capital Market.”

- The “Emerging Company Marketplace” previously operated by the American Stock Exchange (the “Amex”) was closed on May 11, 1995.
- The Pacific Exchange (sometimes referred to as the “Pacific Stock Exchange” and historically designated as a national securities exchange by the SEC) was acquired by Archipelago Holdings in September 2005, which in turn was acquired by the New York Stock Exchange (the “NYSE”) in February 2006. The NYSE now operates the Pacific Exchange as “NYSE Arca,” which continues to be designated as a national securities exchange under Section 6 of the 34 Act. NYSE Arca does not maintain a market for “small corporate offering registration” securities as had been maintained by the Pacific Exchange (known as the “SCOR Marketplace”).
- On July 26, 2007, the SEC approved the consolidation of the enforcement arm of the NYSE and the National Association of Securities Dealers, Inc. (the “NASD”) and its subsidiary, the National Association of Securities Dealers Regulation, Inc. (the “NASDR”), to form the Financial Industry Regulatory Authority (“FINRA”). The NASD previously was the corporate parent of The Nasdaq Stock Market, Inc. and the NASDR was the regulatory body governing Nasdaq and broker-dealers who trade Nasdaq securities. FINRA is the successor to the NASD, and the NASD and the NASDR have no ongoing separate existence.
- Certain provisions of the Code incorrectly refer to the “OTC-Bulletin Board” and the “Pink Sheets, LLC,” which are correctly known as the “OTC Bulletin Board” and the “Pink Sheets LLC.”
- On August 9, 2007, the Commissioner of Corporations for the State of California (the “Commissioner”) promulgated Commissioner’s Release 87-C, pursuant to which the Commissioner certified the NASDAQ Global Market of the NASDAQ Stock Market LLC as a national securities exchange pursuant to subdivision (o) of California Corporations Code Section 25100.

### **Relevant Existing Code Sections.**

**Section 301.5(d):** Section 301.5(d) defines the term “listed corporation” to include a corporation with shares listed on the NYSE or the American Stock Exchange (the “Amex”) *or securities listed on the National Market System of the NASDAQ Stock Market.* (The term “listed corporation” is relevant to whether a corporation is permitted to have a classified board of directors and prohibit cumulative voting.)

**Section 1300(b):** Section 1300(b) defines the term “dissenting shares” for purposes of a reorganization or short-form merger as shares which are not listed on any national securities

exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100 *or listed on the National Market System of the NASDAQ Stock Market.*

**Section 1502.1(b):** Section 1502.1 defines a “publicly traded corporation” (for purposes of determining whether an annual statement of information must be filed) as an issuer as defined in Section 3 of the 34 Act that has at least one class of securities listed or admitted for trading on a national securities exchange, *on the National or Small Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by the Pink Sheets, LLC.*

**Section 2115(c):** Section 2115(c) makes the rest of Section 2115 (which subjects some foreign corporations to select provisions of California corporate law) inapplicable to any corporation with outstanding securities listed on the NYSE or the Amex *or designated as qualified for trading on the Nasdaq National Market of the Nasdaq Stock Market operated by the Nasdaq Stock Market, Inc.*

**Section 2217.1(b):** Section 2217.1(b) defines a “publicly traded foreign corporation” (for purposes of determining whether an annual statement of information must be filed) as a foreign issuer as defined in Section 3 of the 34 Act that has at least one class of securities listed or admitted for trading on a national securities exchange, *on the National or Small Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by the Pink Sheets, LLC.*

**Section 25014.7:** Section 25014.7(a) defines an “eligible rollup transaction” as a rollup transaction in which the new securities issued are either listed or approved for listing on a national securities exchange or on *the National Market System of the Nasdaq Stock Market (or any successor thereto)*, where the national securities exchange *and the Nasdaq Stock Market (or its successor)* have been certified by the commissioner under subdivision (o) of Section 25100 if the exchange or *Nasdaq Stock Market* imposes procedural requirements to protect limited partner rights. Subdivision (b) of Section 25014.7 further provides a presumption that limited partners’ rights are being protected in a rollup transaction if dissenting partners are provided freely tradable securities issued by an issuer whose securities have been listed on a certified national securities exchange *or listed on the National Market System of the Nasdaq Stock Market System (or its successor)* for at least one year.

**Section 25100(o):** Section 25100(o) provides an exemption from the registration requirements of Section 25110, 25120 and 25130 for any security listed or approved for listing upon notice of issuance on a national securities exchange *or on the National Market System of the Nasdaq Stock Market (or any successor to that entity)* if the exchange *or Nasdaq Stock Market* has been certified by rule or order of the commissioner. The exemption does not apply to securities issued in a rollup transaction unless it is an eligible rollup transaction under Section 25014.7. Section 25100(o) also sets forth various minimum listing criteria that form the basis for certification by the commissioner, which criteria reference the Nasdaq Stock Market.

**Section 25101(a):** Section 25101(a) provides an exemption from the registration requirements of Section 25130 for any security listed upon notice of issuance on a national securities exchange *or on the National Market System of the Nasdaq Stock Market (or any successor to that entity)* if the exchange *or Nasdaq Stock Market* has been certified by rule or order of the commissioner.

**Section 25117(a):** Section 25117(a) exempts from constitutional usury provisions if the issuer of an evidence of indebtedness has any security listed or approved for listing upon notice of issuance on a national securities exchange *or on the National Market System of the Nasdaq Stock Market (or any successor to that entity)*, if the exchange *or Nasdaq Stock Market* has been certified by the commissioner.

**Section 25211(b):** Section 25211(b) sets forth the application requirements for a broker-dealer to become licensed by notification to the commissioner if the broker-dealer is a member of the NYSE, the Amex, *the Pacific Stock Exchange or the National Association of Securities Dealers*.

**Section 25219:** Section 25219 excludes any security listed on *the National Market System of the Nasdaq Stock Market or any national securities exchange located outside California* from the commissioner's authority to suspend over-the-counter trading of any security in California or summarily suspend all trading on a national securities exchange located in California.

**Section 25231(b):** Section 25231(b) requires all investment adviser applications, amendments, reports, notices, related filings and fees to be filed electronically through a specified system operated by *the National Association of Securities Dealers*.

**Sections 25247(a) and (f):** Section 25247(a) requires the commissioner to make available to any person certain information about a broker-dealer or agent regulated under the Corporations Code, which information includes that made available through *the Public Disclosure Program of the National Association of Securities Dealers, Incorporated (NASD)*. Section 25247(f) makes inapplicable specific provisions of the Business & Professions Code to the Department if its uses a national, uniform application adopted or approved for use by the SEC, the North American Securities Administrators Association, *or the National Association of Securities Dealers Regulation, Inc.* that is required for participation in the Central Registration Depository or the Investment Adviser Registration Depository.

## **Proposal.**

The proposed revisions to Sections 301.5(d), 1300(b), 1502.1(b), 2115(c), 2217.1(b), 25014.7, 25100(o), 25201(a), 25117(a), 25211(b), 25219, 25247(a) and 25247(b) of the Code (the “Affected Sections”) simply update and correct references to stock exchanges, markets and legal entities that are out-of-date and/or incorrect:

- Specific references to the “Nasdaq Stock Market” and the “National Market System of the Nasdaq Stock Market” will be deleted in most instances where the Nasdaq Stock Market is captured by an existing reference to a “national securities exchange.”
- References to the “National Market System of the Nasdaq Stock Market” used in a list of specific national securities exchanges will be struck and instead replaced by references to the “NASDAQ Global Market.”
- The “National Small-Cap Market” will be replaced by reference to the “NASDAQ Capital Market.”
- The “OTC-Bulletin Board” will be replaced by a reference to the “OTC Bulletin Board,” which is the correct name for that marketplace.
- References to “Pink Sheets, LLC” will be replaced by references to “Pink Sheets LLC,” which is the correct name for the electronic service known as the “Pink Sheets.”
- The reference to the “Pacific Stock Exchange” will be replaced by a reference to “NYSE Arca,” which is the successor to the Pacific Exchange.
- References to the “National Association of Securities Dealers,” “National Association of Securities Dealers, Incorporated (NASD)” and “National Association of Securities Dealers Regulation, Inc.” will be replaced by references to the “Financial Industry Regulatory Authority.”

## **Reasons for the Proposal.**

The reason for the proposed changes described above is simply to correct technical inaccuracies in the names of entities and markets referenced in various provisions of the Code brought about by recent changes in such entities and markets. Each of the proposed changes is intended to preserve the original intent of the Affected Sections.

## **APPLICATION**

If adopted, the proposed amendments to the Affected Sections described above would become effective January 1, 2010.

### **PENDING LITIGATION**

None to our knowledge.

### **LIKELY SUPPORT AND OPPOSITION**

We anticipate that the proposed amendments to the Affected Sections described above would receive unanimous support of California corporations, foreign corporations operating in California, investors and corporate law practitioners.

### **FISCAL IMPACT**

No negative fiscal impact is expected. The proposed amendments to the Affected Sections are merely intended to make it easier for businesses and advisors to understand what is required under the Code, which should contribute toward encouraging companies to incorporate or remain incorporated in California, or establish headquarters or remain headquartered in California.

### **GERMANENESS**

The subject matter of the proposed amendments of the Affected Sections are ones in which the members of the Section (and, in particular, the members of the Committee) have special expertise because they are called upon to interpret provisions of the Code and provide guidance on California securities law matters. The subject matter requires the special knowledge, training, experience and technical expertise of the Section. In addition, the proposed amendments would promote clarity, consistency and comprehensiveness of the law.

### **TEXT OF PROPOSAL**

SECTION 1. Section 301.5(d) of the Corporations Code is amended to read:

(d) For purposes of this section, a "listed corporation" means ~~any of the following:~~

~~(1) A~~ a corporation with outstanding shares listed on the New York Stock Exchange, ~~or~~ the American Stock Exchange *or the NASDAQ Global Market.*

~~(2) A corporation with outstanding securities listed on the National Market System of the Nasdaq Stock Market (or any successor to that entity).~~

SECTION 2. Section 1300(b) of the Corporations Code is amended to read:

(b) As used in this chapter, “dissenting shares” means shares which come within all of the following descriptions:

(1) Which were not immediately prior to the reorganization or short-form merger ~~either (A) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100 or (B) listed on the National Market System of the NASDAQ Stock Market~~, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303 and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; and provided, further, that this provision does not apply to any class of shares described in subparagraph (A) or (B) if demands for payment are filed with respect to 5 percent or more of the outstanding shares of that class.

SECTION 3. Section 1502.1(b) of the Corporations Code is amended to read:

(b) For purposes of this section, the following definitions apply:

(1) “Publicly traded corporation” means a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the ~~National or Small-Cap~~ *NASDAQ Capital* Markets of the NASDAQ Stock Market, *Inc.*, on the OTC- Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

SECTION 4. Section 2115(c) of the Corporations Code is amended to read:

(c) This section does not apply to any corporation (1) with outstanding securities listed on the New York Stock Exchange, ~~or~~ the American Stock Exchange *or the NASDAQ Global Market*, or (2) ~~with outstanding securities designated as qualified for trading on the Nasdaq National Market (or any successor thereto) of the Nasdaq Stock Market operated by the Nasdaq Stock Market Inc., or~~ (3) if all of its voting shares (other than directors' qualifying shares) are owned directly or indirectly by a corporation or corporations not subject to this section.

SECTION 5. Section 2217.1(b) of the Corporations Code is amended to read:

(b) For purposes of this section, the following definitions apply:

(1) “Publicly traded foreign corporation” means a foreign corporation, as defined in Section 171, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the ~~National or Small-Cap~~ *NASDAQ Capital*

Markets of the NASDAQ Stock Market, Inc., on the OTC- Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

SECTION 6. Section 25014.7(a) of the Corporations Code is amended to read:

(a) "Eligible rollup transaction" means a rollup transaction in which the new securities issued are ~~either listed or approved for listing on a national securities exchange or on the National Market System of the Nasdaq Stock Market (or any successor to that entity)~~, which has been certified by the commissioner under subdivision (o) of Section 25100, if the exchange ~~or Nasdaq Stock Market (or its successor)~~ requires as a condition to listing or designation that the rollup transaction be conducted in accordance with procedures to protect the rights of limited partners.

(b) The rights of limited partners will be presumed to be protected if the rollup transaction provides for the right of dissenting limited partners:

(1) (D) Freely tradeable securities utilized as compensation to dissenting limited partners must be issued by an issuer whose securities are listed on a ~~certified~~ national securities exchange ~~or listed on the National Market System of the Nasdaq Market System (or its successor)~~, if so *that has been* certified; for at least one year prior to the transaction, and the number of securities to be received in return for limited partnership interests must be determined by an appraisal of limited partnership assets, conducted in a manner consistent with paragraph (1) of subdivision (b), in relation to the average last sale price of the freely tradeable securities in the 20-day period following the transaction. If the issuer of the freely tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be utilized as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For the purposes of the preceding sentence, a sponsor or general partner is "affiliated" with the issuer of the freely tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the rollup transaction or the purchase of the general partner's interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this section.

SECTION 7. Section 25100(o) of the Corporations Code is amended to read:

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange ~~or on the National Market System of the Nasdaq Stock Market (or any successor to that entity)~~, if the exchange ~~or Nasdaq Stock Market (or its successor)~~ has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or approved for listing upon notice of issuance on a national securities exchange ~~or on the National Market System of the Nasdaq Stock Market (or its successor)~~, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange ~~or the Nasdaq Stock Market (or its successor)~~ shall be made by the commissioner upon the written request of the exchange ~~or Nasdaq Stock Market (or its successor)~~ if the commissioner finds that the exchange ~~or Nasdaq Stock Market (or its successor)~~: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars (\$750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange ~~or Nasdaq Stock Market (or its successor)~~ may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the exchange ~~or Nasdaq Stock Market (or its successor)~~ shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security that trades infrequently shall not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars (\$3) per share for a reasonable period of time prior to the filing of a listing application; provided, however, in certain instances an exchange ~~or Nasdaq Stock Market (or its successor)~~ may favorably consider listing an issue selling for less than three dollars (\$3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars (\$3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars (\$3,000,000).

(B) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars (\$15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company that (A) has shareholders' equity of less than one million dollars (\$1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars (\$3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars (\$750,000).

(v) If shares of common stock sell at a price of less than three dollars (\$3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange ~~or Nasdaq Stock Market (or its successor)~~, certified by rule or order of the commissioner under this subdivision, shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards ~~or Nasdaq Stock Market's (or its successor) criteria~~, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange ~~or Nasdaq Stock Market (or its successor)~~ to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or

order, decertify any exchange ~~or Nasdaq Stock Market (or its successor)~~ previously certified that ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, ~~or listed on the National Market System of the Nasdaq Stock Market (or its successor)~~, named in a rule or order of certification, and any warrant or right to purchase or subscribe to that security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange ~~or the Nasdaq Stock Market (or its successor)~~.

SECTION 8. Section 25101 of the Corporations Code is amended to read:

The following securities are exempt from the provisions of Section 25130:

(a) Any security issued by a person that is the issuer of any security listed on a national securities exchange, ~~or on the National Market System of the Nasdaq Stock Market (or any successor to that entity)~~, if the exchange ~~or Nasdaq Stock Market (or its successor)~~ is certified by rule or order of the commissioner.

SECTION 9. Section 25117(a) of the Corporations Code is amended to read:

(a) An evidence of indebtedness, and the purchasers or holders thereof, shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution if (1) the evidence of indebtedness is rated or provisionally rated by Standard & Poor's Corporation as AAA, AA, A, BBB, or investment grade commercial paper, or by Moody's Investors Service, Inc. as Aaa, Aa, A, Baa, or investment grade commercial paper, including any such ratings with "+" or "-" designation or other variations that occur within these ratings, or has a rating or a provisional rating by another nationally recognized rating agency or system, which rating and agency or system have been certified by rule or order of the commissioner, or (2) the issuer thereof either (A) has any security listed or approved for listing upon notice of issuance on a national securities exchange ~~or on the National Market System of the Nasdaq Stock Market (or any successor to that entity)~~, if the exchange ~~or Nasdaq Stock Market (or its successor)~~ has been certified by the commissioner, pursuant to subdivision (o) of Section 25100, or (B) meets each of the following requirements:

SECTION 10. Section 25211(b) of the Corporations Code is amended to read:

(b) A broker-dealer registered under the Securities Exchange Act of 1934 who is a member of the New York Stock Exchange, the American Stock Exchange, ~~the Pacific Stock Exchange~~ *NYSE Arca*, or the ~~National Association of Securities Dealers~~ *Financial Industry Regulatory Authority*, and who has not had any certificate as a broker-dealer, investment adviser or agent denied or revoked under this law or any predecessor statute, may be licensed by

notification pursuant to this subdivision by filing with the commissioner an application setting forth the following information in such form and detail as the commissioner may by rule require:

SECTION 11. Section 25219 of the Corporations Code is amended to read:

Notwithstanding any other provision of this division, if in his or her opinion the public interest and the protection of investors so require, the commissioner is authorized summarily to suspend all over-the-counter trading in this state by broker-dealers and agents in any security or summarily to suspend all trading on a national securities exchange located in this state in any security (provided, in the case of trading on that exchange, that the security is not listed on ~~the National Market System of the NASDAQ Stock Market~~ or any national securities exchange located outside this state on which trading has not been suspended) for a period not exceeding 90 days, and for successive periods of 90 days. No broker-dealer or agent shall effect any transaction (other than an unsolicited brokerage transaction effected on ~~the National Market System of the NASDAQ Stock Market~~ or on a national securities exchange located outside this state) in, or induce or attempt to induce the purchase or sale of, any security in this state in which trading is in any manner suspended under this section, except in performance of a contract previously entered into.

SECTION 12. Section 25231(b) of the Corporation Code is amended to read:

(b) Unless otherwise provided by rule or order of the commissioner, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the commissioner pursuant to this title shall be filed electronically with and transmitted to the Web-based Investment Adviser Registration Depository operated by the ~~National Association of Securities Dealers~~ *Financial Industry Regulatory Authority*.

SECTION 13. Subdivisions (a) and (f) of Section 25247 of the Corporations Code are amended to read:

(a) Upon written or oral request, the commissioner shall make available to any person the information specified in Section 6254.12 of the Government Code and made available through the Public Disclosure Program of the ~~National Association of Security Dealers, Incorporated (NASD)~~ *Financial Industry Regulatory Authority* with respect to any broker-dealer or agent licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of a broker-dealer. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provisions of law, the commissioner may disclose either orally or in writing that information pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Corporations, the Commissioner of Corporations, or any officer, agent, or employee of the state or of the Department of Corporations for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(f) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national, uniform application adopted or approved for use by the Securities and Exchange Commission, the North American Securities Administrators Association, or the ~~National Association of Securities Dealers Regulation, Inc.~~ *Financial Industry Regulatory Authority* that is required for participation in the Central Registration Depository or the Investment Adviser Registration Depository.

**SUPPLEMENTAL CONTACTS INFORMATION**  
**(2008-09 STATE BAR YEAR)**

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