



## BUSINESS LAW SECTION

THE STATE BAR OF CALIFORNIA

### **LEGISLATIVE PROPOSAL (BLS-2007-15) *REVISIONS TO CORPORATE DISCLOSURE ACT***

TO: Larry Doyle, Chief Legislative Counsel, State Bar of California

FROM: Neil J. Wertlieb, Vice-Chair, Legislation, Executive Committee,  
State Bar of California Business Law Section

DATE: July 5, 2006

RE: Proposal to amend §§1502, 1502.1, 2117 and 2117.1 of the Corporations Code of the  
State of California re Corporate Disclosure Act

#### SECTION ACTION:

**(Approved by BLS Executive Committee: March 10, 2006)**  
**(Approved by Corporations Committee: January 6, 2006)**

#### SECTION CONTACTS:

##### **Executive Committee Contact:**

Neil J. Wertlieb  
Milbank Tweed Hadley & McCloy LLP  
601 S. Figueroa St  
Los Angeles, CA 90017  
213-892-4411  
FAX 213 892-4710  
nwertlieb@milbank.com

##### **Corporations Committee Contact:**

Christopher Delfino  
Downey Brand Attorneys LLP  
555 Capitol Mall, Tenth Floor  
Sacramento, CA 95814-4686  
916-444-1000  
FAX 916-444-2100  
cdelfino@downeybrand.com

#### HISTORY, DIGEST AND PURPOSE

The mission statement of the Corporations Committee (the “Committee”) provides that it shall study, consider, take a position and advocate that position with respect to, among other things, “statutory changes that would promote efficiency or effectiveness in practice.” The Committee believes that the California Corporate Disclosure Act (the “Disclosure Act”), codified at Corporations Code §§1502 and 2117 as amended by Assembly Bill No. 55 (Chapter 1015, Statutes of 2002) and Corporations Code §§1502.1 and 2117.1 as added by Assembly Bill No.

1000 (Chapter 819, Statutes of 2004), impedes such efficiency and effectiveness by requiring publicly traded corporations doing business in California to provide disclosures that largely duplicate information already publicly available and that are costly to compile, in part due to inconsistencies with federal disclosure requirements. The Committee recommends that §§1502, 1502.1, 2117 and 2117.1 be amended to permit a publicly traded corporation to simply provide its Central Index Key (“CIK”)<sup>a</sup> as part of its annual statement filed under Section 1502 or 2117 in lieu of filing a corporate disclosure statement pursuant to §§1502.1 or 2117.1. The Committee further recommends amending §§1502 and 2117 to require the California Secretary of State to include information on its website describing how a member of the public can use a corporation’s CIK to access electronic information available through the United States Securities and Exchange Commission (the “SEC”).

**1. Background.** The original Disclosure Act was enacted on September 28, 2002, and became effective on January 1, 2003. The Disclosure Act required any “publicly traded company”<sup>b</sup> to supplement its annual Statement of Information, filed with the California Secretary of State, with additional disclosures relating to its auditor relationships, certain corporate events and its officers and directors. The Disclosure Act, adopted with little debate, suffered from a number of deficiencies, however, including inadequate or incomplete definitions and inconsistencies with disclosure requirements under federal law, resulting in substantial compliance costs for corporations subject to the Disclosure Act with little or no discernable offsetting benefit to the public.

On September 27, 2004, Governor Schwarzenegger signed Assembly Bill 1000, which made clarifying changes to the Disclosure Act and resolved some, but not all, of the Disclosure Act’s inconsistencies with federal law. In signing AB 1000, Governor Schwarzenegger directed the California Department of Corporations to review the efficacy of the Disclosure Act and, if appropriate, to consider sponsoring legislation to eliminate duplicative requirements from the Disclosure Act and to further align its provisions with federal reporting requirements. On December 1, 2004, the Department of Corporations announced such a study and requested public comments, to which the Committee responded with a comment letter recommending repeal of the Disclosure Act.

The Committee’s prior recommendation to repeal the Disclosure Act, and its current recommendation to amend the Disclosure Act as described in this proposal, is based on its determination that the Disclosure Act imposes unnecessary costs on the vast majority of publicly traded corporations doing business in California, without either providing meaningful new disclosure or improving investor access to information relating to the corporation and its business.

Redundant and Incomplete Disclosure. Nearly all of the information required to be set forth in the disclosure filings with the Secretary of State pursuant to the Disclosure Act can

---

<sup>a</sup> The CIK is a unique number assigned to each entity or person that files disclosure documents with the SEC. A filer’s CIK can be used to obtain information filed with the SEC with respect to the filer, through the SEC’s EDGAR database, available on the SEC’s website, [www.sec.gov](http://www.sec.gov).

<sup>b</sup> The term “publicly traded company” used in the Disclosure Act was changed to “publicly traded corporation,” with some modifications to the definition, when Assembly Bill No. 1000 was adopted in 2004.

already be found in disclosure reports filed with the SEC that are electronically available to the public free of charge on the SEC's EDGAR (Electronic Data Gathering, Analysis and Retrieval) database (available through the SEC's website, [www.sec.gov](http://www.sec.gov)). Since the information filed with the SEC is more extensive than that filed with the Secretary of State pursuant to the Disclosure Act, any investor interested in researching information about a corporation can already rely on a corporation's filings with the SEC. To the extent that interested parties consult both the California and SEC filings, definitional inconsistencies between the California and SEC disclosure requirements may lead to confusion on the part of investors. Under the recommendation set forth herein, publicly traded corporations that do not file such information with the SEC would remain subject to the provisions of the Disclosure Act. *Appendix A* sets forth, in tabular form, a comparison table of disclosure mandated by the SEC and, where applicable, the corresponding requirements of the Disclosure Act.

Existing Investor Access to Information. Many investors rely on financially-oriented websites, such as Yahoo!, MSN and AOL, for a "snap shot" of compensation information for a publicly traded corporation's officers and directors and for links to relevant SEC filings. As practitioners working with public corporations and investors, the members of the Committee do not believe that information filed under the Disclosure Act has been, or will be, used in any meaningful way by investors. While the Disclosure Act may have been intended to function as a simple way for investors to identify key information about publicly traded corporations doing business in California, the Committee believes that the continued development of Internet services as a means for disseminating financial information, and investors' familiarity with those services, has obviated the need for a duplicative resource at the California Secretary of State that provides only a portion of the information made available in SEC filings.

Compliance Costs; Nonconformity with SEC Disclosure. Compliance with the Disclosure Act has been, and will continue to be, costly. The Committee believes that the ongoing cost of compliance with the current version of the Disclosure Act is approximately \$2,500 to \$15,000 per filing as a result of technical, but legally mandated, differences between SEC disclosure and that required under the Disclosure Act. For example, the Disclosure Act requires disclosure concerning the compensation of five officers in addition to those who are also directors, which sometimes results in a need to collect compensation data for officers other than those specified under SEC regulations. Likewise, the Disclosure Act requires disclosure of loans to directors or officers at below-market rates, whereas SEC regulations require disclosure of any loan in excess of \$60,000. While the substance of the two disclosure regimes is similar, corporations subject to the Disclosure Act nonetheless incur costs in compiling the unique information required under the Disclosure Act, preparing the forms and having the appropriate personnel and advisors review the disclosures. This process involves the time not only of the personnel and advisors involved in compiling and receiving the information, but also the individual directors and officers in supplying the information. We also note that the SEC has proposed expansive changes to its existing executive compensation and related-party transaction disclosure regime, anticipated to be effective in 2007.<sup>c</sup> These changes, if adopted, will further expand the amount of information available to investors on the EDGAR system and harmonize

---

<sup>c</sup> Securities and Exchange Commission, Proposed Rule: Executive Compensation and Related Party Disclosure, Release No. 33-8655 (Jan. 27, 2006).

such disclosure practices nationwide for corporations that file reports with the SEC. Such changes would also, if adopted, widen the gap between SEC standards and the information required to be collected and disclosed under the Disclosure Act.

Adverse Effect on Californians. The Committee believes that the Disclosure Act reinforces the perception that California's regulatory environment is hostile to business, one that may discourage corporations from doing business in California or encourage corporations to move out of California. Members of the Committee are aware of corporations that have restructured their operations to have subsidiaries qualify to transact intrastate business in California to avoid the parent company being subject to the requirements of the Disclosure Act.

No Similar Laws in Other States. The Committee is not aware of any other states that have a law similar to the Disclosure Act. Nevada considered such a law in 2003, but instead enacted a requirement for each publicly traded corporation to list its CIK on its filings, together with a mandate for the Nevada Secretary of State to facilitate the public's use of such a corporation's CIK in obtaining information about the corporation from the SEC. As discussed above, such an approach would point interested parties to far more information than is currently available pursuant to the Disclosure Act, while also substantially reducing the burden on corporations conducting business in California.

Recommendation. For the reasons stated above, the Committee recommends that Sections 1502, 1502.1, 2117 and 2117.1 of the Corporations Code be amended to permit a publicly traded corporation filing a Statement of Information to provide its CIK in lieu of filing the corporate disclosures required under 1502.1 and 2117.1.

**2. Amendments.** §§1502(a) and 2117(a) would be amended by adding an additional element to the required statement, to require that a publicly traded corporation identify itself as such and provide its CIK. §§1502(h) and 2117(c) would be amended to require the Secretary of State's website to provide instructions on obtaining information about a publicly traded corporation from the SEC. §§1502 and 2117, respectively, would be amended to include a definition of "publicly traded corporation" equivalent to the definition currently set forth in Section 1502.1, a clarified version of the definition of "publicly traded foreign corporation" currently set forth in §2117.1, and a new definition of "Central Index Key." §§1502.1(a) and 2117.1(a) would be amended to exempt from its provisions (a) a "publicly traded corporation" or "publicly traded foreign corporation", as applicable, that has provided its "Central Index Key" pursuant to §§1502(a) or 2117(a), as applicable and (b) has filed with the Securities and Exchange Commission its annual report pursuant to Rule 13a-1 or Rule 13a-3, or its transition report pursuant to Rule 13a-10, promulgated under the Securities Exchange Act of 1934, as amended, for its most recently completed fiscal year. §§1502.1(b) and 2117.1(g) would be amended to include a definition of "Central Index Key."

## **APPLICATION**

If adopted, the proposed amendment would be effective January 1, 2008.

**PENDING LITIGATION**

There is no pending litigation to our knowledge.

**LIKELY SUPPORT AND OPPOSITION**

Support from corporations subject to the Disclosure Act. Potential opposition from groups representing investor interests.

**FISCAL IMPACT**

The proposed amendment would impose minimal costs to the Secretary of State in order to revise the Statement of Information forms to conform to these amendments and to make CIKs available through the Secretary's website. These costs would be offset by savings from not collecting and processing the information previously required by the Disclosure Act.

**GERMANENESS**

The subject matter of this proposal is one in which the members of the Business Law Section have special experience, and which requires their special knowledge, training and technical expertise. In addition, the proposed statute will promote clarity, consistency and comprehensiveness in the law.

**TEXT OF PROPOSAL**

SECTION 1. Section 1502 of the Corporations Code is amended to read:

1502. (a) Every corporation shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

- (1) The names and complete business or residence addresses of its incumbent directors.
- (2) The number of vacancies on the board, if any.
- (3) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.
- (4) The street address of its principal executive office.
- (5) If the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any.
- (6) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(7) *A statement as to whether the corporation is a publicly traded corporation; and if so, the corporation's Central Index Key, if available.*

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a

corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth that person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) If there has been no change in the information in the last filed statement of the corporation on file in the Secretary of State's office, the corporation may, in lieu of filing the statement required by subdivisions (a) and (b), advise the Secretary of State, on a form prescribed by the Secretary of State, that no changes in the required information have occurred during the applicable filing period.

(d) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each corporation approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the corporation according to the records of the Secretary of State. The failure of the corporation to receive the form is not an excuse for failure to comply with this section.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.

(f) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(g) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

(h) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, ~~not later than December 31, 2004,~~ shall provide access to all information contained in this statement by means of an online database. *The Secretary of State shall also include on its Internet website instructions describing the manner in which a member of the public may use a publicly traded corporation's Central Index Key to obtain information concerning such corporation from the Securities and Exchange Commission.*

(i) In addition to any other fees required, a corporation shall pay a five-dollar (\$5) disclosure fee when filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (h), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(j) A corporation shall certify that the information it provides pursuant to subdivisions (a) and (b) is true and correct. No claim may be made against the state for inaccurate information contained in the statements.

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

*(1) "Central Index Key" means the Central Index Key assigned to a corporation by the United States Securities and Exchange Commission pursuant to the EDGAR Filer Manual and Rule 301 of Regulation S-T (Section 232.301 of Title 17 of the Code of Federal Regulations).*

(2) "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 Global, Global Select or Capital Markets of the NASDAQ Stock Market or any successor market thereto, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

SEC 2. Section 1502.1 of the Corporations Code is amended to read:

1502.1. (a) In addition to the statement required pursuant to Section 1502, every publicly traded corporation (*other than a publicly traded corporation that (i) has provided its Central Index Key pursuant to Section 1502(a)(7) on its most recent annual statement filed pursuant to Section 1502 and (ii) has filed with the Securities and Exchange Commission its annual report pursuant to Rule 13a-1 or Rule 13a-3, or its transition report pursuant to Rule 13a-10, promulgated under the Securities Exchange Act of 1934, as amended, for its most recently completed fiscal year (sections 240.12a-1, et seq. of Title 17 of the Code of Federal Regulations)*) shall file annually, within 150 days after the end of its fiscal year, a statement, on a form prescribed by the Secretary of State, that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements.

(2) A description of other services, if any, performed for the corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loan, made to any member of the board of directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly-situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the corporation, its executive officers, or members of the board of directors of the corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the 10 years preceding the date of the statement, if the conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the

Securities and Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(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~~ *National Global, Global Select* or *Capital Small-Cap* Markets of the NASDAQ Stock Market or any successor market thereto, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

(2) "*Central Index Key*" means the *Central Index Key* assigned to a corporation by the United States Securities and Exchange Commission pursuant to the EDGAR Filer Manual and Rule 301 of Regulation S-T (Section 232.301 of Title 17 of the Code of Federal Regulations).

(32) "Executive officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(43) "Compensation" as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(54) "Loan" as used in paragraph (5) of subdivision (a) excludes an advance for expenses permitted under subdivision (d) of Section 315, the corporation's payment of life insurance premiums permitted under subdivision (e) of Section 315, and an advance of expenses permitted under Section 317. This statement shall be available and open to the public for inspection. The Secretary of State, ~~not later than December 31, 2004~~, shall provide access to all information contained in this statement by means of an online database.

(d) A corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SEC 3. Section 2117 of the Corporations Code is amended to read:

2117. (a) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, annually during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing the following:

(1) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(2) The street address of its principal executive office.

(3) The street address of its principal business office in this state, if any.

(4) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(5) *A statement as to whether the corporation is a publicly traded foreign corporation; and if so, the corporation's Central Index Key, if available.*

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, ~~not later than December 31, 2004~~, shall provide access to all information contained in the statement by means of an online database. *The Secretary of State shall also include on its Internet website instructions describing the manner in which a member of the public may use a publicly traded corporation's Central Index Key to obtain information concerning such corporation from the Securities and Exchange Commission.*

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar (\$5) disclosure fee upon filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (d), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section, except that "articles" shall mean the filing pursuant to Section 2105, and "corporation" shall mean a foreign corporation.

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

*(1) "Central Index Key" means the Central Index Key assigned to a corporation by the United States Securities and Exchange Commission pursuant to the EDGAR Filer Manual and Rule 301 of Regulation S-T (Section 232.301 of Title 17 of the Code of Federal Regulations).*

*(2) "publicly traded foreign corporation" means a foreign corporation, as defined in Section 171, that (i) is qualified to transact intrastate business; (ii) is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and (iii) has at least one class of securities listed or admitted for trading on a national securities exchange, on the Global, Global Select or Capital Markets of the NASDAQ Stock Market or any successor market thereto, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.*

SEC. 4. Section 2117.1 of the Corporations Code is amended to read:

2117.1. (a) In addition to the statement required pursuant to Section 2117, every publicly traded foreign corporation (*other than a publicly traded foreign corporation that (i) has provided its Central Index Key pursuant to Section 2117(a)(5) on its most recent annual statement filed pursuant to Section 2117 and (ii) has filed with the Securities and Exchange Commission its*

*annual report pursuant to Rule 13a-1 or Rule 13a-3, or its transition report pursuant to Rule 13a-10, promulgated under the Securities Exchange Act of 1934, as amended, for its most recently completed fiscal year (sections 240.12a-1, et seq. of Title 17 of the Code of Federal Regulations)) shall file annually, within 150 days after the end of its fiscal year, on a form prescribed by the Secretary of State, a statement that includes all of the following information:*

(1) The name of the independent auditor that prepared the most recent auditor's report on the publicly traded foreign corporation's annual financial statements.

(2) A description of other services, if any, performed for the publicly traded foreign corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the foreign corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the publicly traded foreign corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the foreign corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loans, made to any member of the board of directors by the publicly traded foreign corporation during the foreign corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the foreign corporation, its executive officers, or members of the board of directors of the foreign corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the publicly traded foreign corporation was convicted of fraud during the 10 years preceding the date of the statement, which conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities and Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(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 (i) is qualified to transact intrastate business; (ii) is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c);; and (iii) has at least one class of securities listed or admitted for trading on a national securities exchange, on the National Global, Global Select or Capital Small Cap Markets of the NASDAQ Stock Market

*or any successor market thereto*, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

(2) "Central Index Key" means the Central Index Key assigned to a corporation by the United States Securities and Exchange Commission pursuant to the EDGAR Filer Manual and Rule 301 of Regulation S-T (Section 232.301 of Title 17 of the Code of Federal Regulations).

(32) "Executive officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(43) "Compensation" as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(54) "Loan" as used in paragraph (5) of subdivision (a) excludes an advance for expenses, the foreign corporation's payment of life insurance premiums, and an advance of litigation expenses, in each instance as permitted according to the applicable law of the state or place of incorporation or organization of the foreign corporation.

(c) This statement shall be available and open to the public for inspection. The Secretary of State, ~~not later than December 31, 2004~~, shall provide access to all information contained in this statement by means of an online database.

(d) A foreign corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.