



State Of California  
Business, Transportation And Housing Agency  
DEPARTMENT OF CORPORATIONS  
*California's Investment and Financing Authority*

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**Arnold Schwarzenegger**  
*Governor*

**Preston DuFauchard**  
*California Corporations Commissioner*

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### **New Filing Requirements for Regulation D Offerings**

In 2008, the Securities and Exchange Commission (SEC) adopted revisions to Regulation D and Form D, designed to simplify and restructure information requirements and to enable electronic filing of Form D.<sup>1</sup> See Securities Act Release No. 33-8891 (Feb. 6, 2008), available at <http://www.sec.gov/rules/final/2008/33-8891.pdf>. The revised Form D was filed electronically with the SEC on a voluntary basis from September 15, 2008, through March 15, 2009.

**BEGINNING MARCH 16, 2009, THE SEC REQUIRES ALL FORM D FILINGS TO BE MADE ELECTRONICALLY.**

#### **Filing Requirements in California**

To claim an exclusion or exemption from securities qualification under California law, a Form D filing must be submitted to the California Corporations Commissioner no later than 15 days after the date of the first sale in this state. The Corporations Commissioner accepts Form D filings in two ways:

1. For an issuer filing a notice of a Rule 506 offering under California Corporations Code Section 25102.1(d), an issuer must submit:
  - a. A copy of the version of Form D filed with and accepted by the SEC;
  - b. A filing fee of \$300, pursuant to Section 25608.1(c) of the California Corporations Code; and

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<sup>1</sup> Under the Securities Act of 1933, any offer to sell securities must either be registered with the SEC or meet an exemption. Regulation D (or Reg D) contains three rules providing exemptions from the registration requirements, allowing some smaller companies to offer and sell their securities without having to register the securities with the SEC. In California, companies offering or selling securities in reliance on Rule 506 of Regulation D must file a "Form D" upon the first sale of securities in this state, and companies relying on the exemption under Corporations Code Section 25102(f) may file a paper copy of "Form D" rather than filing an electronic notice through the Department of Corporations' website.

- c. A consent to service of process or Form U-2 if a Temporary Form D was filed with the SEC prior to March 16, 2009 **(a consent to service of process or Form U-2 is not required if an electronic Form D was filed with the SEC).**
2. To file a notice of exemption under California Corporations Code Section 25102(f) by filing a copy of Form D (rather than electronically filing a notice with the Department of Corporations), an issuer must submit:
    - a. A copy of the version of Form D filed with and accepted by the SEC;
    - b. The appropriate filing fee, as determined based on the value of securities proposed to be sold, pursuant to Section 25608(c) of the California Corporations Code;
    - c. A consent to service of process or Form U-2 if Temporary Form D was filed with the SEC prior to March 16, 2009 **(a consent to service of process or Form U-2 is not required if an electronic Form D is filed with the SEC);** and
    - d. A cover letter specifying that the Form D filing is pursuant to section 25102(f).

All filings submitted by mail should be addressed to:

California Department of Corporations  
1515 K Street, Suite 200  
Sacramento, California 95814

### **Annual Filings/Amendments**

California does not require the filing of amendments or annual renewals.

### **Other Considerations**

An issuer filing electronically with the SEC should allow adequate time to obtain an Electronic Data Gathering, Analysis, and Retrieval (EDGAR) access code from the SEC prior to filing with that agency, in order to meet the filing requirement in California within 15 days of a sale in this state. An EDGAR access code may be obtained by following the instructions at <https://www.filermanagement.edgarfiling.sec.gov>. For more information on filing with the SEC, consult the [SEC's Guidance on Form D Filing Process](#). See also [Securities Act Release No. 33-8891 \(PDF\)\\*](#) (Feb. 6, 2008).

An electronic signature on a copy of electronic Form D is acceptable in California.

**Questions**

Questions regarding Form D filing requirements in California may be directed to the Department of Corporations' toll free number at 1 (866) ASK-CORP (1 (866) 275-2677).

Preston DuFauchard  
California Corporations Commissioner

By \_\_\_\_\_

Colleen E. Monahan  
Deputy Commissioner  
Office of Legislation and Policy