RONALD REAGAN, GOVERNOR, STATE OF CALIFORNIA
ANTHONY R. PIERNO, COMMISSIONER OF CORPORATIONS

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MEMBERSHIPS

Under Section 25019 of the Corporate Securities Law of 1968, a membership in an incorporated or unincorporated association is a security subject to the qualification requirements under that law unless an exemption is available. As used in Section 25019, "membership" refers to a security which confers upon the holder rights similar to those conferred by the ownership of a share of stock (see California Corporations Code Section 115). However, the term "membership" is often applied to license arrangements under which a person who is merely a licensee is entitled to use certain facilities or services. It is necessary to distinguish the two types of memberships carefully in order to avoid confusion and to properly determine whether a particular "membership" is subject to the qualification provisions or exempted therefrom.

MEMBERSHIPS IN NONPROFIT ORGANIZATIONS

The term "membership" as used in Section 25019 refers to memberships, such as those issued by nonprofit organizations, which confer a proprietary right on the holder. A proprietary right may be defined as a right to the ownership of the assets or earnings of an organization or the right to control of such organization. A right to control is normally evidenced by voting rights, whether conferred by the charter documents or under the provisions of the Corporations Code.

Section 25100(j) exempts from the qualification requirements, any securities (except evidences of indebtedness whether interest-bearing or not), of an issuer organized exclusively for educational, benevolent, fraternal, religious, charitable, social or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual or if the issuer is organized as a chamber of commerce or trade or professional association.

Memberships in such a nonprofit organization or unincorporated association are exempt from qualification unless a promoter's profit is made with respect to the formation or operation of the corporation. The right of members to the ultimate distribution of the organization's assets does not mean that the issuer is organized for pecuniary profit, unless it appears that at the time of its formation, the organizers intended to confer profits upon the members by increasing the assets or the value of the assets of the corporation and distributing the increment to the members in a liquidation. In the absence of evidence to this effect, a nonprofit

corporation is not disqualified for the exemption by reason of the fact that its articles and bylaws grant distributive rights to members upon liquidation either expressly or by being silent as to such rights.

An exemption is not available for securities of any nonprofit organization if a promoter intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of such nonprofit organization, or from remuneration received from such nonprofit organization. For example, if the promoters of a nonprofit country club should operate the bar or the golf shop, or act as contractor in building the club house, or if they expect a profit from the ownership of land adjacent to the country club, the exemption is not available.

An organization which otherwise meets the requirements contained in Section 25100(j) is not disqualified for the exemption by reason of the fact that membership fees or dues received from members will be used to construct or acquire the facilities used by the members.

MEMBERSHIPS IN PROFIT-MAKING ORGANIZATIONS

A membership sold by a profit-making organization which is a license to use the facilities constitutes a security if the proceeds from the sale of such membership are used to provide facilities necessary to the full utilization of the membership, that is, where the purchaser provides the risk capital for the enterprise, such as for the construction of a golf course and related facilities.

Not every right, privilege, benefit or license sold by a profit-making organization and which is labeled a "membership" is a membership within the meaning of Section 25019. A membership which confers upon the holder nothing more than the right to enjoy the facilities which are provided, such as key club privileges, the use of a swimming pool, or the use of golf facilities, is not a membership within the meaning of Section 25019 and, in the absence of the "risk" element, is not a security. If the sale of a right to use facilities includes a right to a return of monies paid or a right to share in the income or profits, it constitutes the sale of a security, in the nature of an evidence of indebtedness or of an investment contract.

Dated: October 7, 1970

By order of
ANTHONY P. PIERNO
Commissioner of Corporations

HANS A. MATTLS
Assistant Commissioner
Office of Policy