

FINAL STATEMENT OF REASONS
FOR THE AMENDMENT OF RULES UNDER THE
CORPORATE SECURITIES LAW OF 1968

As required by Section 11346.2 of the Government Code, the California Corporations Commissioner (Commissioner) sets forth below the reasons for the amendment of Sections 260.101.2, 260.103.4, 260.105.7, 260.105.17, 260.105.33, 260.105.34, 260.211.1, 260.217, 260.230, 260.241.4, and 260.242; and repeal of Sections 260.105.37 and 260.204.11 of Title 10 of the California Code of Regulations (10 C.C.R. Sections 260.101.2, 260.103.4, 260.105.7, 260.105.17, 260.105.33, 260.105.34, 260.105.37, 260.204.11, 260.211.1, 260.217, 260.230, 260.241.4, and 260.242).

The Department of Corporations (Department) regulates the offer and sale of securities under the Corporate Securities Law of 1968, as amended (commencing with Corporations Code Section 25000). This rulemaking action is based on a request by the Corporations Committee of the Business Law Section of the State Bar of California ("Committee"). By letter dated June 5, 2008, the Committee notified the Commissioner of the need to make various amendments to several sections of the Code of Regulations administered by the Commissioner. The Committee explained the need for the changes and provided sample language to implement the changes, which the Commissioner has incorporated into this rulemaking action. These amendments are reasonably necessary to reflect changes in the names and function of certain national security exchanges, stock exchanges, markets and related entities.

Sections 260.101.2

The Securities and Exchange Commission recently approved NASDAQ National Market System registration to operate as a national securities exchange. NASDAQ renamed the NASDAQ National Market System as the NASDAQ Global Market. Prior to this, NASDAQ has been operating under the supervision and control of the interdealer quotation system of the National Association of Securities Dealers, Inc. The proposed amendment adds NASDAQ Global Market to the national securities exchange list and deletes the reference to the interdealer quotation system of the National Association of Securities Dealers, Inc.

On October 1, 2008, NYSE Euronext (parent company of the New York Stock Exchange) acquired the American Stock Exchange and was renamed NYSE Alternext US LLC. Subsequently, NYSE Alternext US LLC was renamed NYSE Amex. Moreover the American Stock Exchange's "Emerging Company Marketplace" was closed on May 11, 1995. The proposed amendment adds NYSE Amex to the national securities exchange list and deletes reference to Emerging Company Marketplace.

In 2005, the Pacific Stock Exchange was acquired by Archipelago Holdings, which in turn was acquired by the New York Stock Exchange (NYSE) in 2006. The NYSE now operates the Pacific Exchange as NYSE Arca. The proposed amendment adds Tier 1 of the NYSE Arca to the national securities exchange list and deletes reference to the Pacific Stock Exchange. Reference to Tier 1 of the NYSE Arca

provides clarity that only those securities listed on Tier 1 of the NYSE Arca are exempt from the review and approval process of the Department.

In July 2008, NASDAQ OMX acquired the Philadelphia Stock Exchange and is now known as NASDAQ OMX PHLX. Reference to Tier 1 of the NASDAQ OMX PHLX provides clarity that only those securities listed on Tier 1 of the NASDAQ OMX PHLX are exempt from the renew and approval process of the Department.

Section 260.103.4

In 1997, the Securities and Exchange Commission approved the operation of the OTC Bulletin Board, an electronic quotation system for over-the-counter equity securities. Pink Sheets LLC also provides an electronic quotation service for over-the-counter equity and debt securities. The proposed amendment adds the electronic service operated by Pink Sheets LLC or the OTC Bulletin Board and deletes reference to the National Daily Quotation Service.

Section 260.105.7

In June of 2000, the National Quotations Bureau changed its name to Pink Sheets LLC. The proposed amendment deletes reference to the National Quotation Bureau and adds the Pink Sheets LLC, the OTC Bulletin Board, and the NASDAQ Stock Market LLC.

Section 260.105.17

On January 13, 2006, the Securities and Exchange Commission approved the application of NASDAQ to operate as a national securities exchange. NASDAQ renamed the NASDAQ National Market System 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.) Due to NASDAQ's change in status, it is no longer necessary to distinguish between national securities exchanges and NASDAQ. The proposed amendment adds NASDAQ Global Market to the certified national securities exchange list.

On October 1, 2008, NYSE Euronext (parent company of the New York Stock Exchange) acquired the American Stock Exchange and was renamed NYSE Alternext US LLC. Subsequently, NYSE Alternext US LLC was renamed NYSE Amex. The proposed amendment provides the correct current name of the exchange formerly known as the American Stock Exchange.

Sections 260.105.33 and 260.105.34

NASDAQ was designated as a national securities exchange and it no longer operates under the supervision and control of the interdealer quotation system of the National Association of Securities Dealers, Inc. The proposed amendments delete the reference to the interdealer quotation system of the National Association of Securities Dealers, Inc.

Other technical changes to SEC Rules referred to in Section 260.105.33 have been made. Citations to Regulation A, D, and E were corrected. References to Regulation B have been deleted as the SEC repealed the regulation in 1996.

Section 260.105.37

The exemption from registration for securities listed on the Chicago Board Options Exchange has expired. The exemption provided remains effective only for 36 months from the effective date of the rule unless extended by order of the Commissioner of Corporations. Consequently, the effectiveness of such an exemption has lapsed and the regulation is no longer necessary. The proposed amendment repeals the regulation.

Section 260.204.11

In 2005, the Pacific Stock Exchange was acquired by Archipelago, which was acquired by the New York Stock Exchange. The Pacific Stock Exchange is now known as NYSE Arca. Since the exchange location of NYSE Arca is not limited to a physical location in California, exempting members of the Pacific Exchange who conduct specified proprietary or firm trading at the California facilities is no longer necessary. Therefore, the proposed amendment repeals the regulation.

Section 260.211.1

On July 26, 2007, the New York Stock Exchange (NYSE), the National Association of Securities Dealers (NASD) and its subsidiary, the National Association of Securities Dealers Regulation, Inc. (NASDR) consolidated to form the Financial Industry Regulatory Authority (FINRA). The proposed amendments add Financial Industry Regulatory Authority and delete any reference to NASDR. The proposed amendments also correct outdated references to the NYSE Arca (fka the Pacific Stock Exchange or PCX) and the NYSE Amex (fka the American Stock Exchange or AMEX).

Sections 260.217, 260.230, 260.241.4 and 260.242

On July 26, 2007, the New York Stock Exchange (NYSE), the National Association of Securities Dealers (NASD) and its subsidiary, the National Association of Securities Dealers Regulation, Inc. (NASDR) consolidated to form the Financial Industry Regulatory Authority (FINRA). The proposed amendments add Financial Industry Regulatory Authority and delete any reference to NASDR.

DETERMINATION GOVERNMENT CODE SECTION 11346.9(2)

The Commissioner has determined that the adoption of the regulation does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES CONSIDERED

No alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

ADDENDUM, REGARDING PUBLIC COMMENTS

No request for hearing was received during the 45-day public comment period, which ended on November 24, 2008. Accordingly, no hearing was scheduled or held.

COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

The Department received one public comment letter during the 45-day public comment period. Those comments are summarized below, together with the Department's response.

1. COMMENTOR: Letter dated November 19, 2008, from Alan M. Parness with the American Bar Association Section of Business Law Committee on State Regulation of Securities.

COMMENT 1: Commentor recommends that the Department amend Section 260.101.2 to certify national securities exchanges identified in Rule 146(b)(1) of the Securities and Exchange Commission (17 CFR Section 146(b)(1)).

RESPONSE: The Department declines to certify national securities exchanges identified in Rule 146(b)(1) at this time because the SEC rule includes markets not previously certified by the Commissioner, and therefore, is beyond the scope of this rulemaking.

COMMENT 2: Commentor recommends that the Department amend Section 260.105.17 to certify national securities exchanges identified in Rule 146(b)(1) of the Securities and Exchange Commission (17 CFR Section 146(b)(1)).

RESPONSE: The Department declines to certify national securities exchanges identified in Rule 146(b)(1) at this time because the SEC rule includes markets not previously certified by the Commissioner, and therefore, is beyond the scope of this rulemaking.

COMMENT 3: Commentor suggests the Section 260.105.33 definition of “senior security” should be amended to limit the definition to evidences of indebtedness and stock, which conforms to the federal definition. Commentor further makes technical recommendations to Rule 260.105.33 regarding SEC Regulations A, B, D, and E, and suggested that “limited liability company” be included within specified business types.

RESPONSE: The Department declines to amend the definition of “senior security” and to include “limited liability company” as proposed by the Commentor, as the suggestions go beyond the scope of this rulemaking. However, the Commentor’s suggestions regarding SEC Regulations A, B, D, and E have been incorporated into Section 260.105.33.

COMMENT 4: Commentor recommends Section 260.105.34 be amended so that the description of investment grade securities track more closely the terminology used by the rating agencies. Commentor also makes technical suggestions.

RESPONSE: The Department considered the Commentor’s recommendations and has incorporated them into Section 260.105.34.

COMMENT 5: Commentor suggests Section 260.210 references to the NASD, Inc. be amended to refer to the Financial Industry Regulatory Authority, Inc. (FINRA).

RESPONSE: The Commentator’s recommendations have been incorporated in a separate rulemaking file entitled Proposed Technical Corrections to the CCR.

COMMENT 6: Commentor suggests Section 260.211.1 references to NASD, Inc. of the form of Application for licensee by notification is amended to refer to FINRA.

RESPONSE: The Department has considered the Commentor’s recommendations and has incorporated them into Section 260.211.1.

COMMENT 7: Commentor recommends technical amendments to Section 260.217 be made.

RESPONSE: The Department has considered the Commentor’s suggestions and has incorporated them into Section 260.217.

COMMENT 8: Commentor suggests that the Department consider adopting a rule certifying exchanges under Corporations Code Section 25100(o) in conformity with Section 260.101.2, as proposed to be amended.

RESPONSE: The Department has considered the Commentor’s suggestions and notes that besides the proposed changes to Section 260.101.2 in this rulemaking, the Commissioner has recently issued Release 87-C, which also certifies specified exchanges.

COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

No written comments were received during the 15-day public comment period, which ended on September 21, 2009.

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