

FINAL STATEMENT OF REASONS
FOR RULE CHANGES UNDER THE
CORPORATE SECURITIES LAW OF 1968

As required by Section 11346.2 of the Government Code, the Commissioner of Corporations ("Commissioner") sets forth below the reasons for the proposed adoption of 260.204.12 of the California Code of Regulations (10 C.C.R. Sec. 260.204.12).

Subdivision (e) of Section 28152 of the Corporations Code, under the Capital Access Company Law (Corporations Code Section 28000 *et seq.*), requires a person who makes recommendations with respect to the investment of funds of a capital access company to be an investment adviser either registered or licensed under federal or California law, or to be exempt from registration or licensure, respectively. At present, the Corporate Securities Law of 1968 (the "CSL") does not provide an exemption from licensure for such an investment adviser. Accordingly, the Commissioner proposes to adopt a rule under the CSL exempting an investment adviser from the certification requirement of Section 25230 when engaging in the activities set forth in subdivision (e) of Section 28152 on behalf of a capital access company licensed under the Capital Access Company Law.

After consideration of the facts and circumstances underlying the necessity for the proposed rule, and after consideration of the scope of the exemption proposed by the rule, it is the Commissioner's opinion that such an exemption is in the public interest. The proposed rule is in the public interest because of (i) the limited nature of the exemption under the CSL (i.e., the exemption is from licensure, only, and not from the prohibited practices, anti-fraud and other disciplinary provisions of the CSL) and (ii) the protections contained in the Capital Access Company Law with respect to the safeguards and procedures relating to the provision of investment advice to the company by the investment adviser (e.g., see Sections 28212, 28402, 28501, and 28820 through 28829) and the requirement of "good character and moral turpitude" in regard to the investment adviser under that law (specifically, subdivision (e) of Section 28152). Moreover, it is the Commissioner's opinion that, under the facts, circumstances and limitations of the proposed rule, there is no necessity for licensure of the investment adviser pursuant to Section 25230.

ALTERNATIVES CONSIDERED

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

FISCAL IMPACT

Cost to Local Agencies and School Districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

No other nondiscretionary cost or savings are imposed on local agencies.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action 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.

Facts evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse economic impact on business.

No written comments were received during the 45-day public comment period which ended on January 29, 2001.

No requests for hearing were received. No public hearing was scheduled or heard.