

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 California Corporations Commissioner ("Commissioner") sets forth below the reasons for the proposed amendments to Sections 260.140.72, 260.140.72.1 and 260.140.72.5 of Title 10, California Code of Regulations. In general, the proposed rulemaking makes clarifying and conforming changes to modernize the Commissioner's rules in a manner that is consistent with the Statement of Policy Regarding Church Bonds of the North American Securities Administrators Association dated April 14, 2002.

Section 260.140.72.

The Department of Corporations ("Department") regulates the offer and sale of securities under the Corporate Securities Law of 1968, as amended ("CSL"). Under the CSL, it is unlawful to offer or sell any security in this state unless the offer or sale has been qualified with the Commissioner, or is exempt from qualification.

Under the CSL, the public sale of promissory notes or other debt securities by a church must be qualified by obtaining a permit from the Commissioner prior to the offer. The regulations of the Commissioner set forth specific standards for the qualification of debt securities issued by churches. Standards relating to church debt offerings are currently set forth in Section 260.140.72 et. al of the California Code of Regulations.

The proposed rules amend current regulations as follows:

- (1) Under current law Section 260.140.72 defines church to include church, synagogue, temple, or other place of worship and related church properties such as a school or youth camp. The proposed rule would expand the definition of "church" to include "mosque". The expansion of the definition of "church" is necessary to indicate the scope of the entity and projects to which the entities are subject to the special rules for church debt securities.
- (2) Also, the rule is proposed to be amended to require that churches are "nonprofit" entities. Although understood by the public that such churches should be nonprofit entities, it is not explicitly stated in the regulations. Therefore, it is necessary to clarify that churches subject to the Commissioner's jurisdiction pursuant to the qualification of debt securities offerings shall be organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Section 260.140.72(c) was revised to clarify and confirm that a church must be an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. This grammatical revision is made for consistency with the

model standard definition of not-for-profit organization in NASAA's Statement of Policy.

Section 260.140.72.1

Under current law, Section 260.140.72.1 sets forth additional information to be included in the application for qualification. The standards set forth in Rule 260.140.72.1 are relevant to both open and limited offerings of church debt securities. The regulations were developed to assure that the church will have sufficient funds to complete the project for which the debt securities are intended to fund.

The proposed rule would amend Section 260.140.72.1 to require an opinion of legal counsel attesting to (1) the authority of the issuer to offer and sell the debt securities, (2) the status of the issuer as a nonprofit organization, (3) and whether after the sale, the church debt securities will be valid, binding obligations of the issuer in accordance with the issuers governing documents. While commercial entities are ordinarily advised by securities counsel and underwriters as to their authority to offer and sell debt securities, religious organizations may not have such advice readily available. Therefore, the proposed rule is necessary to ensure that such church has the authority to offer and sell the debt securities.

Section 260.140.72.5

The CSL requires disclosure of all material information in connection with an offering pursuant to Section 25113 of the CSL. The information required to be provided to the Department in a securities offering application is complex and voluminous. Many religious organizations may not have professional securities counsel and underwriters available to them for advice as to the proper disclosure requirements related to debt securities offerings. The format suggested by the North American Securities Administrators Association especially for church debt offerings provides a useful outline to ensure that full disclosure is made, and that there is some uniformity in church debt applications which are reviewed by the Department.

Current law incorporates references to the last offering circular provisions included in the Guidelines for Offering Church Bonds of the North American Securities Administrators Association, which were adopted April 29, 1981. Recently, the North American Securities Administrators Association amended and updated the Guidelines (renamed "Statement of Policy Regarding Church Bonds") on April 14, 2002. The offering circular requirements in the Statement of Policy dated April 14, 2002 are not substantially different from what is currently required pursuant to the CSL.

The proposed amendment to Rule 260.140.72.5 would clarify that the debt offering shall be accompanied by a disclosure document in the form and containing the information required by the offering circular provisions of the Statement of Policy Regarding Church Bonds of the North American Securities Administrators Association, adopted on April 14, 2002. A cross reference sheet, which is substantially equivalent to

the form that accompanies the Statement of Policy Regarding Church Bonds adopted April 14, 2002, is required to be submitted with an application for qualification. Having a cross reference sheet accompany the application would assist the Department in reviewing the application for qualification.

The North American Securities Administrators Association is an organization of US State and Canadian Province Securities Commissioners and Administrators interested in the promulgation of uniform securities laws and regulations, (while acknowledging the differences in each state's law), among other things. California is a member of this organization.

The Statement of Policy Regarding Church Bonds, which is incorporated by reference, was not published in the California Code of Regulations because it would be cumbersome, unduly expensive or otherwise impractical to publish this document. However, the Statement of Policy Regarding Church Bonds was made available upon request directly from the Department.

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DETERMINATIONS

The Commissioner has determined that the adoption, amendment or repeal 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 15, 2004. Accordingly, no hearing was scheduled or held.

PUBLIC COMMENT LETTERS

No public comments were received during the 45-day public comment period, which ended on November 15, 2004. There were no changes to the text of the proposed changes.