

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 amendments to Sections 260.230, 260.231, 260.236.1, 260.241.4, and 260.242, and repeal of Sections 260.231.2 and 260.236.2, of the Corporate Securities Law of 1968. In general, this regulatory action conforms the rules to law by clarifying that all applications, reports and other documents of investment advisers must be filed electronically through the Investment Adviser Registration Depository (“IARD”) in accordance with Section 25231 of the Corporations Code.

The Department of Corporations (“Department”) licenses and regulates investment advisers pursuant to the Corporate Securities Law of 1968, as amended (the “Corporate Securities Law”). Under the Corporate Securities Law, it is unlawful for an investment adviser to conduct business without first applying for and securing a certificate, as specified.

Operative January 1, 2005, AB 3070 (Chapter 461, Statutes of 2004) requires all investment adviser and investment adviser representative applications and other specified documents to be filed electronically with and transmitted to the web-based IARD, operated by the NASD. This rulemaking action makes conforming changes to the rules regarding the filing of applications and amendments.

In 2003, Corporations Code Section 25612.3 was added by AB 1031 (Chapter 473, Statutes of 2003) to require the Commissioner to use certain forms in the licensing of securities professionals. Since the forms are now required by statute, all existing incorporations of versions of these forms are redacted in this rulemaking action.

Finally, this rulemaking action eliminates the reference to the appeal process under the Permit Reform Act as a result of the repeal of that law in 2003 (AB 1757 (Chapter 229, Statutes of 2003)).

Section 260.230

Section 260.230 provides that all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Commissioner pursuant to the Corporate Securities Law may be filed electronically with and transmitted to IARD. This rulemaking action amends Section 260.230 to clarify that electronic filing with IARD is mandatory. The change is necessary to ensure that all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Commissioner pursuant to the Code are filed electronically with and transmitted to IARD, to incorporate the changes made to Corporations Code Section 25231(b) by AB 1031, and to ensure that all of the Department’s licensees are on IARD, and thus available to the public through this database.

### Section 260.231

Section 260.231 sets forth the filing requirements for an investment adviser filing through IARD. This rulemaking action amends Section 260.231 by striking out the language differentiating between advisers filing through IARD and those filing by paper. The rule change is necessary to ensure that all investment adviser applications filed with the Commissioner are filed electronically with and transmitted to IARD, and to incorporate the changes made to Corporations Code Section 25231(b) by AB 3070.

The amendments to the section also eliminate the incorporation of versions of forms required to be filed with the Commissioner, as a result of AB 1031 codifying the requirement for the use of the forms in Corporations Code Section 25612.3. The required forms in the rules are those set forth by statute in Corporations Code Section 25612.3.

In addition, the rulemaking action amends subsection (f) to clarify the procedure for successions to the business of an investment adviser in cases where the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership. The amendments allow the successor to amend the predecessor's Form ADV to reflect the change, rather than require the filing of a Form ADV-W (withdrawal from licensure) and a new Form ADV. The purpose of this amendment is to simplify the workload required when firms make such a change, since all of the remaining information on the registration remains the same, and the firm continues in business. Additionally, it allows the firm to continue to use the same CRD number. This change is further necessary to follow the same procedure for successions for investment advisers as for broker-dealers (see Section 260.211(e)), and to follow the same procedure as the Securities and Exchange Commission ("SEC").

Finally, the amendments eliminate the notice of appeal rights under the Permit Reform Act of 1981 (Government Code Section 15378(b)), since this code section was repealed by AB 1757.

### Section 260.231.2

Section 260.231.2, which sets forth the requirements of an application for a certificate as an investment adviser by an applicant not filing through the IARD, is repealed by this rulemaking action. A separate instruction for investment advisers not filing through the IARD is no longer needed since filing through IARD is now required for all applicants. The repeal of this section is necessary to incorporate the changes made to Corporations Code Section 25231(b) by AB 3070.

### Section 260.236.1

Section 260.236.1 sets forth the reporting requirements for an investment adviser representative of an investment adviser filing through the IARD. The amendments strike out the language identifying this section as only applicable to those filing through the IARD, since all applicants must now file through IARD. This change is necessary to be consistent with and avoid conflict with Corporations Code Section 25231(b).

The amendments to the section also eliminate the incorporation of versions of forms required to be filed with the Commissioner, as a result of AB 1031 codifying the requirement for the use of the forms in Corporations Code Section 25612.3.

#### Section 260.236.2

Section 260.236.2, which sets forth the reporting requirements for an investment adviser representative not filing through the IARD, is repealed by this rulemaking action, because all investment adviser representatives must be reported through IARD. This change is necessary to be consistent with and avoid conflict with Corporations Code Section 25231(b).

#### Section 260.241.4

Section 260.241.4 sets forth the requirements for broker-dealers and investment advisers to file notices of any changes in the information contained in the applications for a certificate. This rulemaking action amends this section by striking out the language differentiating between those filing and those not filing through IARD. This change is necessary to be consistent with and avoid conflict with Corporations Code Section 25231(b) as it is no longer a necessity to differentiate between licensees filing and not filing through the IARD. The amendments to the section also eliminate the incorporation of versions of forms required to be filed with the Commissioner, as a result of AB 1031 codifying the requirement for the use of the forms in Corporations Code Section 25612.3.

#### Section 260.242

Section 260.242 sets forth the requirements for a broker-dealer or an investment adviser surrendering a certificate. The amendment to Section 260.242 eliminates the alternative of surrendering a certificate by filing directly with the Commissioner, rather than through IARD. This change is necessary to be consistent with and avoid conflict with Corporations Code Section 25231(b). The amendments to the section also eliminate the incorporation of versions of forms required to be filed with the Commissioner, as a result of AB 1031 codifying the requirement for the use of the forms in Corporations Code Section 25612.3.

### DETERMINATIONS

The Commissioner has determined that this rulemaking 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.

### 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 September 18, 2006. Accordingly, no hearing was scheduled or held.

### COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

COMMENTOR: E-mail dated August 23, 2006, from Douglas Martin.

COMMENT 1: The commentor states that the proposed amendment to Section 260.231(f) fails to include the word "reorganization" in the types of successions that would require an amendment rather than a new Form ADV filing, and thus appears to indicate that the Department intends to be more restrictive than the Securities and Exchange Commission's instruction to Form ADV Part I.

RESPONSE: The inclusion of the phrase "form of organization" in the rule is intended to encompass a reorganization, to the extent the reorganization does not result in a change in ownership or control. The Department has patterned its rule after the SEC's Rule 240.15b1-3, and will look to the SEC's release, "Registration of Successors to Broker-Dealers and Investment Advisers," Investment Advisers Act Release No. 1357 (Dec. 28, 1992), in interpreting the rule. In describing a change in form of organization, that release provides as follows:

"An internal corporate reorganization or restructuring in which broker-dealer or advisory activities are transferred from one entity to another within the same organization, but that does not result in a change of control of the broker-dealer or adviser, would be filed by amendment."

Thus, the Department believes a reorganization is included in the amendment to Section 260.231(f), and may be reported to IARD by an amendment.

COMMENT 2: The commentor indicates that if there is any impediment to filing U-4s for solicitors with the IARD and the Department wants to receive the U-4s, the proposed regulation should make an express exception for them.

RESPONSE: There are no longer any impediments to IARD accepting Form U-4s for persons who are engaged only to offer or negotiate for the sale of services, and therefore Form U-4s for these individuals should be filed through the Central Registration Depository in the same manner as for other investment adviser representatives. However, the system is not capable of recognizing the exemption from the examination requirement in Rule 260.236(c)(2) (10 C.C.R. § 260.236(c)(2)), and therefore the filing will appear in the system as "deficient." Once the Department is notified that the individual is a "solicitor," the Department will correct the status in the system.

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