

This Blue Sky Law May Cast A Shadow On Promissory Note Amendments

Article By:

Keith Paul Bishop

The California Corporate Securities law requires qualification of three categories of transactions: issuer, recapitalization/reorganization transaction, and nonissuer. Cal. Corp. Code §§ 25110, 25120 & 25130. The second category includes "any change in the rights, preferences, privileges, or restrictions of or on outstanding securities". Cal. Corp. Code § 250120(a)(1). As has been discussed in this [space](#), a promissory note may be a security for purposes of the CSL. See Cal. Corp. Code § 25019 ("Security' means any note . . ."). Consequently, the amendment of an outstanding promissory note that is a security is potentially subject to qualification under the CSL.

The impact of Section 25120 is tempered somewhat by the existence of several exemptions. With respect to changes involving debt securities, Section 25103(g) exempts any change in the rights of outstanding debt securities, except the following if they **substantially and adversely affect** any class of securities:

- to change the rights to interest thereon;
- to change their redemption provisions;
- to make them redeemable;
- to extend the maturity thereof or to change the amount payable thereon at maturity;
- to change their voting rights;
- to change their conversion rights;
- to change sinking fund provisions; and
- to make them subordinate to other indebtedness.

Other exemptions may also be available for changes in outstanding debt securities but *hanc marginis exiguitas non caperet*. Moreover, the qualification requirement will not apply at all if the debt

instrument is not a security.

"[A] loan oft loses both itself and friend"

The requirement that certain changes in the rights of outstanding securities contrasts with numerous other statutes that are intended to protect borrowers (e.g., usury, borrower disclosure and lender licensing laws). The CSL is intended to protect investors. In the case of debt securities, the investors are lenders and it is for their protection that qualification may be required.

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