

## MEMORANDUM

**To: John Smith, Medical Company**  
**From: Atlas Legal Research, LP**  
**Date: December 7, 2004**  
**Re: Reverse stock split/Issuing new shares**

You have asked us to provide you a with memorandum of law outlining the procedure for “a small California S Corp. to effect a ‘reverse stock split’ and issue new stock (to not more than 25 new accredited investors) while not running afoul of any regulatory or anti-dilution statutes,<sup>1</sup> and with an eye toward any possible derivative suits.” Our findings are outlined below.

A "reverse stock split" is defined as “the pro rata combination of all the outstanding shares of a class into a smaller number of shares of the same class by an amendment to the articles stating the effect on outstanding shares.”<sup>2</sup> It therefore follows that the reverse stock split will have to be carried out through an amendment to the articles of the company.

### **I. Amendment:**

Once the company proposes an amendment to the articles to effect a reverse stock split, the same will have to be approved by the board of directors of the corporation (“board”) and approved by the outstanding shares. The board may approve of the amendment either before or after the approval by the outstanding shares.<sup>3</sup> “Approved by the outstanding shares” means approved by the affirmative vote of a majority of the outstanding shares entitled to vote.<sup>4</sup> It is to be specifically noted that the class of outstanding shares being reverse split will be entitled to vote whether or not such class is entitled to vote by the provisions of the articles.<sup>5</sup>

Once the amendment is adopted, the corporation is required to file (in the office of the Secretary of State) a certificate of amendment, which shall consist of an officers' certificate<sup>6</sup> stating:

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<sup>1</sup> “Anti-dilution” issues refer to the right of existing shareholders to purchase securities when a company issues fresh stock – a process referred to preemptive rights. Under Cal.Corp.Code § 204(a)(2), preemptive rights are governed by a company’s articles of incorporation. Hence, this issue will require an analysis of the articles in this case. We will be happy to undertake that process separately if required.

<sup>2</sup> Cal. Corp. Code § 182.

<sup>3</sup> See Cal. Corp. Code § 902.

<sup>4</sup> See Cal. Corp. Code § 152.

<sup>5</sup> Cal. Corp. Code § 903(a)(2).

<sup>6</sup> "Officers' certificate" means a certificate signed and verified by the chairman of the board, the president or any vice president and by the secretary, the chief financial officer, the treasurer or any assistant secretary or assistant treasurer. Cal .Corp. Code § 173.

- (a) The wording of the amendment or amended articles;
- (b) that the amendment has been approved by the board;
- (c) the total number of outstanding shares of each class entitled to vote with respect to the amendment; and that the number of shares of each class voting in favor of the amendment equaled or exceeded the vote required, specifying the percentage vote required of each class entitled to vote.<sup>7</sup>

The certificate of amendment shall establish the wording of the amendment or amended articles by one or more of the following means:

- (1) By stating that the articles shall be amended to read as therein set forth in full.
- (2) By stating that any provision of the articles, which shall be identified by the numerical or other designation given it in the articles or by stating the wording thereof, shall be amended to read as set forth in the certificate.
- (3) By stating that the provisions set forth therein shall be added to the articles.<sup>8</sup> Additionally, since the amendment will be for the purpose of effecting a reverse stock split, the amended articles will have to state the effect of the reverse stock split on outstanding shares.<sup>9</sup>

Once the certificate of amendment is filed with the Secretary of State, the articles shall be amended in accordance with the certificate and the reverse stock split shall be effected. A copy of the certificate, certified by the Secretary of State, is prima facie evidence of the performance of the conditions necessary to the adoption of the amendment.<sup>10</sup>

## **II. Dissenters' rights:**

California law provides for dissenters' rights only in the case of a reorganization<sup>11</sup> of a corporation.<sup>12</sup> No dissenters' rights are provided for in the case of a reverse stock split.

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<sup>7</sup> See Cal. Corp. Code § 905.

<sup>8</sup> Cal. Corp. Code § 907(a).

<sup>9</sup> See Cal. Corp. Code § 907(b).

<sup>10</sup> See Cal. Corp. Code § 908.

<sup>11</sup> See Cal. Corp. Code § 181 for definition of "reorganization".

<sup>12</sup> See Cal. Corp. Code § 1300 et. seq.

### **III. Issue of shares:**

#### **FEDERAL LAW**

##### **The Securities Act of 1933:**

The Securities Act of 1933 (“Act”) requires the filing of a registration statement with the Securities and Exchange Commission (“SEC”) before a security can be offered for sale in the United States.<sup>13</sup> A “security” includes a transferable share.<sup>14</sup> However, the Act exempts certain transactions from the registration requirement.

##### **The intrastate exemption:**

While, the facts furnished do not specifically state whether the new investors are California residents, the Corporation in question may well avail of the intrastate resident exemption if the new investors are all California residents. The intrastate exemption is provided by Section 3(a)(11) of the Act, which exempts:

“Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.”<sup>15</sup>

The basic purpose of the exemption is to allow local businesses to obtain financing from local sources without having to comply with federal registration requirements. Regulation of this aspect of such transactions is left to state Blue Sky Laws.<sup>16</sup>

However, securities exempt from registration under this exemption remain subject to the antifraud provisions of the federal securities laws.<sup>17</sup> Where the exemption is available, no documents need be filed with the SEC and no disclosure documents need be furnished unless otherwise required by state law.

In an effort to provide more objective standards upon which businessmen intending to raise capital from local sources can rely, the SEC adopted Rule 147 which

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<sup>13</sup> See 15 U.S.C.A. § 77e.

<sup>14</sup> See 15 U.S.C.A. § 77b(1).

<sup>15</sup> See 15 U.S.C.A. § 77c(a) (11).

<sup>16</sup> See 39 Fed. Reg. 2353 (1974).

<sup>17</sup> See Preliminary Notes to Rule 147. See also *Forman v. Cmty. Servs., Inc.*, 366 F. Supp. 1117 (S.D.N.Y. 1973), rev'd, 500 F.2d 1246 (2d Cir. 1974), rev'd, 421 U.S. 837.

sets forth more precise guidelines for utilization of the intrastate exemption from registration.<sup>18</sup> Rule 147 generally requires that:

- (1) The entire issue of securities be offered and sold to residents of the single appropriate state. An offer or sale to a single nonresident will render the exemption unavailable with respect to the entire offering.<sup>19</sup> An offeree or purchaser is deemed to be a resident of the state where he has his principal place of residence at the time of the offer or sale to him. For this purpose, a corporation, partnership, or trust is deemed to be a resident of the state in which it has its principal office.<sup>20</sup>
- (2) The issuer must be a resident or organized under the laws of the state and it must be doing business within the state or territory in which all offers and sales are made. An issuer is deemed to be doing business within a state if: (a) it derives at least eighty percent of its revenues, on a consolidated basis, from operations within the state, (b) it has at least eighty percent of its assets in the state, (c) it uses at least eighty percent of the net proceeds from the offering in connection with its operation within the state, and (d) its principal office is located within the state. For purposes of determining issuer residency, a limited partnership or corporation is deemed a resident of the state under the laws of which it is organized.<sup>21</sup>
- (3) Resales of securities in interstate markets must be delayed until nine months from the date of the last sale by the issuer. During this period resales must be limited to residents of the appropriate state. The issuer must take certain actions, including the insertion of a restrictive legend upon certificates, to insure that the securities are not traded in intrastate markets during the restricted period.<sup>22</sup>

All of the terms and conditions of the rule must be satisfied for it to be available. An issuer seeking to qualify for the intrastate exemption must rely totally upon the rule or administrative and judicial interpretations of the exemption.<sup>23</sup>

### **Small Offering Exemption:**

Section 3(b) of the Securities Act of 1933 authorizes the SEC to adopt rules and regulations to exempt securities from the registration requirement if it finds that

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<sup>18</sup> See 17 C.F.R. § 230.147.

<sup>19</sup> See *Hillsborough Inv. Corp. v. SEC*, 276 F.2d 665 (1st Cir. 1960).

<sup>20</sup> See 17 C.F.R. § 230.147(d)(1).

<sup>21</sup> See 17 C.F.R. § 230.147(c)(1).

<sup>22</sup> See 17 C.F.R. § 230.147(e)(f)(1).

<sup>23</sup> See 1 Bloomenthal, Securities and Federal Corporate Law, § 404 (1st. ed. 1972).

registration is not necessary in the public interest and for the protection of investors due to the small amount involved or the limited character of the public offering. Pursuant to this authorization the SEC adopted Regulation A which comprises SEC Rules 251 through 263.<sup>24</sup>

An issuer may sell securities with an aggregate offering price of up to \$1,500,000 within a 12-month period under Regulation A without registration under the Securities Act. The regulation requires, among other things, however, that a notification and an offering circular containing specified information be filed with the regional office of the SEC for the region in which the issuer's principal business operations are conducted. The required notification must be prepared on SEC Form 1-A, five copies of which must be signed by the issuer and filed at least ten business days prior to the date of the initial offering of any securities.<sup>25</sup> Upon written request, however, the SEC may authorize commencement of the offering prior to the expiration of the ten-day period.

Where an offering circular is required, it is necessary to file it as an exhibit to Form 1-A. The offering circular is a detailed document which must set forth much of the information that would be contained in a prospectus filed in connection with a registration statement.<sup>26</sup> The offering circular must be furnished to each person to whom securities are expected to be sold at least 48 hours prior to the mailing of confirmation of the sale to such persons.<sup>27</sup>

The offering circular, however, need not be filed or used in connection with an offering of securities under Regulation A where the aggregate offering price of securities of the issuer, its predecessors, and affiliates does not exceed \$100,000 provided:

- (1) five copies of a statement setting forth the information (other than financial statements) required by Part II Offering Circular is filed as an exhibit to the notification; and
- (2) any advertisement or other communication in connection with the offering is limited to required information.<sup>28</sup>

**The private offering and the accredited investors exemption:**

Based on the limited facts furnished, two other potential exemptions which the Corporation in question can avail are the private offering exemption<sup>29</sup> and the exemption

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<sup>24</sup> See 17 C.F.R. §§ 230.251-230.263.

<sup>25</sup> See 17 C.F.R. § 230.255.

<sup>26</sup> See 17 C.F.R. § 230.256.

<sup>27</sup> See 17 C.F.R. § 230.256(a)(2).

<sup>28</sup> See 17 C.F.R. § 230.257.

<sup>29</sup> See 15 U.S.C.A. § 77d(2).

granted to transactions involving offers or sales by an issuer solely to one or more accredited investors.<sup>30</sup> The accredited investors exemption may be availed provided:

- The aggregate offering price of the issue of securities offered does not exceed \$5,000,000;
- there is no advertising or public solicitation in connection with the transaction by the issuer, and
- and if the issuer files the prescribed notice with the SEC.<sup>31</sup>

### **Brief overview of Regulation D:**

The rules governing the limited offer and sale of securities without registration under the Act are contained in Regulation D,<sup>32</sup> which is designed to simplify existing regulations, eliminate unnecessary restrictions that existing rules place on issuers, and achieve uniformity between state and federal exemptions in order to facilitate capital formation consistent with the protection of investors. The regulation is comprised of eight rules, designated Rules 501-508, and establishes three exemptions from the registration requirements of the Securities Act. Rules 501-503 set forth definitions, terms, and conditions that are generally applicable to all Regulation D offerings. The operative exemptions of Regulation D are contained in Rules 504-506.

Rule 501 of Regulation D sets forth certain definitions that apply to the entire regulation. The terms defined in this Regulation are:

“Accredited investor”; “affiliate”; “aggregate offering price”; “business combination,” “executive officer”; “issuer” and “purchaser representative.” The regulation also includes a formula for calculating the number of purchasers involved in a transaction.<sup>33</sup>

Rule 502 of Regulation D sets forth a number of general conditions which apply to all offerings under the regulation pursuant to Rules 504-506. The regulatory framework established by this rule includes (a) guidelines for determining whether separate offers and sales constitute part of the same offering under principles of integration, (b) limitations on the manner of conducting the offering and on the resale of securities acquired in an offering, and (c) provisions detailing the specific disclosure requirements of Regulation D. Restrictions are imposed on the payment of commissions in connection with offers and sales under the regulation.<sup>34</sup>

Rule 502(b) sets forth the timing and nature of information which must be furnished in Regulation D offerings. The type of information to be furnished varies and

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<sup>30</sup> See 15 U.S.C.A. § 77d(6).

<sup>31</sup> See *id.* read with 15 U.S.C.A. § 77c(b).

<sup>32</sup> See 17 C.F.R. § 230.501-230.508.

<sup>33</sup> See 17 C.F.R. §230.501.

<sup>34</sup> See 17 C.F.R. §230.502.

generally depends on the size of the offering and whether or not the issuer is a reporting company. Where an issuer sells securities only to accredited investors, the rule does not require any specific disclosure. However, as a practical matter, disclosure is recommended because Rule 10b-5 is a general prohibition against fraud in connection with the sale of any security.<sup>35</sup>

Disclosure is required for unaccredited investors under Rules 504-06. The basic disclosure requirements under these rules are found at 17 C.F.R. § 230.502(b) and may be summarized as follows:

- (1) For offerings up to \$2,000,000, an issuer must provide the information required in Item 310 of Regulation S-B, except that only the issuer's balance sheet, dated within 120 days of the start of the offering, must be audited.<sup>36</sup>
- (2) For offerings up to \$7,500,000, an issuer who is not subject to the reporting obligations of the Exchange Act must provide the same kind of information as required in Form SB-2. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, the issuer may instead provide an audited balance sheet dated within 120 days of the start of the offering. A limited partnership that cannot obtain audited financial statements without unreasonable effort or expense may furnish financial statements based on federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.<sup>37</sup>
- (3) In offerings over \$7,500,000, nonreporting companies must furnish a financial statement as would be required in a registration statement filed under the Act on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, the issuer may instead provide an audited balance sheet dated within 120 days of the start of the offering. A limited partnership that cannot obtain audited financial statements without unreasonable effort or expense may furnish financial statements based on federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.<sup>38</sup>

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<sup>35</sup> See 17 C.F.R. §230.502(b)(1).

<sup>36</sup> See 17 C.F.R. §230.502(b)(2)(i)(B)(1).

<sup>37</sup> See 17 C.F.R. §230.502(b)(2)(i)(B)(2).

<sup>38</sup> See 17 C.F.R. § 230.502(b)(2)(i)(B)(3).

- (4) Companies that are subject to the reporting obligations of the Exchange Act must make the same kind of disclosures regardless of the size of the offering. Such issuers, however, may make the required disclosure either by furnishing to the purchaser: (a) the issuer's annual report to shareholders for the most recent fiscal year, if the report meets the requirements of § 240.14a-3 or §240.14c-3 of the Exchange Act, the definitive proxy statement filed in connection with that annual report, and, if requested in writing, a copy of the most recent Form 10-K and Form 10-KSB under the Exchange Act; or (b) the information contained in an annual report in Form 10-K or 10-KSB under the Exchange Act or in a registration statement on Form S-1, SB-2 or S-11 under the Act or on Form 10 or Form 10-SB under the Exchange Act, whichever form is the most recent required to be filed.<sup>39</sup> Regardless of the form of disclosure selected, the basic information provided must be supplemented by information contained in designated Exchange Act reports filed with the distribution or filing of the report or registration statement in question. The issuer must also furnish to the purchaser a brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs that are not disclosed in the documents furnished.<sup>40</sup>

Rule 503 pertains to the filing of notice of sales with the Commission.<sup>41</sup>

Rules 504, 505 and 506 each define specific requirements for creating an exempt offering.

Rule 504 allows a business to raise a maximum of \$1 million, less the total dollar amount of securities sold during the preceding 12-month period. Rule 504 has no prescribed disclosure requirements and no limit on the number of purchasers.<sup>42</sup>

Rule 505 offerings may not exceed \$5 million, less the total dollar amount of securities sold during the preceding 12 month period under Rule 504, Rule 505 or Section 3 of the act. This exemption limits the number of non-accredited investors to 35.<sup>43</sup>

Rule 506 provides an exemption for limited offers and sales without regard to the dollar amount of the offering. This exemption does not limit the number of accredited investors, but the number of non-accredited investors may not exceed 35. Rule 506

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<sup>39</sup> See 17 C.F.R. §230.-502(b)(2)(ii)(A) and (B).

<sup>40</sup> See 17 C.F.R. § 230.502(b)(2)(ii)(C).

<sup>41</sup> See 17 C.F.R. § 230.503.

<sup>42</sup> See 17 C.F.R. § 230.504.

<sup>43</sup> See 17 C.F.R. § 230.505.

requires detailed disclosure of relevant information to potential investors; the extent of disclosure depends on the dollar size of the offering.<sup>44</sup>

Rule 507 disqualifies an issuer from exemptions under Rules 504-06, if the issuer has been subject to any order, judgment, or decree enjoining it for failure to comply with the notice filing requirements under Rule 503.<sup>45</sup>

Rule 508 affords an affirmative defense to civil liability for failure to comply with Regulation D. Rule 508 provides that if a requirement of Regulation D is not specifically designed to protect the complaining person, the failure to comply is insignificant to the offering as a whole and there has been a good faith and reasonable attempt to comply with all the requirements of the regulation, then an exemption from the registration requirements will be available despite the failure to comply with Regulation D.<sup>46</sup>

## **STATE LAW:**

### **The Corporate Securities Law of 1968:**

The California state law, which governs the sale of securities, is The Corporate Securities Law of 1968. A "security" includes a transferable share.<sup>47</sup>

As a general rule, the sale of any security in an issuer transaction has to meet the qualifications under §§ 25111, 25112 and 25113 of the Corporations code<sup>48</sup> and further should not be subject of any issuance of stop orders<sup>49</sup> or postponement/suspension<sup>50</sup> orders passed by the commissioner.

Section 25111 applies when a corporation has filed a registration statement under the Securities Act of 1933. Substantially, § 25111 provides for automatic qualification the moment the federal registration statement becomes effective.

Section 25112 applies in the case of an issuer registered under Section 12 of the Securities Exchange Act of 1934,<sup>51</sup> and which is not eligible for qualification under § 25111. In such cases the commissioner, under § 25112, may qualify the sale of security.

Section 25113<sup>52</sup> is the residual provision under which qualification is to be sought in the case of all securities, whether or not eligible for qualification under § 25111 or

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<sup>44</sup> See 17 C.F.R. § 230.506.

<sup>45</sup> See 17 C.F.R. § 230.507.

<sup>46</sup> See 17 C.F.R. § 230.508.

<sup>47</sup> See Cal. Corp. Code § 25019.

<sup>48</sup> See Cal. Corp. Code § 25110.

<sup>49</sup> See Cal. Corp. Code § 25140.

<sup>50</sup> See Cal. Corp. Code § 25143.

<sup>51</sup> See 15 U.S.C.A. § 78a et seq.

<sup>52</sup> § 25113 reads: Qualification by permit; application; contents; effective date

§ 25112. In the case of the corporation in question, § 25113 in all probability applies, and the procedure contemplated under this section will have to be complied before issuing shares pursuant to the approval of the reverse stock split provided the reverse stock split is not exempted from qualification (see below).

As stated earlier, meeting the qualification requirements under §§ 25111, 25112 and 25113 is the general rule before the sale of any security in an issuer transaction. The transactions exempt from the qualification requirements under § 25110 are listed in §§

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(a) All securities, whether or not eligible for qualification by coordination under Section 25111 or qualification by notification under Section 25112, may be qualified by permit under this section.

(b)(1) An application for a permit under this section shall contain any information and be accompanied by any documents as shall be required by rule of the commissioner, in addition to the information specified in Section 25160 and the consent to service of process required by Section 25165. For this purpose, the commissioner may classify issuers and types of securities.

(2) An applicant may file a small company application for permit under this section if it meets all of the following conditions:

(A) The applicant is: (i) a California corporation or a foreign corporation, which at the time of filing an application under this subdivision is subject to Section 2115, and neither corporation is a "blind pool" company, as that term is defined by the commissioner; (ii) not engaged in oil and gas exploration or production, or mining or other extractive industries; (iii) not an investment company subject to the Investment Company Act of 1940; and (iv) not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.

(B) The total offering of voting common stock and preferred stock by the applicant to be sold in a 12-month period, within or outside this state, is limited to one million dollars (\$1,000,000), less the aggregate offering price for all securities sold (within the 12 months before the start, and during the offering, of the voting common stock or preferred stock) under Rule 504 of the Securities and Exchange Commission, in reliance on any exemption under subdivision (b) of Section 3 of the Securities Act of 1933, or in violation of subdivision (a) of Section 5 of that act, and immediately after the proposed sale and issuance there will be only one class of voting common stock.

(C) The minimum offering price of the voting common stock and preferred stock (and the conversion price if the preferred stock is convertible into the voting common stock) to be sold is two dollars (\$2) per share and the applicant files an undertaking with the commissioner that there will be no stock splits, stock dividends, spinoffs, or mergers for a period of two years from the close of the offering. The undertaking notwithstanding, the commissioner may approve a spinoff or merger pursuant to an application for qualification filed by an applicant.

(D) The net proceeds from the offering are to be expended in the operations of the business.

(E) The offering is made pursuant to a Small Corporate Offering Registration disclosure document based on the Form U-7 as adopted by the North American Securities Administrators Association and any additional requirements as the commissioner shall prescribe, that may include, but not be limited to, investor suitability and due diligence investigation requirements.

(F) The application and disclosure document is reviewed and signed by a majority of the members of the board of directors of the applicant.

(G) The application shall contain that information and be accompanied by those documents required by rule of the commissioner, in addition to the information specified in Section 25160 and the consent to service of process required by Section 25165.

(c) Qualification of securities under this section becomes effective upon the commissioner issuing a permit authorizing the issuance of those securities.

25102 & 25103. Section 25103 (f) exempts a reverse stock split from the qualification requirements except where the corporation in question has:

- (a) More than one class of shares outstanding and the reverse stock split would have a material effect on the proportionate interests of the respective classes as to voting, dividends, or distributions, or
- (b) The option of paying cash for any fractional shares created by the reverse split and as a result of that action the proportionate interests of the shareholders would be substantially altered.<sup>53</sup>

If the reverse stock split falls under the exception clause under § 25103 (f), then the issue of shares upon a reverse stock split shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.<sup>54</sup>

Therefore, the shares issued to the existing investors pursuant to effecting the reverse stock split are exempt from the qualification requirement under California law subject to the conditions mentioned supra. With respect to the issue of fresh stock, the exemption for the sale of securities from the qualification requirements are listed in Cal. Corp. Code § 25100 et. seq. Based on the limited facts provided, the potential exemptions available to the Corporation are:

**Private Placement Exemption:**

Section 25102 (f) provides exemption from qualification in the case of private placement if the offer or sale of securities meets the following criteria:

- Sales are made to not more than 35 purchasers wherever located;
- the purchasers can be reasonably assumed to have the capacity to protect their own interests in connection with the transactions by reason of their business or financial experience or the purchasers have a preexisting personal or business relationship with the issuer or any of its partners, officers, directors or controlling persons;
- each purchaser represents that the purchaser is purchasing for their own account and not with a view to or for sale in connection with any distribution of the security; and

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<sup>53</sup> See Cal. Corp. Code § 25103(f).

<sup>54</sup> *Id.*

- the offer and sale of the security is not accomplished by the publication of any advertisement.<sup>55</sup>

To qualify for the exemption, an issuer must file, within 15 calendar days after the first sale:

- A notice on Form D if the issuer is filing a notice with the SEC pursuant to Section 4(6) of the Securities Act or Regulation D, otherwise the issuer shall file California State Form 25102(f), *Notice of Transaction Pursuant to Corporations Code Section 25102(f)*;
- a Form 260.165, *Consent to Service of Process*, unless a consent to service is currently on file with the California Commissioner of Corporations;
- a filing fee; and
- a cover letter indicating the filing is pursuant to Section 25012(f) and a statement as to whether the consent to service of process is included or already on file.<sup>56</sup>

In addition, California provides another limited offering exemption for any offer or sale of voting common stock provided, among other things, that immediately after the proposed sale and issuance, there will be only one class of stock of the corporation outstanding that is beneficially owned by no more than 35 persons.<sup>57</sup>

To qualify for the exemption, the issuer must file, within 10 business days after receipt of consideration:

- a notice on Form 260.102.8, *Notice of Issuance of Securities Pursuant to Section 25102(h)* signed by a member of the State Bar of California;
- an opinion of the member of the State Bar of California that the exemption is available;
- a Form 260.165, *Consent to Service of Process* unless a consent is currently on file with the California Commissioner of Corporations; and

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<sup>55</sup> See Cal. Corp. Code § 25102(f).

<sup>56</sup> See Cal. Code Regs. tit. 10, § 260.102.14 (1984).

<sup>57</sup> See Cal. Corp. Code § 25102(h).

- a filing fee.<sup>58</sup>

#### **IV – Conclusion**

John, we hope this memo provides a useful roadmap for effectuating a reverse stock split and issue of new shares under California and federal law. In order for us to do a more in-depth analysis, we will need to know more details about the company and the articles.

Please bear in mind that Atlas Legal Research, LP is not a law firm. We work only with lawyers, law firms, and/or in-house corporate counsel. Hence, this memorandum does not constitute legal advice. We encourage you to carefully review the memo through your company's in-house legal department and/or engage outside counsel.

It is our understanding that you plan to use this memo to help you decide whether you will hire outside counsel to assist you with this process. To that end, Atlas Legal Research's president – Rocky Dhir – has a law practice separate and apart from Atlas Legal Research. His partner, Larry Newman, is very experienced in corporate transactional work. Rocky and Larry could either provide actual legal assistance or could help guide you to competent counsel in California.

If you have questions or need any other assistance, please call us at 866-52-ATLAS or email Rocky at [rocky@atlaslegal.com](mailto:rocky@atlaslegal.com). Thanks for reposing your confidence in Atlas. We look forward to assisting you again soon.

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<sup>58</sup> See Cal. Code Regs. tit. 10, § 260.102.8 (1997).