



FENWICK & WEST LLP

CORPORATE & SECURITIES LAW UPDATE

California Changes Information Statement Disclosure Rules for Companies Incorporated in or Doing Business in California

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On September 28, 2002, California adopted a new law known as the California Corporate Disclosure Act, which will change the disclosure requirements for information statements that are filed with the California Secretary of State by businesses that are incorporated in California and “foreign” corporations that are qualified to transact business in California. Beginning January 1, 2003, these companies will be required to file an information statement on an annual, rather than biannual, basis and public companies will be required to include expanded disclosures in their filings. The text of California Corporate Disclosure Act can be found at the following link:

http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_55&sess=CUR&house=B&author=shelley

Who must file the new California information statements?

All companies incorporated in California, and all companies incorporated elsewhere and qualified to transact intrastate business in California, will need to make a filing. The disclosures required to be included in the filing are more expansive for public companies.

How often must a California information statement be filed?

Under the Act, all filing companies will be required to file information statements on an annual basis. This will change current law, which now only requires biennial filings.

What information is required in all these filings?

Currently, information statements require the name and address of the CEO, CFO and Secretary, principal address of the company, a statement of the company’s principal type of business activity and the company’s agent for service of process. California companies also provide the names and addresses of the board of directors and the number of vacancies on the board. Publicly traded companies must also include additional information as described below.

What additional information must publicly traded companies now file?

Any “publicly traded company” (a company with securities listed or admitted to trading on a national or foreign exchange or the subject of regularly published two-way broker-dealer quotations) that is required to file an information statement must also disclose:

- The name of the company’s independent auditor.
- A description of non-audit services performed within the past 2 years by the auditor and its affiliates;
- Date, and a copy of, the company’s last independent audit report;
- The annual compensation paid to each director and the five most highly compensated non-director employees;

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- Any loans made to board members during the prior 2 years at a “preferential loan rate”;
 - Any bankruptcy within the past 10 years filed by the company, any of its directors or any of its five most highly compensated non-director employees;
 - Any conviction of any board member or any of the five most highly compensated non-director employees for fraud during the previous 10 years; and
 - Whether the company was found liable of violating any federal securities law, or any securities or banking provision of California law during the previous 10 years in an action before a federal or state court or regulatory agency, or a self-regulatory agency, in which a judgment of \$10,000 or more was entered.

Will this information be accessible by the public?

Yes. This information will be made publicly available on the Internet.

When must the filings be made?

Information statements must be filed annually or whenever the company changes its agent for service of process. The California Secretary of State is required to send a form for compliance three months in advance of the due date, which is determined based upon the filing date of a California corporation’s Articles of Incorporation or a foreign corporation’s filing to qualify to do business in California. However, failure to receive this form does not excuse noncompliance.

Is there a new filing fee?

Yes. In addition to the regular filing fee, a new \$5 disclosure fee will be required. Half of this new disclosure fee will go into a newly established Victims of Corporate Fraud Compensation Fund.

What happens if the company fails to make the filings?

Failure to file may result in a delinquency notice and a fine of \$250 if the company fails to file within 60 days from the mailing of the delinquency. If the company fails to file for two consecutive years, the company’s corporate rights, powers and privileges will be suspended or forfeited until the filings are made.

Please feel free to contact any member of your Fenwick & West team or Ken Linhares (klinhares@fenwick.com), if you have questions about these new rules.