



## Certification Pursuant To Section 25100(o) – Why It Still Matters (Part 1)

August 30, 2011 by [Keith Paul Bishop](#)

On October 11, 1996, President Bill Clinton signed the National Securities Markets Improvement Act (aka the “NSMIA”) into law. The NSMIA preempted qualification requirements under state blue sky laws with respect to “covered securities”. In general, the act designated certain securities as “covered securities”. Other securities were designated “covered securities” only with respect to specified categories of transactions.

Section 102 the NSMIA (which amended Section 18 of the Securities Act of 1933) deems securities listed (or authorized for listing) on the NYSE, the American Stock Exchange or the National Market System of NASDAQ to be “covered securities”. A security is also a “covered security” under the NSMIA if it is listed (or authorized for listing) on a national securities exchange (or tier or segment thereof) that has listing standards that the SEC determines by rule to be substantially similar to the foregoing three exchanges. To date, the SEC has listed five exchanges (or tiers or segments thereof) under Rule 146 for this purpose. (As discussed in this earlier [post](#), the SEC recently [proposed](#) adding a sixth exchange – the [BATS Exchange, Inc.](#)) Finally, securities of the same issuer that are equal or senior in seniority are “covered securities”. Section 18(b)(1)(C). A “senior security” is defined as any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, any stock of a class having priority over any other class as to distribution of assets or payment of dividends. Section 18(d)(4). Noticeably absent from the definitions of “covered security” and “senior security” are warrants or options to acquire covered securities (more about this below).

California exempts from all three of its qualification requirements (Sections 25110, 25120 & 25130) any security listed or approved for listing on a national securities exchange certified by rule or order by the Commissioner of Corporations. Cal. Corp. Code § 25100(o). Given that the exchanges certified by the Commissioner (the New York Stock Exchange, the American Stock Exchange, Tier 1 of the Philadelphia Stock Exchange, and the Nasdaq Global Select, Global and Capital markets) overlap with federal preemption, is certification relevant under Section 25100(o)?

The answer is yes because the NSMIA does not define “covered securities” to include warrants or options to acquire covered securities. Thus, the NSMIA does not preempt state qualification requirements with respect to options or warrants. Section 25100(o), however, exempts both the listed security and “any warrant or right to purchase or subscribe to the security”.

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Please refer to yesterday's [post](#) for a table listing the exchanges certified by the Commissioner under various statutes and rules under the Corporate Securities Law. In future posts, I plan to cover some additional reasons why certification under Section 25100(o) may still be important.

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