



California Corporate & Securities Law

Religious Facility Debt Securities And The CSL

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Earlier this week, Shelly Banjo wrote this [story](#) for *The Wall Street Journal* about religious facilities that are unable to meet their debt obligations. Ms. Banjo notes that many religious groups have relied on bond financing to acquire, build or expand their facilities.

As is the case with securities issued by secular enterprises, the offer and sale of securities in California by a religious institution are subject to qualification under the Corporate Securities Law of 1968. Thus, churches, mosques and synagogues selling bonds in California must either qualify the offer and sale of their securities or identify an applicable exemption from qualification.

Corporations Code § 25100(j) exempts from qualification any security of an issuer that is organized exclusively for religious purposes and not for pecuniary profit. To qualify for this exemption, no part of the net earnings of the issuer may inure to the benefit of any private shareholder or individual. The exemption is not be available for securities of a nonprofit organization if a promoter intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of the nonprofit organization, or from remuneration received from that organization. This exclusion is discussed in Commissioner's Release 15-C (Commissioner Releases are reproduced in Harold Marsh, Jr. & Robert Volk, *Practice Under The California Securities Laws*). [\[1\]](#)

The limitations on private inurement may lead to the question of whether proceeds of an offering may be used to construct or acquire a building for the organization. Section 25100(j) answers this question by providing that an organization that otherwise meets the requirements of the statute is not disqualified for the exemption by reason of the fact that membership fees or dues will be used to construct or acquire the facilities used by the members.

Although Section 25100(j) was modeled after a similar exemption in the Uniform Securities Act, California specifically excludes evidences of indebtedness (the current version of the Uniform Securities Act (§ 201(7)) allows, but does not require, the exclusion of evidences of indebtedness by rule). Ironically, California's exclusion is attributable to adverse publicity concerning church bond offerings, including a November 8, 1967 article in *The Wall Street Journal*.

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If no other exemption is available, the qualification of the offer and sale of debt offerings will be subject to the Commissioner's fair, just and equitable standards. In fact, the Commissioner has adopted a number of standards specifically for debt offerings by religious organizations. 10 CCR § 260.140.72 – § 260.140.72.6.

[1] I have served as a practice consultant to this treatise since 2009.

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