



# California Corporate & Securities Law

## Just What Is An Initial Transaction Statement?

Posted In [Corporate Governance](#)

12/15/2010

When shares of a California corporation are subject to a restriction on transfer or other specified conditions, Section 418 of the California Corporations Code requires that this fact “appear on the certificate, the initial transaction statement, and written statements”. This, of course, raises the question of what the Code is talking about when it refers to the “initial transaction statement” and the “written statements”.

These terms are defined in Section 171.1, which I’ve reproduced below:

*“Initial transaction statement” means a statement signed by or on behalf of the issuer sent to the new registered owner or registered pledgee, and “written statements,” when used in connection with uncertificated securities, means the written statements that are periodically, or at the request of the registered owner or registered pledgee, sent by the issuer to the registered owner or registered pledgee describing the issue of which the uncertificated security is a part.*

This definition is not exactly a model of clarity. In particular, it is not easy to conclude from the above definition that an initial transaction statement is a term that applies only when dealing with an uncertificated security.

Thus, a little history may help make sense of what the legislature was trying to say. Former Division 8 of the California Uniform Commercial Code (as the students in my Sales class know, we refer to UCC “divisions” rather than “articles”) required that an issuer of uncertificated securities send transaction statements and periodic statements. Formerly, Section 171.1 defined the terms “initial transaction statement” and “written statements” by reference to those provisions in former Division 8. In 1996, Division 8 was repealed and replaced with a new Division 8 effective January 1, 1997. The new Division 8 eliminated references to these statements (although it did retain the concept of uncertificated securities). This made it necessary to redefine these terms in the Corporations Code. Thus, I think these terms should be properly understood to refer to statements sent in connection with uncertificated securities, a term defined in Corporations Code § 191.1.

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So why spill all of this ink over the meaning of these terms? Issuers simply need to know where to put the statements required by Corporations Code § 418. In other words, in the case of a certificated security, the statements required by § 418 need only appear on the certificate.

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